

THE NATURE OF CONSTITUTION OF INDIA

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- ▶ India is a federal country. But not once in the constitution is the word “federation” ever mentioned.
- ▶ Instead what is said is that India is a ‘Union of States’.
- ▶ Actually many historians believe that India is a quasi-federal country. (K.C. Wheare)
- ▶ The constitution of India has essentially prescribed a federal state of government. “India is federal in structure and Unitary in spirit”- D.D. Basu
- ▶ Then the various state governments, the Vidhan Sabhas, and the Vidhan Parishad. And finally, we have the Municipal Corporations and the Panchayats, which are forms of local governance.
- ▶ India is often also claimed to be non- federal in matter such as the Center can impinge upon the areas earmarked only for the states in some cases.
- ▶ Therefore, it infringes the principle of federalism as it makes the state hyponym to the center. Hence, it is also said to be in a unitary form of government too.

DISTINCTION

Unitary

- ▶ Places its power in one central governing system
- ▶ Very little political power exists outside the central government
- ▶ All major government decisions are made by the central government
- ▶ Many unitary governments are either dictatorships or totalitarian
- ▶ France, although Democratic, is governed by a Unitarian body
- ▶ Kuwait, Saudi Arabia, Barbados, Morocco, and Spain are examples of unitary monarchy government
- ▶ China, Afghanistan, Italy, Zambia, and the Ukraine are examples of unitary republic government

Federal

- ▶ Distributes power from the national government to local/state governments
- ▶ Power may be diffused in the federal system
- ▶ Larger countries often adopt the federal system
- ▶ Ethnicities within a country may lead to a federal system. An example of this is the small country of Belgium which balances the needs two distinct ethnic groups
- ▶ The United States has a federal governing system

Written Summary: How is the power distributed politically?



FEDERAL NATURE OF INDIAN CONSTITUTION

- ▶ Constitution is *suprema lex*.
- ▶ Our Constitution contains an inspiring Preamble reflecting the hopes and aspirations of the Indian people, a chapter on Directive Principles of State Policy, indicating the manner in which the people's objectives can be attained by legislative action, with due respect for Fundamental Rights of the citizens, the enforcement of which should only be suspended under compelling necessities.
- ▶ Federal system cannot exist without a written constitution
- ▶ Ours being a rigid Constitution, it cannot be amended by the national legislature unilaterally without the participation of the states.
- ▶ Division of governmental powers into national and regional governments by the way of 3 lists - the Union, State and the Concurrent lists is provided in the 7th Schedule to the Constitution.

UNITARY NATURE OF INDIAN CONSTITUTION

- ▶ There are some strong centralizing tendencies present in the Indian Constitution which confer maximum power to the Central Government.
- ▶ There are historical reasons for this centralization - when the Constitution was made, it was made at the time of partition of the India, so the framers thought that if the Central government was not strong, then India would get fragmented.
- ▶ Article 1 which provides that India i.e. Bharat, shall be a Union of States.
- ▶ Article 2 and 3 of the Constitution, give the power to the Parliament to redraw the political map of India; to create and abolish the states, change the boundaries of the States or even change their names and this can be achieved by simple legislation by way of simple majority in the Parliament

- ▶ Appointment of the Governors of various States is done by the Centre
- ▶ In **Rameshwar Prasad v Union of India**, popularly known as Bihar Assembly Dissolution Case where SC raised questions as to the impartiality of the Governor Bhuta Singh because there was a President's Rule imposed in Bihar after the elections because no political party was in the position to form the government but when there was a possibility of formation of government led by JDU led by Nitish Kumar, the Governor sent a report to the Centre that the Assembly should be dissolved. The center did not apply its mind to the recommendation and it was hurriedly accepted and the Assembly was declared as dissolved the very other day and the SC said that the Governor did not act as per his duties. So, the Governor is not supposed to be an agent of the ruling party in the Centre. SC declared the dissolution of the Assembly as unconstitutional.
- ▶ The Constitution of India has established a Single and Uniform Citizenship for the whole of the country.
- ▶ In India we have Unified Judiciary with the Supreme Court at the apex as opposed to the federal system having a dual system of courts.

- ▶ Appointment on Key Positions such as the Chief Election Commissioner, the Comptroller and Auditor General are made by the Union Government and All India Services such as IAS and IPS have been created which are kept under the control of the Union.
- ▶ States in India have unequal representation in the Rajya Sabha. According to **Schedule 4**, the representation of the States ranges from 2 to 31.
- ▶ **Entry IIA in List 1** inserted by the 42nd Amendment, 1976 calls for deployment of the armed forces of the Union in the aid of the civil powers of the State
- ▶ The Centre has the power to make laws under the State List under in certain cases under **Article 249**
- ▶ Under **Article 356**, if the President is satisfied that the government of the State cannot be carried out in accordance with the provisions with the provisions of the Constitution, the proclamation of emergency can be made.
- ▶ Residuary Power i.e. the power to legislate on the areas which do not find mention in any of the three lists under **Schedule 7** lies with the Centre.

FEDARAL/UNITARY/QUASI-FEDERAL?

- ▶ The debate whether India has a 'Federal Constitution' and 'Federal Government' has been grappling the Apex court in India because of the theoretical label given to the Constitution of India, namely, federal, quasi-federal, unitary.
- ▶ The first significant case where this issue was discussed at length by the apex Court was **State of West Bengal V. Union of India**.
- The main issue involved in this case was the exercise of sovereign powers by the Indian states. The legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the state and the sovereign authority of states as distinct entities was also examined.
- The apex court held that the Indian Constitution did not propound a principle of absolute federalism.

The court outlined the characteristics, which highlight the fact that the Indian Constitution is not a "traditional federal Constitution".

- Firstly, there is no separate Constitution for each State as is required in a federal state.
- Secondly, the Constitution is liable to be altered by the Union Parliament alone and the units of the country i.e. the States have no power to alter it.
- Thirdly, the distribution of powers is to facilitate local governance by the states and national policies to be decided by the Centre.
- Lastly, as against a federal Constitution, which contains internal checks and balances, the Indian Constitution renders supreme power upon the courts to invalidate any action violative of the Constitution.

The Supreme Court further held that

- “both the legislative and executive power of the States are subject to the respective supreme powers of the Union.
- Legal sovereignty of the Indian nation is vested in the people of India.
- The political sovereignty is distributed between the Union and the States with greater weight age in favor of the Union.
- Another reason which militates against the theory of the supremacy of States is that there is no dual citizenship in India.”

Thus, the learned judges concluded that the structure of the Indian Union as provided by the Constitution one is centralized, with the States occupying a secondary position vis-à-vis the Centre, hence the Centre possessed the requisite powers to acquire properties belonging to States.

- ▶ The next landmark case where the nature of the Indian Constitution was discussed at length was **State of Rajasthan V. Union of India**.
- The learned judges embarked upon a discussion of the abstract principles of federalism in the face of the express provisions of the Constitution.
- It was stated that even if it is possible to see a federal structure behind the establishment of separate executive, legislative and judicial organs in the States, it is apparent from the provision illustrated in Article 356 that the Union Government is entitled to enforce its own views regarding the administration and granting of power in the States.

Comparative Development

RUKHSAR Ali

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JUDICIAL REVIEW





CONSTITUTION OF INDIA



सत्यमेव जयते



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EMERGENCY PROVISIONS IN
INDIAN CONSTITUTION

Art.352- Art.360 PART XVIII

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WRIT – TYPES OF WRIT



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