
FEDERALISM IN INDIA: A COMPREHENSIVE ANALYSIS OF ITS EVOLUTION, FEATURES, AND CONTROVERSIES

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Abstract

Federalism in India presents a unique governance structure characterized by the distribution of powers between the central and state governments. This article provides a thorough examination of the evolution, features, and controversies surrounding federalism in India. Beginning with its historical roots, the discussion delves into the essential features of federal government, including the supremacy of the Constitution, division of powers, rigidity of the Constitution, and the role of an independent judiciary. The article explores the merits and demerits of federal government, highlighting its suitability for diverse countries like India. Additionally, it analyzes the evolution of federalism in India, tracing its constitutional history from colonial rule to the present day. Through a detailed examination of legal precedents and scholarly discourse, the article sheds light on the complexities and nuances of Indian federalism, addressing the ongoing debates and differing perspectives on its nature and functioning.

Keywords: Federalism, India, Constitution, Central Government, State Government, Evolution, Features, Controversies, Judiciary, Division of Powers.

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Introduction

Federalism, as a form of government, has been instrumental in shaping the political landscape of India since its inception. With a rich historical backdrop and a diverse population, India's federal structure has evolved over time, reflecting the complexities of governance in a vast and heterogeneous nation. This article aims to provide a comprehensive analysis of federalism in India, examining its historical antecedents, essential features, and the interplay between the central and state governments. Through a critical examination of legal frameworks, judicial decisions, and scholarly interpretations, the article seeks to elucidate the unique dynamics of Indian federalism and explore the underlying controversies and debates surrounding its nature and functioning.

Federalism in India

Federalism as a form of government was, for the first time, put into practice in the United States way back in 1789. It was a result of the prevailing situation that time in the United States of America. Subsequently, it was followed in other countries of the world as a political choice. The most important feature of federalism is the division of powers between the central and state government by the scheme of the Constitution itself. Both governments are independent and autonomous in their sphere of powers.

Federalism in India has a strong bias towards the Union Government. Federalism constitutes a complex governmental mechanism for governance of a country. It has been evolved to bind into one political union several autonomous, distinct, separate and disparate political entities or administrative units. It thus seeks to reconcile unity with multiplicity, centralization with

decentralization and nationalism with localism. The originality of the federal system lies in that power is at one and the same time concentrated as well as divided. There is centralization in other respects¹.

India is not a true federation. It combines the features of a federal government and the features of a unitary government which can also be called the non-federal features. Because of this, India is regarded as a semi-federal state. Prof. K.C. Wheare described it as a “quasi-federal state”. The Supreme Court of India also described it as “ a federal structure with a strong bias towards the Centre”. Thus the Indian federation is an example of ‘indestructible union with destructible states’. It means that the Union shall remain intact but the physical existence of states or units can be modified. Accordingly, Article 3 provides that the Parliament may by law form the new states by separating or uniting the territory of existing states, increase or diminish the area of any state, and alter the name and boundary of any state.

A federal Constitution establishes a dual polity as it comprises two levels of Government. At one level, there exists a Central Government having jurisdiction over the whole country and reaching down to the person and property of every individual therein. At the other level, there exist the regional governments, each of which exercises jurisdiction in one of the regions or administrative units into which the country is divided under the Constitution. A citizen of a federal country thus becomes subject to the decrees of two governments – the central and the regional.

The two levels of Government divide and share the totality of governmental functions and powers between themselves. A Federal Constitution thus envisages a demarcation or division of governmental functions and powers between the centre and the regions by the sanction of the Constitution itself which is usually a written document and also a rigid one in which is not capable of amendment easily from this follows two necessary consequences-

(1) that any invasion by one level of Government on the field assigned to the other level of Government is a breach of the Constitution and

(2) that such a breach of the Constitution is a justiciable issue to be determined by the judiciary. Each level of Government thus functions within the field assigned to it by the Constitution. The several governments do not, however function in watertight compartments². They come in contact with each other at many points. Their areas of operation and functioning cross and interest in several respects thus creating a variety of governmental relations between the centre and the

¹. See, Dicey, *Law of the Constitution*, (1952), p. 138; see also Federalism; Problems and Methods, IV *International Bulletin of Social Science*, (1952),

p. 72; Bowie, *Problems of Federalism*, (19872), p.11; Wheare, *Federal Government*, (1953), p. 14; Schwartz, *American Constitutional Law*, (1955), p. 738; Friedrich & Bowie, *Studies in Federalism*, (1957), p. 426; Mc Whinney, *Comparative Federalism* (1962), p. 131; Sawyer, *Modern Federalism*, (1969), p. 79; Ricker, *Federalism: Origin, Operation, Significance* (1964), p. 76; Livingstone, *Federalism and Constitutional Change* (1956), p.174; Jain, *Federal Grants-in-aid in the USA* (1956), p. 79; Jain, *Some Aspects of Indian Federalism*, (1979), p. 644; Jain, “Federalism in India”, VI *JILL*, 355 (1965), p. 355; Alice Jacob, “Centre-State Governmental Relations in the Indian Federal System”, X *JILL*, (1968), p. 583; S.N. Jain, “Freedom of Trade and Commerce and Restraints on the State Power to Tax Sale in the Course of Inter-State Trade and Commerce, X *JILL*, (1968), p.586; M.P. Jain, *Indian Federalism – A Background Paper in III, Constitutional Development since Independence*, (1974), pp.205-254; Setalvad, *Union and State Relationship under the Indian Constitution* (1974), p. 214

². Sower, *Modern Federalism* (1969), p. 189

regions and between the regions inter se. thus the pattern of inter governmental relation in a federal country is not static but dynamic.

As contradistinguished with the federal Constitution, there is a unitary Constitution in which the Central government is supreme. The units in a federation act under the Constitution. The units in a federation³ thus have their own identity and personality and have their own separate functions to discharge apart from the federal Government⁴.

The concept of Co-operative Federalism originated in the Australian Constitution. Co-operative Federalism means there should be a co-operative relation between the centre and the state and not confrontation. There should be harmony and not conflict. The cooperative federalism concept is worked out in a number of constitutional provisions as well as strengthened through legislation⁵. The framers of the Indian Constitution learnt a great deal from the experiences the problem faced and the solution attempted – of the federation of the USA, Canada and Australia. The approach of the framers of the Indian Constitution was conditioned in good measure by the knowledge of the working of these federations. They have tried to incorporate in the Indian federal structure the main development faced therein. But, still, the Indian federalism break new ground and the Indian Constitution contain some novel provisions which are not to be found in other federation⁶. While discussing in favour of strong centre the Supreme Court by majority in *Greater Bombay Corporation Bank Ltd. v. United Yarne Tex (P) Ltd*⁷. held that need however, the Constitution being an organic living document for the interpretation of its flexible provision which was dynamic and pace the changing times.

In *Karunanidhi v. Union of India*⁸, it was held that if the word “federation” can be used at all in the context of the Constitution of India, it is a federation of various states which were designated under the Constitution.

Indian federalism has been a subject of controversy. Different views has been expressed by various writers about the nature of Indian federalism Prof. K.C. Wheare, while citing the constitutions of the United States, Switzerland and Australia as examples of federal Constitution⁹ deems fit to include the Indian Constitution in the class of quasi-federal Constitution¹⁰. According to Prof.

³. This is a form of polity, in which there is union of constituent units without unity. The Government is organized at two levels- union and state. The union has a general government while the federating units regional governments. There is thus a division of powers between these two governments, which are of co-ordinate authority. A federation may be formed with units that were previously independent, as for example, the United States of America, again it may consist of units that were formerly administrative areas as in India. A federation is characterized by three factors, viz., (1) the supremacy of the Constitution (2) the division of powers between two co-ordinate Governments- general and regional; and (3) an independent authority to interpret the Constitution.

If the word ‘federation’ can be used at all in the context of the Constitution of India, it is federation of various states which were designated under the Constitution for the purpose of efficient administration of the country, Mitra’s Legal and Commercial Dictionary, 5th Edn., (1990).

⁴. Wheare, *Federal Government*, 4th Edn., (1963), p. 424

⁵. M.P. Jain, *Indian Constitutional Law*, 4th Edn., (1993), p. 662

⁶. *Ibid*

⁷. (2007) 6 SCC, p.236

⁸. AIR 1977 Madras 1920

⁹. K.C. Wheare, *Modern Constitution*, (1952), p.27

¹⁰. K.P. Krishnashetty, *The Law of Union State Relation and Indian Federalism* (1981), p.447

Where, a Constitution which fails to conform to conventional conception of strict federal principle of independent and coordinate status between general and unitary governments, is not strictly federal, and it may be called “quasi federal¹¹”.

This classification of Prof. Wheare was however questioned by Prof. C.A. Alexandrowicz. He says that the term “quasi federation” conveys no precise meaning at all. According to him, the term quasi in the expression “quasi-federation hints at a deviation from the federal principle, without indicating what kind of special position a particular quasi-federation occupies between a federation proper and a unitary state¹².” So, he rejects the vague quasi-federal nomenclature and after referring to salient features of the Indian federal structure, say that India is a case of *sue generis*¹³ for though the federation was created from above, the local states enjoy the rights of real parliamentary Government whatever the distribution of powers between them and the centre¹⁴.

Sir Ivor Jennings, a reputed constitutional lawyer says that “India has a federation with strong centralizing tendency¹⁵. But he admits that it is not easy to the essential characteristics of Indian federalism¹⁶.”

Granville Austin describes the Indian federation as an ‘amicable union’ because in his opinion the Indian Constitution has been verily cast in the mould of “co-operative federalism” whose dominant trait is the increasing interdependence of federal and regional governments¹⁷. Yet another writer has describes as “bargaining federalism”, for according to him, not only the constitution has afforded sufficient scope for bargaining between centre and states on several matters but in practice the relationship between them has been shaped often by such bargaining as well¹⁸. And a few others have given different appellations. F.G. Carnell calls it a federation in reverse because as federation evolved by way of political devolution from former unitary colonial structure¹⁹. It is also described as federation “by disaggregation” on the ground that states were re-organised in 1956 on the basis of language in response to the persistent demand of the linguistic groups.

Thus the federalism has come to mean different things to different people, and it has earned number of appellations and is given a few nomenclatures. In short it has provided to be as complicated as any other federation.

There are marked differences between the American federation and the Indian Federation. In America there is a dual citizenship, whereas in India there is only one citizenship. Indian citizens wherever they resides are equal in the eye of law²⁰. Secondly the states in America have a right to make their own constitutions exhibit a centralizing tendency in several of its provisions, e.g., the adoption of a lengthy concurrent list, the power of parliament to re-organise the political structure

11. *Ibid* at p.28

12. C.H. Alexandrowicz, *Constitutional Developments in India*, (1957), pp.158-159.

13. *Ibid* at p.159

14. *Ibid* at p.55

15. Sir Ivor Jennings, *Some Characteristics of the Indian Constitution* (1953), p.1; see also M.P. Jain, *Federalism in India* (1964), p. 17.

16. *Ibid* at p.552

17. Granville Austin, *The Indian Constitution – Cornerstone of a Nation* (1966), pp.186-187.

18. W.H. Morris – Jones, *The Government and Politics of India* 2nd Edn., (1967), pp.141-144.

19. U.K. Hicks, F.G. Carnell and Others, *Federalism and Economic Growth in Under Developed Countries* (1963), p.53.

20. Wheare, *Modern Constitution*, 2nd Edn. (1966), p. 142

of the country, supremacy of parliament over state legislatures if there is a direct conflict between their respective jurisdiction, vesting of the residuary legislative power in parliament, and powers of governors to reserve bills for the consideration of the President of the republic, fourthly in certain circumstances, the Union is empowered to supersede the authority of the state or to exercise powers otherwise vested in the states.

In India the centre has the power to reorganize the states through parliament. Governors appointed by the centre can withhold assent to legislation passed by the State Legislature, Parliament can over ride legislation passed by the states in the national interest, the Governor can play a role in the formation of the State Governments. Under Article 356, residuary powers are vested with the centre and the major taxation power lie with the central authority. Judicial review of centre state relation exist as in federal system. On the balance, the Indian political system has federal features which are circumscribed with a built-in unitary core²¹.

Meaning of Federalism

A Federal Government is a complicated form of Government. Probably this peculiar feature accounts for a number of versions of federalism. A noted Greek historian A.H.J. Greenidge has tried to define federation as a political unit which is itself as aggregate of units. It is something less than a nation and something more than a league²².

The term “Federation” is derived from the Latin word ‘Foedus’. It means treaty or agreement. Therefore in a Federal state there exist two governmental bodies i.e., one at the centre and the other in the states. Both have independent powers divided by a written and rigid Constitution. The examples for federal Government are India, USA, Australia, Switzerland and Canada. In *IR Coelho v. State of Tamil Nadu & Others*²³, SC held that Parliament can made addition in 3 legislative list, but cannot abrogate all the lists as it would abrogate the federal structure of the Constitution. If there exist only one Government in a country it is called a unitary state. Countries like England and Sri Lanka are the examples of unitary governments.

Essential Features of Federal Government

A Federal Government has four essential characteristics. They are:

1. Supremacy of the Constitution.
2. Division of powers between the centre and the states.
3. The rigidity of the Constitution.
4. The existence of the independent judiciary.

1. The Supremacy of the Constitution

Every federal Government must necessarily have a written Constitution. The powers and functions of the Union Executive Legislature and State Executive and Legislature are prescribed by the Constitution. Neither the Executive nor the legislative functions against the Constitution.

2. Division of Powers between the Centre and the States

²¹. Lecture at Public Forum, Bandaranaike Centre for International Studies, Colombo, Sri Lanka on September 13, 2004

²². A.H.J. Greenidge, *A Handbook of Greek Constitutional History* (1914), p.220

²³. (2007) SC 861; see also *Greater Bombay Corporation Bank v. United Yarn Tex Ltd.*, (2007) 6 SCC 119; *Gujarat University v. Sri Krishna*, AIR 1963 SC 703 pp. 715-16; *Waverly Mills v. Raymon and Co.*, AIR 1963 SC 90, p. 95

In a federal Constitution there must be the division of powers between the Central Government and the State Governments. Usually the power that are of national importance are allocated to the Central Government. Those subjects which are of local importance are given to the State Governments. The unspecified or residuary powers are left either with the centre or with the states. In the Indian Constitution the powers of the Central Government are mentioned in the union list. At present there are 100 subjects in the Union List. The State list consists of 62 subjects. There are 52 subjects in the common or concurrent list. The unspecified or residuary power rest with the Central Government. Any change in these list can be made only by an amendment to the Constitution

3. Rigidity of the Constitution

A federal state must have a written Constitution. It cannot be easily amended. The amendment to such Constitution are effected by difficult process. In Australia and Switzerland every constitutional amendment requires the approval of the people. In America, the amendments to the Constitution can be made with the support of the absolute majority of the congress together with the support of three fourth of the state legislatures.

4. Independent Judiciary and the Power of Judicial Review

A federal state is characterized by the existence of an independent judiciary. The centre and states in this system fulfill their constitutional obligations within the framework of the Constitution. However, conflict may arise between them on one pretext or other. In order to settle such conflicts judicial opinion is required. Therefore an independent judiciary is a must in a federal state to offer such opinion or interpret the Constitution. The centre as well as the states have to abide by the decision taken by the Supreme Court. This is called the judicial review power of the Supreme Court.

Professor A.V. Dicey describes federalism in his own inimitable way he says that;

- (1) Federalism is a natural constitution for a body of states which desire union and do not desire unity.
- (2) The idea which lies at the bottom of federalism is that each of the separate states should have approximately equal political rights and should thereby be able to maintain the limited independence.
- (3) A true federal Government is based on the division of powers.
- (4) Federalism means the constant effort of statesmanship to balance one state of the confederacy against another
- (5) It also means the predominance of legalism or in other words, a general willingness to yield to the authority of the law courts²⁴. The last point seems to have been given a greater emphasis by Roscoe Pound who says that the federal polity is essentially a legal polity and only Constitution which is the supreme law can hold the Government of the whole and of the parts to their appointed spheres²⁵.

According to Prof. K.C. Wheare, in a federal Constitution the powers of the Government are divided between a Government for the whole country and Government for parts of the country in such a way that each Government is legally independent within its own sphere²⁶. According to him the legislature of the whole country has limited power neither is subordinate to the other, both are

²⁴. A.V. Dicey, Introduction to the Study of the Law of the Constitution 8th Edn. (1927) p. 126

²⁵. See A.T. Mason and V.M. Beaney, *The Supreme Court in a Free Society* (1959), p.71.

²⁶. K.C. Wheare, *Modern Constitution*, 3rd Edn., (1963), p. 74

co-ordinate²⁷. The contrasting it with a unitary Constitution he says that in the latter, the legislature of the whole country is the supreme law making body in the country.

The central theme of the definition is that the federation and Unit Government are coordinate and independent powers. However, from the myriad of definition one can glean out three important and essential features of federalism. They are;

(1) division of powers between the centre and the states, which are expected to exercise their powers independently as far as possible and in concert with each other or cooperatively if necessary

(2) supremacy of the Constitution with an explicit idea that neither the centre nor the state can change provisions relating to federal aspect unilaterally and

(3) an independent judiciary to function as an arbitration in all disputes between the states. To this body of three principles it is necessary to add one more namely the concept of strong centre. It may be noted that the important principles followed in a federal constitution in dividing powers are that subject matters of national importance and dimensions are entrusted to the centre, subjects of local character to the states and subjects of doubtful complexion to both concurrently, Bora Laskin, a noted Canadian jurist has rightly described the federal structure wherein the Central Government would be one with dependent status as a “limping federalism²⁸.” As a matter of fact, the aforesaid essential features have been accepted as cardinal principles of federalism uniformly by legal writers, political thinkers and Constitution-makers.

The Union of India is a federal union with distribution of power of which the judiciary is the interpreter.

In special reference of 1956²⁹, it was held that although there has been considerable controversy whether India is or not a federation and although some writers have called it quasi federal, it would seem that essentially the Indian constitution is a federal one.

In *Kesaram Industries Ltd. and others v. State of West Bengal and others*³⁰, V.N. Khare, CJ and RC Lohoti held that in federal structure of the Constitution there was a historical bias towards a strong centre, which bias was reflected inter alia, in the following

(1) Distribution of Legislative heads between the union and the states

(2) Primacy of union legislation in respect of List III

(3) Residuary power to legislate having been conferred on the Union

(4) Possibility of encroachment of fields covered in List III by union under articles 249 to 252

Merits of Federal Government

Federation as a form of Government is widely accepted and appreciated by several political scientists. The merits of the Federal Government are the following:

1. The small states make a stable union and thus they gain strength.
2. Federation is suitable for big countries with different race, cultures, language and religion.
3. The regional and local problems are solved immediately.
4. The federal Government enhances the value of the small states.
5. It is also economically advantage for small states to strengthen themselves.

²⁷. *Ibid*

²⁸. Bora Laskin, “Reflections on the Canadian Constitution after the First Century”, xlv *Can.Bar Rev.*, (1967) p.401

²⁹. AIR 1965 SC 745

³⁰. (2004) 10 SCC 201

6. In a federal system there is no danger of the rise of authoritarian Government.
7. In a Federal Government local talents are encouraged.
8. There is no overburdening of work and
9. There is no centralization of powers.

Demerits of Federal Government

1. It is an expensive form of Government.
2. Sometimes there may occur inconsistency in internal and external affairs.
3. Many conflicts may arise between the centre and the states over the question of authority and power.
4. The national integrity may be affected due to such conflicts between the centre and the states.
5. There may be a delay and wastage of energy.
6. Due to the rigidity of the Constitution no immediate legal remedies could be provided to free the socio-economic challenges of the times.

Evolution of Federalism in India

The constitutional history of India traced its back from the Government of India Act 1858 through which the Government of India transferred from the company to the British Crown and a Viceroy was designated as the representative of the Crown. The transfer of company's Government to the British Crown was announced by a Royal Proclamation made by the Queen of England. The proclamation had a great constitutional importance. According to G.N. Singh, "the passing of the Government of India Act, 1858 closed one great period of history and ushered another great era—the direct rule of the Crown"³¹.

The Indian Council Act of 1861 was of basic importance. It brought about the beginning of the representative institutions. It provided India with the frame work of Government which lasted upto the present time³². Under this Act Indians were for the first time associated with the work of legislation. Thus Indian Councils Act of 1861 made provisions for establishment of provincial legislative councils and thereby provincial Governments of Bombay and Madras were established and was empowered to make laws for the benefits of the provinces³³.

The Indian Councils Act of 1892 increased the number of members in the central and provincial council introducing election system partially. The Indian Councils Act of 1909 popularly known as Minto Morely Reform also increased the size of the legislative councils in the central as well as provincial.

The Government of India Act 1919 popularly known as Montagu-Chelmsford Reforms making a major development in the constitutional history of India³⁴. This Act introduced Dyarchy in the provinces. Dyarchy has been derived from the Greek word 'di-arche' means double rule. The object of the Dyarchy was to train the natives in the act of self-Government. In matter of legislation subjects were divided into central and provincial. The provincial matters of legislative subjects were divided into 'reserved' and transferred. Jail, police, justice, finance and irrigation, comparatively more important subjects, were the 'reserved' subject and they were to be governed

³¹. G.N. Singh, *Landmark in Indian Constitutional and National Development*, (1989) p. 73.

³². Jennings, *Some Characteristics of the Indian Constitution*, (1953), p. 56

³³. Wade and Philips, *Constitutional Law*, 4th edn., (1972) p. 4

³⁴. Section 45A of the Government of India Act, 1915, as inserted by the Government of India Act, 1919

by the Governor and his Executive Council without any responsibility in the Legislature, Education, Agriculture, Local Self Government etc. Subjects of lesser importance were transferred to the Indian Ministers and the Governors. The Governor could over ride both Ministers and the Executive Council. The Provincial Legislative Council was empowered to legislate in respect of provincial matters only. But there were many restrictions on their powers of legislation.

In several cases the previous sanction of the Governor General was necessary. He had the power to stop the consideration of a Bill or part of it. He could secure legislation on reserved subjects notwithstanding that the council had not consented to it. He had also the power to veto Bills. The proportion of the elected members was increased upto 70% in the Provincial Legislative Council but the separate electorate for Muslims was continued.

The principle of responsible Government was not introduced in the centre. The Central Government remained responsible to the British Parliament through the Secretary of the State. The Central Legislature was to have a bicameral legislature. It was now a more representative body³⁵. The Governor General had over-riding powers in respect of legislature. First, his prior sanction was required to introduce Bills relating to certain matters. Secondly he had the power to veto or reserve for consideration of the Crown any Bill passed by the Indian Legislature. Thirdly he had the power of certifying any Bill and sign it as a permanent law despite Legislature's opposition to it. Fourthly he could make ordinances having the force of law for a temporary period in case of emergency.

The Central Legislature had power to legislate on any matter. So it was not possible to challenge the validity of the Central Laws. In case of controversy it was the Governor General and not the Courts, who had the authority to decide whether a particular subject was a Central or Provincial subject. Thus, the Government of India remained unitary³⁶ and centralized Government with the Governor-General-in-Council as the key stone of the whole constitutional edifice.

It was the Simon Commission who made proposal to make the Government of India to a federal nature. The report given by the Commission was considered at the Round Table Conference which led to the preparation of some constitutional reforms and thereby introduces federalism in India.

Thus the Government of India Act, 1935 was passed by the British Parliament which made provision for All India Federation. The All India Federation comprising of the British India Provinces and such Indian state who would desire to come into the federation. The accession of the states to the federation was optional. At the time of joining it each ruler of the state was required to sign an instrument of accession³⁷.

The Executive Authority of the Central was vested in the Governor-General. The legislative power is divided between the provincial and the central legislature. The Governor stands as the executive head of the provinces. The provincial legislature of Bombay, Bengal, Madras, Bihar, Assam and the United Provinces were made bicameral.

The Act made a three fold distribution of power between Central and Provincial Federal List, Provincial List and Concurrent List. Federal Lists consists of 59 subjects. The Provincial List consists of 54 subjects and the Concurrent List consists of 26 subjects. The doctrine of 'permissible encroachment' is also seen in the Government of India Act, 1935. The federal legislature had the power to legislate with respect to the subjects enumerated in the Provincial List if a proclamation of emergency was made by the Governor General.

³⁵. Report of the Joint Parliamentary Committee, (1934) Vol. I, pp. 232-238.

³⁶. Webster's "Seventh New Collegiate Dictionary", (1971), p. 70

³⁷. M.V. Pyle, *Constitutional History of India*, p. 24

The Federal Legislature could also legislate with respect to a provincial subject if the legislature of two or more provinces desired this in their common interest. In case of repugnancy in the concurrent field a federal law prevails a provincial law to the extent of repugnancy as the case of Art. 254(1) of the present Constitution.

Like Article 254(4) if the provincial law received the assent of the Governor General or of his majesty, the provincial law was to prevail. Unlike in the present constitution the residuary power of the legislation is neither vested in the Central Legislature or provincial legislature. The governor general was empowered to override either the federal or provincial legislature.

The 1935 Act established a Federal Court. The existing High Court was forming part of the provincial judiciary. Federal court is the federal judiciary but having provision to prefer appeal to the Privy Council from its decision the Federal Court have no advisory jurisdiction. Thus the passing of Government of India Act, 1935 started a federal governance in India.

The idea of our present Federal Constitution is recommended by the Cabinet Mission in March 1946. It recommended that there should be a Union of India embodying both British India and states and the Constitution of a Constituent Assembly was to be elected for the purpose of framing new Constitution³⁸.

The proposal of cabinet mission were accepted and a constitutional making body came into being in November 1946. The Draft Constitution was published in January 1948. The new Constitution of India was adopted by the Constituent Assembly on 26th November 1949 and signed by the President Dr. Rajendra Prasad. Certain Articles came into force at once the remaining on 26th January 1950.

Article 1 of the present Constitution categorically affirmed the fact that India or Bharat shall be Union of states. The territory of India shall comprise the territories of the state, the union territories specified in the First Schedule and such other territories as may be acquired. Thus the Union of India is a federal union, the distribution of powers of which the judiciary is the interpreter³⁹.

Although there has been considerable controversy whether India is or not a federation and although some writers have called quasi federal it would seem that essentially the Indian Constitution is federal. It was held in special reference of 1956.

In *State of Karnataka v. Union of India*⁴⁰, it was held that whatever federal nature is found in the structure it strongly shows unitary features also. In *Kesavananda Bharati v. State of Kerala*⁴¹, it was held that federalism is the basic feature of the Constitution.

The distribution of powers is an essential feature of federalism. Dr. B.R. Ambedkar described Article 226 as an Indian innovation in the process of making federal government less rigid and legalistic. The states under our Constitution are in no way dependent upon the centre for their legislative and executive authority. The centre and the states are co-equal in this matter.

³⁸. Dr.J.N. Pandey, *Constitutional Law of India*, 41st edn., (2004), p. 9

³⁹ *Ibid* at p. 34

⁴⁰. (1978) 11 SCJ 190

⁴¹. AIR 1961 SC 1461; See also *I.R. Coelho v. State of Tamil Nadu and others*, (2007) SC 845; *Re Berubari v. Union of India*, AIR 1960 SC 845; *Karunanidhi v. Union of India*, AIR 1979 SC 898; *Vijay Kumar Sharma v. State of Karnataka*, (1990) 2 SCC 56; *Greater Bombay Corporation Bank Ltd. v. United Yarn Tex Ltd.*, (2007) 6 SCC; *State of West Bengal v. Union of India*, AIR 1963 SC 1241

Thus the basic principle of federalism is that the legislative and the executive authority is partitioned between the centre and states, not by any law to be made by the centre, but by the Constitution itself and this is what Constitution does⁴².

Conclusion

In conclusion, federalism in India represents a dynamic and multifaceted system of governance that has evolved over centuries. Rooted in historical legacies and shaped by constitutional provisions, Indian federalism embodies a delicate balance between centralization and decentralization, unity and diversity. While the distribution of powers between the centre and states remains a fundamental aspect of Indian federalism, ongoing debates and legal challenges underscore the complexities inherent in its functioning. As India continues to navigate the intricacies of federal governance, the principles of cooperation, accommodation, and constitutionalism will remain paramount in ensuring the success and stability of its federal structure.

⁴². CAD, Vol. XI, p. 976.