

India: An Ongoing Experiment to Redefine Federalism

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The Indian Constitution was enacted in 1950, after four years of deliberation, to cater to the governance of what was then a population of 361 million. The nation consisted of an immense array of peoples from religious, linguistic, ethnic, caste, and community backgrounds reflecting great economic differentials. Fifty-five years later, with the population increasing to well over a billion, India has become like a microcosm of the world itself.

India's federal system was based on the British Government of India Act 1935, which was designed to deal with issues of law and order and revenue collection. Following the British design, the Indian Constitution created a strong, centralized federalism with room for flexibility to re-write both the geography of Indian federalism as well as the distribution of power within it.

The power to re-write the geography of Indian federalism was reposed in the Union – or federal – Parliament at the centre which, by simple legislation, could create new constituent units and abolish old ones. This was necessary to absorb the erstwhile princely states as well as to meet regional demands for recognition. The Union Parliament, with scant consultation of the state legislatures, created new states out of the old seven times between 1956 and 2000 on a linguistic and cultural basis so that India now has 28 constituent states and seven union territories. The states are self governing members of the federation. The union territories are directly governed by the Union government although two union territories, Delhi and Pondicherry, have elected assemblies with limited devolved powers. Although the power of the Union Parliament to re-draw the boundaries of the state has attracted academic criticism, the actual exercise of this power has allowed India to give a multicultural dimension to its federal governance.

The division of legislative power between the Union and the states has been heavily weighted in favour of the Union to serve the interests of planned development – both in terms of the distribution of power as well as the capacity to raise finances. Under the Constitution, the distribution of the Union's revenues has been entrusted to a Finance Commission whose members are appointed by the Union. In the year 2000, the financial entitlements of the states were enhanced by constitutional amendments. But, it is the aforementioned Finance Commission that decides how Union revenues are distributed.

In its actual working India has lively legislatures; however, there has been a decisive shift from legislative to executive federalism, run by elected politicians and permanent civil servants within a parliamentary style system – both at the Union and state levels. In addition to the executive sweep of federal legislation, it is executive bodies appointed by the Union, such as the Planning Commission and the National Development Council that have been responsible for future socio-economic planning. Union and state governments and bureaucracies interact with each other informally. While the Constitution made provision for an interactive inter-state council, such a body was created only in 1990. It has proved to be unwieldy, exercising no power and little influence. The Union's power and influence has been enhanced greatly due to the pressures of globalization, its treaty-making powers, the World Trade Organization treaty, regional treaties such as the South Asian Association for Regional Cooperation (SAARC), and the problems and possibilities created by cross-border terrorism, migratory movements, and foreign investment trade.

The Constitution gave the Union a vast “emergency power” to declare national emergencies and “President's Rule,” the latter resulting in the takeover of the legislature and

government of any particular state. An external national emergency was declared in 1962 due to the India-China War. In 1975-77, an internal national emergency enabled extensive powers to be reposed in Indira Gandhi's Congress government. During such national emergencies, the legislature and executive of a state continue to function. However, under President's Rule, the state's legislative and executive branches cease to function and the state is run by the Union legislature and executive through an unelected governor of the state, who, in any event, is a Union nominee. The President's Rule provisions have been indiscriminately abused; some 100 impositions of President's Rule have been imposed on various states – mostly to ensure that opposition governments in the states are removed from office. Such impositions continue albeit with much greater restraint due to a Supreme Court judgment of 1994, which opened up the possibility of judicial interference to strike down any unconstitutional abuse of the President's Rule power.

In 1994, the Supreme Court declared federalism to be part of the inviolate basic structure of the Constitution, which is fundamental to Indian governance and cannot be changed even by constitutional amendment. But changes have been made both to strengthen the Union's power and to give some respite to the states on the distribution of revenues. Not surprisingly, various states – especially Tamil Nadu in 1971 and West Bengal in 1978 – have asked for more power and more finances. This found some reflection in the Sarkaria Commission "Report on Centre-State Relations" (1988) which, while sensitive to the demands of the states, did not seek to greatly alter the status quo but called for greater constitutional discipline.

Indian federalism started on the assumption that the legislatures would be firmly in charge of federal governance. However, this has globally proved not to be the case. A stable parliamentary system also produces strong executives that are constitutionally empowered to act both in their own right and to implement legislation. Inevitably, federal governance slips into executive hands, but to a lesser extent than may be believed. In every democracy, all governments have to face the electoral ballot and cater to diverse demands. Accountability to the legislature has been strengthened in various ways. But, most importantly, executive governance has also been forced to respond to the people through new mechanisms of accountability devised by the media, social activism, freedom of information regimes, and elections in both the states and the Union. In India, the 1992 amendments to the Constitution have also brought power closer to the people by imposing a mandatory three tier local government on the federal structure. **The irresistible rise of executive federalism cannot ignore the no less irresistible demands for democratic governance.** But, clearly the older mechanisms for distributing power and responsibility between the Union and states whilst leaving it to the judiciary to resolve disputes is not enough. Both executive federation as well as overt and covert mechanisms for inter-state interaction have to be recast within a framework of democratic accountability. This, then, is the challenge for the future – reconciling federalism to democracy. Perhaps, it is in this sense that an Indian Supreme Court judge asked if India's Constitution is constantly in a state of being or becoming.