



A STUDY OF FEDERAL MODEL OF INDIAN CONSTITUTION

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ABSTRACT

The Constitutional Law lays down the framework of a political system according to which a country is administered. Any political order aims to attain the goals enshrined in the Constitution through a government system. The location and the distribution of power between the different governing units determines whether a government is federal or unitary and manifest the political behaviour. In federal system, sovereign power to govern is constitutionally divided at two levels of government- a central governing authority and constituent units. In unitary system, the central governing authority exercise all the sovereign powers in the form of central government. The human quest for the attainment of stable and justiciable political system has led to the evolution of different government systems.



The federal system in India is considered as unique in character throughout the world. Since the establishment of independent government, nature of vertical division of sovereign political powers amongst the two levels of government has always been a question of debate and analysis.

KEYWORDS : *Constitution, federal, unitary, dual government, judicial review, dual citizenship.*

INTRODUCTION

The Constitutional Law provides for fundamental legal rules, doctrines relating to the establishment of governmental institutions, scope and limit of their powers and duties. Based on ideologies and the basis of power source, a political structure of government is of different kinds. A government system may be federal or unitary depending on how the power is organized between the central and regional governments. The nature of distribution of sovereign power between the different governing units and the political structure of government determines whether a government is federal or unitary and manifest the political behaviour. When the sovereign power to govern is constitutionally divided at two levels of government- a central governing authority and constituent units, political system is federal in nature. On the other hand, when there is one central governing authority in the form of central government exercising all the sovereign powers, the system is unitary. The human pursuit for the attainment of stable and justiciable political system has led to the evolution of different government systems. A federal system provides for intergovernmental relations. Federalism is an arrangement between two separate political entities establishing a political order and system for the common good.

The paper, highlights the study of concept of federalism. Federalism is a governmental system functioning on the structure-based division of sovereign authority. The paper deals with the concept and origin of federalism. In the second part, an attempt is made to understand the federal model

adopted in India. There has been a misperception expressed by the Constitutional experts about the true nature of the Indian Constitution due to distinctive features incorporated in Indian Constitution. The paper analyses the nature of Indian federal structure by making a study of salient features of the Constitution.

CONCEPT OF FEDERALISM

Federalism refers to a design of the division of political powers of administration between different levels of government—Federal government and the State governments. It is a model of political organization that unites the separate states within a predominant general political system (federal) which allows each state entity to maintain its own integrity.¹

The term "federal" is derived from the Latin term *foedus*, i.e., covenant. Many philosophers, political theorists and theologians have historically traced the roots of federal idea in the Bible. The first usage of the term has been found to be used for theological purpose so as to define the partnership between God and man. The reference to the 'Israelite Tribal Federation'² finds the mention in the Bible. The federation - a polity of tribes, came into existence on the principle of federalism by transforming the 'vassal treaty'³ among unequal into a covenant among equal partners (equal at least for the purposes of the covenant) maintaining their liberties within the framework of a common Constitution and law. Jewish people hence are referred as the 'first federal people'.

The second happening which led to the experimenting and evolution of federalism is the 'Swiss Confederation'.⁴ In August 1291, about more than 700 hundred years ago, an alliance of cantons against the Habsburg dynasty was established to form the *Confoederatio Helvetica* (CH) or Swiss Confederation. abbreviation.⁵ The Federal Charter is the founding document of Swiss Confederation. Switzerland is a multi-ethnic, multilingual and multi-confessional nation. It has been a federal state since 1848 formed by the will of its people. In Switzerland federal structure provides for the division of power at three different political levels- the Confederation, the cantons and the communes.⁶

A federal arrangement is established and regulated by a covenant like partnership. The internal relationships amongst the territorial units reflect the special kind of sharing that prevail among the partners, based on a mutual recognition of the integrity of each partner and attempts to foster a special unity among them.⁷ Federalism is based on the principles of self-rule and shared rule. In federalism, individuals, groups and polities are linked with each other in such a way that provides the limited union and at the same time protects the integrity of all the constituent units. Such an arrangement approves the constituent territorial unit's authority to adore the legitimate internal diversities and link with the national polity for the purpose of economic advantage and security. It is through this federal arrangement that all the polities- national and regional units participate, share and frame the common policy for achieving destined goals and ends.⁸ Thus, based on consent through covenant, there is simultaneous constitutional diffusion of political power to maintain autonomy and concentration to have a united and a strong government. A federal system is a political structure wherein two political forces act in opposite direction and attain equilibrium and sustainability. One force aims to realize national unity and another force acts towards diversity and autonomy. The main aim of the federal

¹ Britannica, The Editors of Encyclopaedia, *Federalism* Encyclopedia Britannica (14/05/2020) available at <https://www.britannica.com/topic/federalism>, last seen on 12/03/2021.

² D.J. Elazar, *The Book of Judges: The Israelite Tribal Federation and Its Discontents* 339 Interpretation- A Journal of Political Philosophy, 23(3) (1996), available at <https://interpretationjournal.com/shop/the-book-of-judges-the-israelite-tribal-federation-and-its-discontents-by-daniel-j-elazar/>, last seen on 13/03/2021.

³ A treaty between two unequal parties is known as vassal treaty.

⁴ Maissen, Thomas, Wachter, Daniel, Egli, Emil and Diem, Aubrey. "Switzerland". Encyclopedia Britannica, (19/03/2019) <https://www.britannica.com/place/Switzerland>, last seen on 12/03/2021.

⁵ Ibid.

⁶ Rise of the Swiss Confederation, available at <https://www.myswitzerland.com/en-in/planning/about-switzerland/history-of-switzerland/rise-of-the-swiss-confederation/>, last seen on 14/12/2020.

⁷ Supra 2.

⁸ Ibid.

process is to establish a federal nation-state, an independent, sovereign entity *de jure* recognizable in the family of nations.

In a federal state the same territory is controlled by multiple levels of government. Federalism is defined as, “an institutional arrangement creating relatively autonomous levels of government each able to act directly on behalf of the people with granted authority”.⁹ Both the levels of government have the authority to make the laws and administer in the respective jurisdiction. Division is based on democratic rules arrived at through negotiation in the form of written Constitution. The governments at distinct levels enjoying their own jurisdictions remains co-ordinate and independent.¹⁰ In unitary systems, the power concentrates with the national government and the lower levels of government exercise the delegated powers at the discretion of the national government. In contrast to the federalism and unitary systems, a confederation is one more system where the substantial authority vests with the state governments with some powers delegated to the national government.

Federalism, is an outcome of historical experiences of different polities with a quest for a stable and peaceful world overpowering conflicting national, ethnic, linguistic and racial issues. There is no any universally accepted definition nor criteria of standards to describe a polity as federal. In the absence of precise definition different political experts have explained the concept according to their own perspective, understanding and experience.

Daniel Elazar, exploring the concept has very aptly provided for the basis of Federalism as ‘self-rule plus shared rule’.¹¹ According to him, federalism involves some contractual relationship of a permanent character which provides for power sharing; upholds sovereignty and permits autonomy. Thus, federalism promotes political integration through intergovernmental relations and makes the all the territorial units and government strong in toto. The celebrated author of India Prof. M. P. Jain in his book titled ‘The Constitution of India’, has described Federalism as,

“Federalism constitutes a complex governmental mechanism for the governance of a country. It has been advanced to bind into one political union numerous autonomous, distinct, separate and disparate entities or administrative units. Federal system intends to draw a balance between the forces working in favour of the concentration of power at a central point and the forces which favour a dispersal of the power in a number of units. Federalism thus seeks to reconcile unity with multiplicity, centralization with decentralization and nationalism with localism. The originality of the federal system lies in the division of power which is at one and the same time, concentrated as well as divided. There is centralization of administration and legislation in certain areas along with decentralization in other areas left to the regional governments.”¹²

Another famous scholar Garner, defines federation “as the system of central and local government combined under a one common sovereignty, both the central and local organisations, being supreme within definite sphere, marked out for them by the general constitution or by the act of parliament which creates the system”.

Professor of Political Science, Prof. Ivo D. Duchacek, in his work furnished ten yardsticks in the form of ten questions to determine the federal nature of a State. Prof. Duchacek’s yardstick broadly deal with matters of foreign relations, immunity against secession, independent sphere of central authority, amending the federal constitution, indestructible identity and autonomy, residual and significant powers, bicameralism and equal representation, two sets of independent courts, the supreme court, and clear division of power.¹³

Thus, division of power between the different governmental levels- national and regional is the essential feature and legal test to determine federalism. A common source namely, Constitution provides for the distribution of powers and the regional governments do not function as the agents or

⁹ W. S. Riker, *Federalism* 391 in *Handbook of Political Science* (Fred Greenstein and Nelson Polsby, 1975).

¹⁰ K.C. Wheare, *Federal Government*, 11(4th ed., 1963).

¹¹ D.J. Elazar, *Exploring Federalism*, 5 (1st ed., 1991).

¹² M.P. Jain, *Indian Constitutional Law* 690 (J. Ruma Pal, Sr. Adv. Samaraditya Pal, 6th ed., 2010).

¹³ I.D. Duchacek, *Comparative Federalism: The Territorial Dimensions of Politics* (1987).

delegates of the national government. Independent and competent Court have the jurisdiction to declare any transgression of powers by either of the government as *ultravires* and void in a federal polity. The federal or national government represents the nation in the international world and thus have sovereign authority in the matters of foreign policy and maintaining international relations. The regional or the component State units do not have jurisdiction to deal with the international affairs.

MODEL OF FEDERALISM IN INDIA:

In the modern world, most of the countries have accepted either the federal or unitary system. Many largest democratic states in the world have approved federal system of government viz., India, USA, Mexico, Canada, Australia, Switzerland, Germany, Brazil, etc. The political systems in the world though having a federal system differ in many ways. The term 'federal arrangements' a plural word meant different ways of incorporating the federal principles. The modern concept of federalism originated in United States of America in 18th Century. Since then, American federalism has set a standard and impelled other democratic nation in the world to adopt the federal polity. In 19th century, the federal system of government became popular and most of the largest democratic countries simulated the concept of federalism suited to their social, economic, cultural and political state of affairs. Though, roughly there are 25 federal countries in the world, they represent 40 % of the world's population.¹⁴ German Politician Karl Loewenstein analyzing the concept described federalism as a "system of territorial pluralism" in contradiction to monolithic Unitary State.¹⁵

The federal system in India is considered as unique in character throughout the world. Since the establishment of independent government, nature of vertical division of sovereign political powers amongst the two levels of government has always been a question of debate and analysis. Dr. Babasaheb Ambedkar, the Chairman of the Drafting Committee while presenting the draft Constitution to the Constituent Assembly described the proposed Constitution to be federal.¹⁶ There was consensus in the Constituent Assembly based on the reasons of external state of affairs, vastness and diverse elements. However, the Indian Constitution in Article 1(1), refers India i.e., Bharat as 'Union of States'. Dr. Ambedkar explained the purpose of making use of the term 'Union' for two reasons to indicate that, Indian Federalism is not the result of an agreement by the units and the regional units have no freedom to secede from the Union.¹⁷

The word 'Union' is used in both the Indian and American Constitution –

Preamble.¹⁸

In the Indian Constitution, neither the Preamble nor any of the Constitutional provisions make use of the term 'federal'. Moreover, independent judiciary and the provisions relating to the Centre-State relations depict the exceptions from the traditional concept of federalism as established in United States. Jurists and academicians from the world have analyzed and explained the nature of Indian Constitution in their own perspective on different yardsticks. K.C. Wheare, an Australian academician called the Indian Constitution as 'quasi-federal'.¹⁹ According to him, quasi-federal refers to a system of government where the distribution of powers between the Centre and the State are not equal. In Indian structure of government there is division of powers between the central and state governments but with a strong Centre.

American federalism, been considered as the classic example of 'federation of states' is based on the model of 'coming together'. Few adjoining regional units- 'The Thirteen Colonies' having political, constitutional similarities voluntarily came together on the issue of independence and formed a

¹⁴ Countries, available at <http://www.forumfed.org/countries/>, last seen on 14/02/2021.

¹⁵ K. Lowenstein, *Political Power and the Governmental Process* (New ed., 1965).

¹⁶ Constituent Assembly Debates Vol.VII, 31.

¹⁷ Ibid.

¹⁸ We the People of the United States, in Order to form a more perfect Union establish Justice, ensure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

¹⁹ K.C. Wheare, *Federal Government*, p. 15 (4th Ed., 1963).

federation. However, if the Indian Constitution is tested on the propositions laid down by the American federalism, then many incongruities are found. The Indian Constitution does not confirm to the salient features of the American federalism. Hence, the enquiry and scholarship to analyse the true nature of Indian government system.

Essential and Salient features of the Indian Constitution are:

➤ Mode of Formation:

The Government of India Act, 1935 for the first time used the expression 'Federation of India'.²⁰ The Act incorporated provisions to establish a federation system wherein the provinces derived their authority directly from the crown and exercised their powers within a definite sphere completely free from the control of the Centre.

Indian federation is not an outcome of any agreement or 'coming together' but 'holding together'. The founding Fathers of India, realizing the economic disparity, cultural diversity and the geographical vastness rejected the idea of complete unitary system. The Cripps and Cabinet Mission Plan advocated a weak Centre. However, the eventual partition of India and Pakistan compelled the Constituent Assembly to come up with a federal Constitution with a strong Centre, and three legislative lists with the residual power to vests with the Union.²¹

Formation of federation is the first distinctive feature between the American and Indian Federalism. The Indian model of federation is based on centrifugal principle of formation and the American model is based on centripetal formation of federation.

➤ Single Written and Supreme Constitution:

The Indian Constitution one of the longest written and elaborate document in the world is the fundamental law of the land.²² The Constitution of India provides for the detailed provisions including the division of powers between the dual governments.

In I.R.Coelho's Case, the Supreme Court had described the Indian Constitution as a 'controlled Constitution' and its supremacy mandates all the constitutional bodies to comply with the provisions of the Constitution.²³

➤ Dual Government:

In India, the political powers are distributed through the Constitutional provisions amongst the Union government and the State government. Thus, the two-tier Governments with the Constitutionally assigned powers and functions, a peculiar feature of federal polity is fulfilled by the Indian Constitution.

The Union or the Central government governs the matters of national concern and the State government governs the State matters.

➤ Distribution of Powers:

The Constitution provides for the division of powers between the Union and the States in the form of three legislative lists (I, II, III), viz., the Union, the State and the Concurrent List in the Seventh Schedule.²⁴

The pattern of the distribution of powers is not the same under the different federal systems. The matters of the national concern are dealt by the Union and the State units deal with the matters of regional concern. Thus, the national and the State government are supposed to exercise its sovereign powers within assigned sphere, co-ordinate and independent.

²⁰ S. 5(1) The Government of India Act, 1935 (Chapter 1- Establishment of federation and Accession of Indian States).

²¹ D.D. Basu's, *Comparative Federalism*, 117 (J. B. P. Banerjee, B.M.Gandhi, 2nd ed., 2008).

²² In the commencement the Constitution contained 395 Articles into 22 parts and 8 schedules. After the enacted of the Constitution (One Hundred and Fifth Amendment) Act, 2021 the Constitution consists of 448 Articles divided into 24 parts and 12 Schedules.

²³ I.R. Coelho v. State of Tamil Nadu, AIR 2003 SC 2363.

²⁴ The Union List consisted of 97 subjects, the more important of which are defence, foreign affairs, diplomacy, war & peace, United Nations, treaty-making, railways, posts and tele-graphs, currency, etc. The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, elec-tricity, economic and social planning, etc.

In India, Article 246 provides for the jurisdictions over the subject-matter of legislations: the exclusive power of the Union government to legislate in respect of matters (important) enumerated in the Union List; the exclusive power of the State governments to legislate on the subjects of the State List; and the jurisdiction of both the governments to legislate on the matters provided in the concurrent List. The residuary power to legislate vests with the Union government.²⁵

Powers of both the Union and State legislatures are enumerated in the Constitution. Both the legislatures exercise sovereign powers of legislation within the respective jurisdiction assigned by the Constitution.²⁶

In certain cases, inspite of division of powers, the Constitution provides for the exercise of control by the Union over the administration and legislation of the States. The provision relating to the appointment of the Governors of a State, the tenure during the pleasure of the President²⁷ and provision 'Bills reserved for consideration'²⁸ of President depict the powers of a strong Union. The distribution of powers in India has a strong Central bias.

➤ **Strong Federal Government:**

In India, the three legislative lists provide for the powers vested in the Union legislature, the Provincial Legislature and both of them concurrently. The residuary power vests with the Union Legislature- Parliament. In case of inconsistency between the Union and the State law in the concurrent sphere, predominance is of the Union Legislature.²⁹

The distribution of power in India has a strong central predisposition. In spite of the elaborated enumerated powers the balance of power favours the Union.³⁰ The sphere of legislation assigned to the Union can be enlarged at the stake of States even in normal times. The following provisions depict the strong Central government and the central bias:

Article 201 – Legislation by a State shall be subject to disallowance by the President, when reserved by the Governor for the consideration of the President.

Article 249 – Power of the Parliament to legislate with respect to State list subject matter in the national interest.

Article 250 - Power of the Parliament to legislate with respect to State list subject matter when the proclaimed emergency is in operation.

Article 251 - Predominance of Parliament legislations in case of inconsistency between the Parliament laws under Art. 249 & 250 and the State laws.

Article 252 - Power of the Parliament to legislate for two or more States in case consent is granted by States through agreement. This includes the power to withdraw the legislation from States. The provision has proved useful to have uniform legislations in case of common interests.

Article 254 -Predominance of Parliament legislations in case of inconsistency between the Parliament laws competent to enact under List I & II and the State laws.

Article 256 – Power to give directions to the States in specific matters.

Article 257 – Control of the Union over States in certain necessary cases.

Article 293 –Borrowing power of the States subject to the consent of the Union in certain cases. The Union government is empowered in respect of financial resources and is financially strong and independent.

Article 352, 353 – When an emergency is proclaimed by the President, the power of the Union executive to give directions to the State executive extends to any matter along with the legislative powers.

²⁵ Art. 248- Residuary power of legislation, the Constitution of India.

²⁶ Art. 245-254; VII Schedule, the Constitution of India.

²⁷ Art. 155- Appointment of Governor; Art. 156- Term of the office of Governor, the Constitution of India.

²⁸ Art. 201, the Constitution of India.

²⁹ Art. 254, the Constitution of India.

³⁰ During the Constituent Assembly debates, the first prime minister, Jawaharlal Nehru cautioned that "it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."

Article 356 – Coercive power in case of failure of the constitutional machinery in a State.

Article 360 - Power to give directions to the States in case of declaration of financial emergency.

The working of the Indian federal system depicts the position of Governor as of the Centre's agent in the States, thus exercising control over State administration. Moreover, the important appointments of the Constitutional institutions such as the Chief Election Commissioner, the Comptroller and Auditor-General of India are made by the Union. Even the power of the Parliament in amendment procedure indicates the paramount position of the Parliament.

These are the distinctive features of Indian Constitution. In America, the division of powers is not superseded at the mere will of one of the parties (federal/regional) to federation although the judiciary has expanded the federal powers in certain cases.

➤ **Blending of Rigidity and Flexibility:**

Amendments to the Constitution can only be made by the Union Parliament. The States cannot propose the amendments. The Indian Constitution is rigid in the sense that some amendments require the special majority in both the houses and even the ratification by at least half of the States.³¹ Important amendments affecting the federal structure of the Constitution are carried through this procedure requiring the ratification of half of the States and hence the Constitution is rigid.

At the same time, some provisions of the Constitution can be amended by the simple majority procedure making it flexible.³² The Constitution of India is not rigid, till today 105 amendments have been carried in the Constitution.

Position of States, 'Indestructible Union of destructible States' makes the Constitution flexible. The Indian federation is an outcome of 'holding together' and since the States were not 'sovereign' entities immediately before forming federation, there is no specific provision relating to the 'State Sovereignty'. In the Indian federal arrangement, no States have power to determine its own Constitution except the special status imparted to the Jammu and Kashmir.³³

After independence, a huge administrative unit- British India Provinces, a colony of British regime was divided into numerous administrative units for the appropriate conduct of administration and wellbeing of people. In 1953, the state reorganisation commission was set up to establish the administrative units. However, the linguistic movement resulted in the division of India on lingual basis and accordingly the State Reorganisation Act, 1956 was enacted.

The Indian Constitution, under Article 3 empowers Parliament by law to form a new State³⁴, alter the areas, boundaries or name of any State. Thus, the Parliament has been empowered to change the territorial limits, political map of India by simple majority or by the ordinary legislative process based on the historical and political experience. The States can merely express their views on the Bill referred to the State legislatures but need not require concurrence from the States. The Constitutional provisions enable the restructuring of India without seeking the consent of States. The territorial integrity of the States is not guaranteed by the Constitution. The Parliament is empowered under Article 2 to determine the terms and conditions on which it may admit any area into the Union or establish new States.

However, the States within Union cannot secede. Union is indestructible so as to protect the sovereignty, integrity and unity but States are destructible. Thus, American federation is an "indestructible Union of indestructible States" and Indian federation is "indestructible Union of destructible States".

³¹ Proviso to Art. 368 (2)-Any change in Art.54, 55, 73, 162, 241, 279A, Part V, VI, XI, any of the Lists in the VII Schedule or the representations of States in Parliament requires ratification by States.

³² Art. 2,3 4,11 and V & VI Schedule, the Constitution of India.

³³ The Jammu and Kashmir Reorganisation Act, 2019 No. 34 Of 2019 reorganized the State of Jammu and Kashmir into Union territory of Jammu and Kashmir and Ladakh.

³⁴ A new State may be formed by separation of territory from any State or by uniting two or more States or parts of States.

➤ **Unequal Representation of the States:**

In Indian Constitution there is no equality of representation of the States in the Council of States. Thus, the theory of 'equality of State rights' is not incorporated in the Indian Constitution. In India, the collective sharing in federal system is secured by unequal representation of unequal units in the bicameral system.³⁵ Even Article 80(1) of the Constitution of India provides for the President's right to nominate twelve members to the Council of States.

➤ **Unified System of Independent Judiciary**

The Indian Constitution provides for unified and integrated system of Courts for both the Union and the State laws.³⁶ The American model of dual set of Courts is not incorporated in India. The Supreme Courts and the High Courts have the jurisdiction to interpret the Constitutional provisions and the Union as well as the State laws. The Constitution provides for a Supreme Court as the apex court of India supervising the High Courts. President empowered to make the appointment of the judges to the Supreme and the High Court's belonging to any of the States and can even be transferred from one High Court to another.³⁷

➤ **Single Citizenship**

The Indian Constitution provides for the single citizenship. In India, the concept of State citizenship is not incorporated.

➤ **Judicial Review**

The Supreme Court and the High Court's exercise the inherent power of the judicial review by interpreting the Constitutional provisions according to its spirit.³⁸ Judicial authority stands above the Union and the component State authority. The Superior Courts of India conferred with various kinds of jurisdiction determine whether the functioning of both the national and regional governments and the governmental actions is according to the Constitution through the judicial process. The Supreme Court of India exercises the original jurisdiction under Article 131 of the Constitution.

Apart, from the above salient features, the All-India Services have been created under the control of the Union to ensure the uniformity of the administrative system in India.³⁹ The States have to work in close co-operation with the Centre. The Union always have the power of administrative supervision over the States. Centralized planning by the Centre through the Planning Commissions and now NITI Aayog shows the predominance of the Centre.

The Supreme Courts in its various judgments have explained the true nature of Indian Constitution. In the landmark the full bench of 13 judges Case of Keshavananda Bharati,⁴⁰ few judges held federalism as the basic feature of the Constitution of India. Subsequently in other Cases Judges have described the Indian Constitution as quasi-federal.⁴¹ In 1978, the C.J. M.H. Beg in Karnataka's Case, described the Indian Constitution as "pragmatic federalism".⁴²

The unique system of federal Indian government, does have subsidiary variations from the American Federalism. The framers of the Indian Constitution have deviated from the American federal structure. The analysis of literature of the various Constitutional experts and testing the yardsticks provided by them confirm that the Indian Constitution is basically Federal with few unitary features.

The federal polity with unitary features provides for a device to maintain solidarity and unity in

³⁵ Schedule IV- Allocation of seats in the Council of States, the Constitution of India.

³⁶ Art. 132-136, the Constitution of India.

³⁷ Art. 222- Transfer of a Judge from one High Court to another, the Constitution of India.

³⁸ Art. 13 read with Art. 14, 32 and 226, the Constitution of India.

³⁹ Art. 312, the Constitution of India.

⁴⁰ Keshavananda Bharati v. Union of India, AIR 1973 SC 1461.

⁴¹ Shamsheer v. State of Punjab, AIR 1974 SC 2192; Union of India v. Sankalchand, AIR 1977 SC 2328.

⁴² State of Karnataka v. Union of India, AIR 1978 SC 68.

diversity. The federal model adopted in India intended to avoid friction and function as a successful democratic polity promoting justice and equity.

The Constitution of India although provides for the vertical division of powers in the form of three lists elaborately, the strong central bias is patent in the Constitutional scheme. Rather the history and the diverse situation compelled the framers of Constitution to adopt asymmetric division of powers showing an inherent bias towards Centre, which is also referred as "asymmetrical federalism".

Indian federalism like American federalism is functioning overcoming challenges in the changing political, social and economic influences. In 1975, during emergency in India, although the federalism structure collapsed soon it gained momentum and revived the balancing of political powers.

CONCLUSION

The experience of various functioning federal systems in the world depict that the federation does not operate in a standard way or isolation. Rather several circumstances and factors such as history, ideology, politics, culture, economic status and emergency situations determine the functioning of federalism and the model of federal arrangement. In his writings Prof. Duchacek, has expressed that "any yardsticks chosen to test federalism are necessarily of unequal weight and, therefore, different relevance."

From the study of the above provisions, it is clear that the Constitution of India is basically federal with unitary features. The Constitution has established a strong Centre by providing the important subject-matters of national interest such as defence, foreign affairs and international relations, railway, telegraph, income tax, custom duties in the Union list and also other provisions discussed above favouring Centre. The State has to exercise its power in such a way as to conform with the laws made by the Union Parliament. The Centre-State legislative, executive and the financial relations depict the strong Centre with the limitations imposed on the State powers in certain matters and control by the Union. Thus, the State autonomy and sovereignty is interfered by the strong Centre. Indian federalism surely is distinct from American model of federalism. In a federal system the territorial distribution of powers has never been intended to be on equal basis. Rather, a federal system favours the national power by entrusting nationally important subject matters within its jurisdiction. The quantification of division of powers varies from nation to nation. The framers of the Indian Constitution have taken into consideration the experiences gained from the functioning of the earlier federal governments. These adaptations based on world's functioning federal systems have led to the establishment of new model of federalism in India.

Moreover, several Constitutional experts has described the Indian Constitution in different ways. During the framing of Indian Constitution, the national leaders due to the happening of partition aimed to prevent further disintegration and hence favoured the model of federalism with a strong Centre. Hence, the pre-dominant role has been assigned to the Centre establishing a co-operative federalism. The Indian Constitution, qualifies most of the yardsticks of federalism given by Prof. Ivo D. Duchacek's in respect of foreign relations, immunity from secession, independent sphere of the Central authority, amendment of the Federal Constitution, indestructible identity and autonomy, residual and significant powers, bicameral legislature, the Supreme Court, and Clear division of power. The only yardstick not complied with is in regard to two independent and parallel sets of Courts and equal representation of the States. In India, one integrated system of judicial hierarchy exists to overcome the complexities and delay in administration of justice. However, the role of the Supreme Court - competent, independent and an impartial institution as the guarantor, protector and interpreter of the Constitutional provisions, fulfill the yardstick of judicial review. The implementation of federal system of government *in spiritu* increases efficiency, promotes public and private modernization providing solutions to the upcoming challenges. Federalism as a system of political structure has evolved in different ways in diverse situations. Irrespective of identifying and giving a particular nomenclature to the functioning of a governmental system as federalism, unitary, quasi-federalism, what is more important is achieving goals of intended legal system to have an ordered, secured, progressive and sustainable society. Federalism is a way to achieve these ends.