

1. The Indian Constitution is quasi-federal in nature. Do you agree? Explain with the help of suitable examples.

Introduction

Indian federalism was designed on the basis of working of the federalism in USA, Canada and Australia. Yet it deviates from those federalism in many respects and establishes its own distinctive features. As K C Wheare observes, it is 'quasi federal' and federal suo generis (Federation of its own form).

Body

Quasi federal nature of Indian Constitution:

Indian constitution is a blend of federal feature with unitary bias. Some of the federal feature are.

- Dual polity: two government one at the Centre and in states with defined functions and responsibilities.
- Written and Rigid Constitution: Ratification by states for Constitutional amendment involving federal features. E.g. GST passage requiring consent of the states.
- Supremacy of the Constitution - Any law or amendment affecting the federal feature will be struck down by the Supreme Court.
- Division of powers: 7th schedule with 3 lists. States are supreme in their own sphere and have responsible government with law making power to the legislature.
- Bicameral Legislature: Like other Federations, the Constitution of India also provides for a bicameral Parliament consisting of the Lok Sabha and the Rajya Sabha.
- Independent judiciary: so that there is no unilateral change in division of power by the Centre.

Yet, Indian federalism deviates from the federal characteristics as below and shows unitary features

- Constitutional amendment procedure- the power to initiate an amendment to the Constitution lies only with the Centre.
- States not indestructible- e.g. Recent Jammu and Kashmir Reorganisation Act without popular government support.
- All India Services- Centre has the ultimate control over the civil servants.
- Emergency provisions: as H V Kamath notes, this single chapter turns the federal character of Indian political setup to unitary. 1975 emergency is a best example.
- President rule under article 356: is a loophole to the federal feature and is misused several times. E.g. Unconstitutional imposition of president rule in Arunachal Pradesh and Uttarakhand in 2016.

- Governor's office- Governors appointment and his/her actions in crucial times has been criticised for being biased towards the power at Centre. Eg. Governor of Karnataka and Manipur inviting the second largest party to form the government instead of single largest party. This shows the Centre influence in state government formation.
- No Equality of State Representation- Representation in the legislature in the federal states in United States is on an equal basis, which is also not applicable in case of Indian States. Thus, making the federation in India unequal.
- Deployment of armed forces in states without the consent of states is seen as violation of federal character.

Conclusion

The Indian Constitution is neither purely federal nor purely unitary, but it's a combination of both. Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth. Also, federalism is not dead in India, as evidenced by the fact that new regions are demanding statehood and union has yielded, thus states like Manipur, Tripura, Goa, etc. have been created.

2. Has the division of subjects into Centre, state and concurrent lists served its objective? Are there any challenges pertaining to the division of subjects? Critically examine.

Introduction

The 7th schedule of the Indian Constitution having 3 lists is formulated to ensure the federal character of Indian polity. The division has been helpful in demarcation of subjects and fixing responsibility for lapses in administration.

Body

Serving its purpose:

- Accountability: the lists have demarcated the functions and thus help in holding the state/Centre government answerable. E.g. imposition of president rule in UP after Babri masjid incident.
- International relations and communications: UNO, foreign affairs etc., are subjects in Centre list and hence decisions are taken with uniformity and certainty. E.g. Ex-UN secretary Kofi annan noted Indian foreign policy as stable and credible.
- External security: central government being responsible has been fairly successful in taking timely decisions with necessary force whenever required. E.g. any delays during war time causes set back. Quick decision taken during Kargil was possible only because the defence was entirely with the Centre.

- Uniformity in Administration: subjects like trade and commerce, Banking, regulation of mines, labor etc., ensure uniformity. E.g. uniform interest rate in banks, labour costs etc., ensure that every state is competent in the sphere of economic attraction.
- Principle of subsidiarity: subjects like public order, police are best administered at states and are present in state list.
- Contextual relevance: subjects in concurrent list like Agriculture, criminal law, forests, wildlife protection etc., needs uniformity but with contextual flexibility and hence being in concurrent list, states can decide on features based on ground reality.

However, there are various instances where it has not served its purpose and faces several challenges.

Challenges to division of subjects:

- States complain that Centre has more and important subjects and there is asymmetry in division. Thus, it results in unitary bias. E.g. Raising loans from international market, Banking regulations etc.,
- Centre uses certain subjects and responsibility as excuse and encroach upon state jurisdiction at times. E.g. imposition of president rule, deployment of Central armed forces etc., giving the reason of function of maintaining internal security.
- Special provisions available to Centre to legislate on state subjects:
 - Article 249 – if the Rajyasabha passes resolution to give Centre power to legislate on state subjects. Centre can confer itself power if it has majority in Rajyasabha. E.g. passing of POTA, TADA etc., in spite of several state's opposition.
 - Article 253 allowing the Centre to legislate on subjects affecting international relations. E.g. Centre passing environmental laws.
- Composition variation: States allege that the union and concurrent list has grown over the years at the cost of state list. A majority government at the Centre helps in this. E.g. 42nd constitutional amendment transferring 5 subjects from state to concurrent list.
- Emergency provisions and president rule under article 356: results in dilution of the separation of subjects and gives the Centre over-riding powers.
- Colorable legislation: allegations on Centre to encroach upon the state jurisdiction finding the loopholes. E.g. the recent Jammu Kashmir reorganization bill was passed under president rule.
- Lack of Centre's consultation on legislating on the concurrent list subjects. Punchhi commission recommended that the Centre to consult states on the same.
- Residuary power of parliament: under article 248 gives the Centre to legislate on subjects not mentioned in the list. The difficulty in bringing constitutional amendment to update the 7th schedule (as it requires constitutional

amendment - special majority with 50% state approval), the new dynamics are not reflected. E.g. digital laws are made unilaterally by the Centre.

- Dual responsibility: especially in subjects of concurrent list or subjects of overlapping jurisdiction results in dereliction/conflict of duty by both Centre and state. E.g. inter-state river flow, environment protection (declaration of economic sensitive zone in western ghats) etc.,
- Reservation of state bills to president who enjoy absolute veto. E.g. the returning of 3 bills passed by Manipur state legislative assembly by president.

Conclusion

Alleging the bias in subject distribution, recently Telangana chief minister called for abolition of concurrent list which was even recommended by Rajammanar committee. Though, the list served has fairly served its purpose, some of the grievances of states are genuine. The centre has to implement recommendations of Puncchi commission on centre-state relations like flexibility on concurrent subjects, updating the list periodically etc., to address the issue.

3. Does the decision of the union government to convert Jammu & Kashmir into a union territory and carve out Ladakh as a separate union territory augur well with the constitutional principles? Examine.

Introduction

Recently, the government of India has repealed Article 370 of the Constitution which used to give autonomous status to the state of Jammu and Kashmir under Part XXI of the Constitution. After revocation of Article 370 Jammu & Kashmir is divided into two Union Territories, one of Jammu and Kashmir with legislative assembly and another of Ladakh without legislative assembly.

Body

Abrogation of Article 370 augur well with the Constitutional Principles

- **Equality** Article 35A which stems from Article 370 empowers the Jammu and Kashmir legislature to define the permanent resident of the state, and their special rights and privileges. Now the Presidential order, The Constitution (Application to Jammu and Kashmir) Order, 2019, has scrapped Article 370 and treated the people of erstwhile Jammu and Kashmir state equally with the other states by extending all provisions of the Constitution of India to Jammu and Kashmir including single citizenship and Fundamental Rights.
- **Integration** With the removal of the 1954 order, which had included a proviso to Article 3, namely that “no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in the parliament without the

consent of the Legislature of that State” the power of the Legislature ceases to exist and Parliamentary Laws, including that of reservation and Emergency would apply to Jammu and Kashmir and Ladakh as it does in other parts of the country. Hence the end of ‘Positive discrimination’.

- **Federalism**

Now the Legislative Assembly of Jammu and Kashmir has a federal relation with the Centre like the federal relation between other states and the centre. Eg. In case of inconsistencies between laws made by Parliament and laws made by the Legislative Assembly of Jammu and Kashmir, earlier law shall prevail and law made by the Legislative Assembly shall be void.

- **Sovereignty**

With the introduction of Jammu and Kashmir Reorganization Bill 2019 ending special status to the state of Jammu and Kashmir, now the Union Territories will be administered by the President, through an administrator appointed as Lieutenant Governor. And the High court of Jammu and Kashmir will be the common High court for both Jammu and Kashmir and Ladakh.

Abrogation of Article 370 doesn't augur well with the Constitutional Principles

1. The reduction of the state to union territory will give a fillip to the concept of Constitution being more unitary.
2. The entire exercise of getting Article 370 of the Constitution effectively abrogated has been marked by executive excess. Since Article 370 has been used to amend Article 367(which deals with the interpretation) in respect of Jammu and Kashmir , and this amendment has been used to amend Article 370 itself. This whole has been done through a Presidential Order when Governor rule was going on in the valley.
3. The passing of legislation as far-reaching as dismembering a State without prior consultation has set a new low.
4. A purported process to change the Constitutional status of a sensitive border State has been achieved without any legislative input or representative contribution from its people.

Conclusion

The special status of Jammu and Kashmir was meant to end, but only with the concurrence of its people. The significant move, in theory, opens up potential opportunities for the development led economic growth in the Union Territories of Jammu and Kashmir and Ladakh. Thus the move is bound to have a significant impact on demography, culture, and politics of Jammu and Kashmir.

4. What is the existing mechanism of devolution of finances between the centre and the states? Do states have adequate autonomy to mobilise finances of their own? Discuss.

Introduction

Fiscal federalism in India has to satisfy the competing demands to deliver a number of essential and basic socio-economic services. As a paramount objective, fiscal federalism is expected to enable the national and sub-national governments to operate in such a way that leads to efficiency in the use of resources - not only in terms of the quality of services provided by the various levels of government but also in terms of creating the environment in which all economic agents use resources efficiently.

Body

Existing mechanism of devolution of finances between the Centre and the States.

Articles 268 to 293 in Part XII of the Constitution deal with Centre–state financial relations. Besides these, there are other provisions dealing with the same subject.

- **Allocation of Taxing Powers:** The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List. The state legislature has exclusive power to levy taxes on subjects enumerated in the State List. Both the Parliament and the state legislature can levy taxes on subjects enumerated in the Concurrent List. The residuary power of taxation (that is, the power to impose taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax and expenditure tax.
- **Distribution of Tax Revenues:** 42% of the total share of tax of Union will go to states. This is as per the recommendations of the 14th Finance Commission. The Finance Commission is required to recommend the distribution of the net proceeds of taxes of the Union between the Union and the States (commonly referred to as vertical devolution); and the allocation between the States of the respective shares of such proceeds (commonly known as horizontal devolution). GST Proceedings are distributed according to CGST, Act and SGST, Act. The Constitution also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied and collected. For example, the income-tax is levied and collected by the Centre but its proceeds are distributed between the Centre and the states.
- **Distribution of Non-tax Revenues:** The Centre The receipts from the following form the major sources of non-tax revenues of the Centre: (i) posts and telegraphs; (ii) railways; (iii) banking; (iv) broadcasting (v) coinage and currency; (vi) central public sector enterprises; and (vii) escheat and lapse. The States The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprise; and (v) escheat and lapse.
- **Grants-in-Aid to the States:** Besides sharing of taxes between the Centre and the states, the Constitution provides for grants-in-aid to the states from the

Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants:

- **Statutory Grants:** Article 275 empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state. Also, different sums may be fixed for different states. These sums are charged on the Consolidated Fund of India every year. Apart from this general provision, the Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam. The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission.
- **Discretionary Grants:** Article 282 empowers both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to the states.
- **Other Grants:** The Constitution also provided for a third type of grants-in aid, but for a temporary period. These sums were charged on the Consolidated Fund of India and were made to the states on the recommendation of the Finance Commission.

Do States autonomy to mobilize finances of their own?

Constitution of India empowered States to mobilize their own finance.

- The States has exclusive power to levy taxes on subjects enumerated in the State List
- Both the Center and the States can levy taxes on subjects enumerated in the Concurrent List
- States have autonomy in Collection of Non Tax Revenues.

However, there are instances shows States autonomy is curtailed to mobilize their own finances.

- States will get their Share in net proceeds of taxes according to Finance Commission's recommendations.
- Constitution empowers the Parliament to make statutory grants to the states which are in need of financial assistance.
- The States have, to look to the Centre for funds in case of unforeseen calamities or to carry out various schemes.
- While the proclamation of national emergency (under Article 352) is in operation, the president can modify the constitutional distribution of revenues between the Centre and the states. This means that the president can either reduce or cancel the transfer of finances (both tax sharing and grants-in-aid) from the Centre to the states.
- While the proclamation of financial emergency (under Article 360) is in operation, the Centre can give directions to the states in financial matters.

Conclusion

The Constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India. The new framework of grants should ensure stability in resource flows to the states to reduce state specific development deficits.

5. Has India's federal polity been successful in addressing regionalism? Critically assess.

Introduction

To be sure, regionalism is rooted in India's manifold diversity of languages, cultures, tribes, communities, religions and so on, and encouraged by the regional concentration of those identity markers, and fueled by a sense of regional deprivation. For many centuries, India remained the land of many lands, regions, cultures and traditions.

Body:

Different Forms of Regionalism

a) Demand for State Autonomy: Regionalism has often led to the demand by states for greater autonomy from the center. Increasing interference by the Centre in the affairs of the states has led to regional feelings.

b) Secession from the Union: This is a dangerous form of regionalism. It emerges when states demand separation from the Centre and try to establish an independent identity of their own.

c) Demand for Full statehood: In India, Most of the Union Territories were not in favor of 14th amendment of the constitution. Therefore, as consequence, the Union territories of Himachal Pradesh, Manipur, Tripura, Meghalaya and Goa were granted the status of full statehood and the remaining union territories are demanding full statehood.

d) Inter-State Disputes: Today, many states are making demands for the merger of territory of belonging to other states and for just division of river waters. Disputes between states over the sharing of river water, primacy given by the states to the language of majority and to people of their own states in job opportunities have also given rise to feelings of regionalism. Migration of people from backward state to a developed state for employment opportunities have often resulted in a hostile attitude against the migrants for example, problems going on in Karnataka and A.P.

Yes, India's federal polity has been successful in addressing regionalism

- Provision of autonomy within 5th Schedule and 6th Schedule.
- Linguistic reorganization of states with passage of States Reorganization Act of 1956.
- Three language formula, special grants to backward states.

- Federal institutions like Inter-State Council, NITI Aayog, and GST Council.
- Creation of new states like Telangana and Uttarakhand.
- Initiatives like 'Ek Bharat Shreshta Bharat' to promote the spirit of national integration through a deep and structured engagement between all Indian States and Union Territories through a year-long planned engagement between States.
- Incentives for Promoting Investment in Backward Regions like Income Tax Concession and tax Holiday in order to give stimulus to new industries in backward regions.

No, India's federal polity has not been successful in addressing regionalism

- Regionalism was deliberately encouraged by many with the result that the people of each region thought more in terms of their region rather than that of India as a whole Bengalis, Gujaratis, Marathis, Punjabis and what not were made conscious that they were the sons of the soil and that they should care for the development of their own region rather than that of the country as a whole.
- All India Services and a strong central government, was envisaged though India was made a federal polity. In addition, in the constitution every step was taken to ensure that the feelings of regionalism were cut down from the very roots. But with the passage of time, it has become very clear that regional feelings very much thrive in India.
- Local leaders, in order to maintain or rather strengthen their leadership, very much exploit regional feelings. They talk of regional imbalances and regional backwardness and try to exploit the feelings of the people of the land by pleading that central authorities are deliberately maintaining regional imbalances and trying to keep an area in state of backwardness.
- They are made to feel that new industries are knowingly not being established in the area and thus the state is being economically as well as socially kept backward. Without caring for the realities and difficulties of the people these leaders exploit their sentiments make efforts to convince them that in the state means of transportation are not being developed, no educational centers being established and so on.

WAY FORWARD

1. Doing away with regional imbalance: If the national resources are distributed in a balanced manner, the problem of regionalism will be mitigated.

2. Top priority to the economic development of deprived zones: if top priority is given to economic development of those areas where the people have developed the feeling of relative deprivation, the situation will improve and they can be drawn into the national mainstream.

3. Developed means of Transport and Communication: Most of the backward regions of the country do not have proper link with the rest of the country through transport and communication system. Due to this reason their interaction and

contact with other regional groups become restricted and they develop a feeling of alienation.

Conclusion

While regionalism highlights regional issues and provides an opportunity to address them, it also has negative impacts like instability, internal security challenge, affects national politics. Uniform development of all regions should be taken up so that no region feel isolated and left behind. Government needs to come with innovative solutions so that problems of regionalism are meaningfully solved.

