

## Exploring Union Model of Indian Federalism

Ajay Kumar Singh



*In more than six decades of its working, Indian federalism has shown enough resilience to accommodate societal pressures for federalisation of polity, economy and society. What we need is reorienting our federal-political culture towards establishing a more inclusive polity where 'demos' have adequate institutional space for decision-making within the broader constitutional framework of India*

**I**N LITERATURES and in practice, we find two distinct federal traditions - one based on the classical federal traditions where nature of contract (or compact) determines the extent of state rights, and it selectively reserves the role of federal government to the areas of defence, foreign affairs, communications and currency. It is broadly premised on a legal framework of division and sharing of sovereignty. It is theoretically characterized as dual federalism. However, in post-classical traditions, mostly found in post colonial polities like India and Canada, federalism per se is perceived doctrinally as (i) pragmatic constitutional policies of nation building and state formation where basic objective is the formation of a federal union and a federal nation to which, each layer of government maximally contributes by fine tuning state- society relationships on one hand, and coordinates interstate or inter agency relationships on the other. The emerging pattern of federal governance is both autonomous and unified; (ii) noncentralised or decentralized governance without hierarchy and subordination. It is participatory in ethos and characteristically coalitional in governance; (iii) empowerment and welfarism, an instructive reminder

to State to adhere to developmental policies in a manner as to conform to the broad principles of justice and equity, and overall to the broad contours of the universal principles of Right to Life; (iv) securing federative rights of the people, polity and nation. In other words, it amounts to recognition of the principle that federalism is primarily a 'demos' facilitating principle where constitutive rights of the people such as (a) right to identity, (b) right to development, and (c) right to self governance are duly codified as inalienable rights of the people. Federal units too have constitutive federal rights to autonomy and jurisdictional independence. "In a typical federal system...", writes Murray Forsyth, "the status of member units may be defined in terms of three constitutionally sanctioned rights: *the right of existence*, including in particular, the right of the unit not to have its territorial boundaries changed or abolished unilaterally by the Centre; *the right of autonomy*, with regard to both legislation and administration, which may include not only the right to administer the unit's own laws but also, as the German example reminds us, the constitutionally entrenched right to administer the laws of the central government; and finally *the right to participate* [formally and informally]

The author is Head, Centre for Federal Studies, Jamia Hamdard, New Delhi. He has published five books/monographs besides more than thirty research articles in national and international volumes. He is also editor of Indian Journal of Federal Studies. He has also served as resource person to different Departments of the Government of India.

in the formation of the political will of the centre. This last right reminds us that the constitutionally guaranteed rights and autonomy of the units of a federal system do *not* mean that the units are completely separate and detached from the Centre but are engaged in a continuous dialogue with it."<sup>1</sup>

At the third level, federal nation and its organic federal polity (read federal government) has significant (a) right to integration, (b) right to governance of common areas of interest, (c) right to coordination of the institutions of 'self and shared governance'; and (d) peace building and conflict resolution through various constitutional, political and social apparatuses of negotiations, boundary specifications and promotion of collective interests. Viewed in this perspective, federalism may be defined as institutional matrix of networked relationship, which acknowledges supremacy of the constitution, separation of powers and autonomous machinery of mediation and conflict resolution. In this context, it is worth mentioning that federalism does not offer any ideal type. It defies theoretical singularity and definitional monocentricity. It generically refers to a grand design of "living together", which is definitionally simplified by Daniel J. Elazar in his seminal work *Exploring Federalism*, 1987 as "self-rule plus shared-rule. Federalism thus, defined involves some kind of contractual linkage of a presumably permanent character that (1) provides for power sharing, (2) cuts around the issue of sovereignty, and (3) supplements but does not seek to replace or diminish prior organic ties where they exist."<sup>2</sup>

Methodologically speaking, federalism always requires a model-centric appraisal than a single stroke theoretical generalisation. This also holds true of the Union Model of Indian Federalism, which characteristically combines and harmonises the features, sometimes diametrically opposite and contradicting as well,

of (1) dual federalism, wherein sovereignty of jurisdictions of each unit of government is constitutionally elaborated and legally protected by an independent judiciary. Jurisdictional sovereignty is duly acknowledged principle of Indian constitutionalism, which cannot be altered even by any organ of the parliamentary polity of India; (2) cooperative-collaborative federalism striving towards either a rule based or politically negotiated consensual framework of governance. Interestingly, Indian constitution is probably the best worked out federal constitution of the world providing adequate framework of institutionalised cooperation and negotiated settlements of disputes. Cooperation is both formally and

**Interestingly, Indian constitution is probably the best worked out federal constitution of the world providing adequate framework of institutionalised cooperation and negotiated settlements of disputes. Cooperation is both formally and informally produced through complex parliamentary –political processes; and, interdependent –organic federalism seeking to promote reciprocal dependence without any critical loss of autonomy, subordination and subjugation of unit governments**

informally produced through complex parliamentary –political processes; and, (3) interdependent –organic federalism seeking to promote reciprocal dependence without any critical loss of autonomy, subordination and subjugation of unit governments. If unit or provincial governments heavily depend on union government for fiscal help and infrastructure–developmental grants, the union government relies upon states' infrastructure not only for the collection of taxes, but also for the execution of federal policies and programmes.

Being distinctively federal, the union model distinguishes itself from other federations through critical harmonisation of otherwise opposite phenomena of unionisation—(i) regionalisation; (ii) centralisation–decentralisation, and (iii) autonomy–integration. Constitution consciously blends them to promote unity of polity and plurality of society through ideational interface of the core values of democracy, secularism, multiculturalism and nationalism. As a result, federalism in India emerges as grand theory of freedom preserving and justice promoting doctrine. It at once is unifying and pluralising. Constitution in its intent recognises federalism both as means and as an end. As a means, federalism must promote democracy, secularism and multiculturalism. And as an end, it constitutes one of the super structures, un-amendable and unalterable, to which constitutional articles and governmental policies must conform to. As matter of fact, the constitution of India offers both a metatheory and functional principles of federalism. As a metatheory, Indian federalism is akin to Johannes Althusius's principles of 'association' and symbiosis where symbiotes communicates " (1) things, (2) services, and (3) common rights (jura) by which the numerous and various needs of each and every symbiote are supplied, the self sufficiency and mutuality of life and human society are achieved, and social life is established and conserved."<sup>3</sup> After a careful reading and deconstruction of constitutional idioms and discourses on authority, power, sovereignty and democracy, one can fairly conclude the following functional principles of federalism in India. (1) Federalism as 'public good', i.e. securing in the best possible manner common good and developmental and security interests of the people as both individual and group. (2) Federalism as principle of independent and interdependent governance, broadly conforming to the principles of equity, accountability, subsidiarity and greater representation and participatory

decisions. (3) Federalism as principle of diversity accommodation and ethnic self-governance. (4) Federalism as principle of promoting civic-territorial nationalism, which is ethically neutral, politically associative, economically inclusive and socially cohesive. The working mantra of federal nationalism is 'unity in diversity.'

Unfortunately, Indian federalism is probably the least researched, but much abused constitutional principle. This is probably due to regimented reading of federalism merely as 'centre-state relations', wrong construction of union as unitarian, and weak comparative analogy and prototyping with classical federations. Weak methodology has led to the absurd propositions such as (1) India is federal because it has not been constitutionally declared as unitary; (2) it is unitary because the application of the word 'federal' is constitutionally missing and the provision of a strong centre causes more centralisation than decentralisation; (3) it is quasi-federal because distribution of powers has selective attributes of dual and cooperative federalism; (4) it is centralised federalism because of the constitutional salience and overwhelming impact of the word 'union' and the extremely restricted and limited regional jurisdictions; (5) It is a parliamentary federalism as the constitutional phrases, idioms and narratives have largely been modelled on the pattern of English constitutionalism with occasional reference to Euro-American tradition of jurisprudence ; and (6) as hypothesised by the Supreme Court of India in *S R Bommai case (1984)* "the state qua the constitution is federal... Qua the union, state is quasi-federal"<sup>4</sup> However, in the same judgement, union was construed by justice K Ramaswamy as a federal state, "a political convenience intended to reconcile national unity and integrity and power with maintenance of state's right... The end aim of the essential character of the Indian federalism is to place the nation as a whole under

control of a national government, while the states are allowed to exercise their sovereign power within their legislative and co extensive executive and administrative sphere."<sup>5</sup> These weak methodological formulations are contrary to the founders' vision of union constitutionalism (one of the original contributions of India to the world of knowledge) and its federalism. In this context, one would like to mention that the founding fathers deliberately avoided any doctrinal fixity; instead, they innovated and scripted a new form of federalism, which retains the metatheoretical propositions and core philosophy of federalism, but departs in its structural designs and framework of resource distribution

**...one would like to mention that the founding fathers deliberately avoided any doctrinal fixity; instead, they innovated and scripted a new form of federalism, which retains the metatheoretical propositions and core philosophy of federalism, but departs in its structural designs and framework of resource distribution and power relationships.**

and power relationships. It is precisely the reason that an eminent scholar of India's constitutional law M P Jain has to comment that the " Indian federal scheme while incorporating the advantages of a federal structure, yet seeks to mitigate some of its usual weaknesses of rigidity and legalism. It does not, therefore, follow strictly the conventional or orthodox federal pattern. Along with adopting some of the techniques developed in other federations for making the federal fabric viable, it also breaks down new ground and develops some novel expedients and techniques of its own, and is thus characterised by several distinctive features as compared with other federal countries."<sup>6</sup> Being distinctively federal, even otherwise unfederal characteristics have federal significance. This holds true of

the centralisation features of the constitution.

### **Constitutional Semantics of Federalism**

As a pre theory, one would like to draw the attention towards three formative documents- (i) Letter from Rajendra Prasad to K T Shah dated December 26, 1946; (ii) First Report of the Union powers Committee dated April 17, 1947, and (iii) Jawaharlal Nehru's forwarding letter to the President of the Constituent Assembly on the Second Report of the Union Powers Committee dated July 5, 1947. In these documents, it is fairly established and as categorically stated by Jawaharlal Nehru in his above mentioned letter "Now that partition is a settled fact, we are unanimously of the view 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. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the units and that to frame a constitution on the basis of a unitary state would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion that the soundest framework for our constitution is a Federation with a strong centre."<sup>7</sup> What notionally the strong centre means? It is the possession of certain power that characterizes a centre as strong or weak. But such power-attributes do not go without corresponding responsibilities. Thus, for one of the members of Constituent Assembly "the attributes of a strong centre are that it should be in a position to think and plan for the well being of the country as a whole, which means that it must have the authority not only to coordinate the activities of states during times of stress and strain, but also the power of initiative to give directions to the various provinces in

regard to the economic development of the country. The second attribute of a strong centre is that it should be in a position to supply the wherewithal to the provinces for their better administration whenever the need arises. The third attribute is that it should have the right in times of stress and strain to issue directives to the provinces regulating their economic and industrial life in the interests of the country as a whole. The fourth attribute of a strong centre is that it must have sufficient powers to protect the country against foreign aggression as also internecine warfare the fifth attribute is that it must be powerful and strong enough to represent the whole country in the international spheres.”<sup>8</sup> However, notion of strong centre cannot override the idea of provincial autonomy, because the very idea of strong centre is itself conditional to the existence of certain national and international exigencies. In normal times, strong centre is bound to respect provincial autonomy and to work towards the promotion of federal democracy and local self-government. Impliedly, in the constitutional framework of India, centre and states are integral to an organic entity called union, representing India as one social, political and economic union. For that matter, even sub provincial structures of self and shared governance are part of the body called union. States and centre are constitutionally obliged to achieve the national, regional and local goals of the union. Neither of the structures is independent of the other. This is what the constitution bench of India has concluded in the famous *Bommai Case*. The court writes:

“Federalism envisaged in the constitution of India is a basic feature in which the union of India is permanent within the territorial limits set in Article 1 of the constitution and is indestructible. The state is the creature of the constitution and the law made by Articles 2 to 4 with no territorial integrity, but a permanent entity with its boundaries alterable by a law made by parliament.

Neither the relative importance of the legislative entries in Schedule VII, Lists I and II of the constitution, nor the fiscal control by the union per se are decisive to conclude that the constitution is unitary. The respective legislative powers are traceable to Articles 245 to 254 of the constitution. The state qua the constitution is federal in structure and independent in its exercise of legislative and executive power. However, being the creature of the constitution the state has no right to secede or claim sovereignty. ... Both are coordinating institutions and ought to exercise their respective powers with adjustment, understanding and accommodation to render socioeconomic and political justice to the people, to preserve and elongate the constitutional goal including secularism”.<sup>9</sup>

**The theory of federalism as propounded by the Constituent Assembly is that of Jurisdictional federalism, which methodologically applies centre-periphery and non centralised matrix models of power sharing, negotiated or circumstantial transfer and delegation of authority, a cooperative and organically interdependent framework of federal governance, where notion of autonomy has qualified application.**

The theory of federalism as propounded by the Constituent Assembly is that of Jurisdictional federalism, which methodologically applies centre-periphery and noncentralised matrix models of power sharing, negotiated or circumstantial transfer and delegation of authority, a cooperative and organically interdependent framework of federal governance, where notion of autonomy has qualified application. The federal consequence of the word ‘union’ ceases beyond the recognition of the fact that Indian polity is non-contractarian in origin, and that the

states do not have right to secede. It represents integral unity of the polity and people, “the country is one integral whole, its people a single people living under a single imperium derived from a single source.”<sup>10</sup>

### **Constitutional Rationality of Centralisation**

Union model is often critiqued as causing excessive centralisation. However, more we deconstruct the founders’ intent and working of constitutional principles on centralisation, one is fairly convinced that centralisation is not only temporary and transient, but it also has the national purpose and polity maintenance function, besides occasionally being welfare oriented. It has been construed as nation preserving, constitution maintaining and welfare oriented doctrine to be applied only during exigencies, and not during normal times. Centralization has been construed as means to protect national unity and integrity, to promote nationalization and national governance. It is unitarian in ethos. Centralization is broadly of two types – (i) centralization for reasons to maintain the constitution, and to protect the national unity and security of India, including its parts; and (ii) centralization for serving and securing larger national and public interests. In the first category, we find two major subtypes, namely *circumstantial centralization*, and *consensual centralization* or *centralization by consent*.

Circumstantial centralization is mainly on account of the emergency provisions of the constitution, wherein the union is entrusted with the responsibility of (i) protecting the units of the federation from external aggression, internal disturbances, subversive terrorist activities and armed rebellion against the state; (ii) maintaining the constitution i.e. to ensure that government of every state is carried on in accordance with the provisions of the constitution. By virtue of this provision, the constitutional-

political order is restored in the event of maladministration, ministerial crisis emerging in the event of unclear electoral verdict or hung assembly or governmental instability caused by the frequent defection and breakdown of party system, natural calamities and other such physical and political breakdowns which render the government of the day ineffective; (iii) protecting the unity and integrity of the federal union and federal nation in a situation when a particular government itself goes against the territorial integrity of India or subverts the constitutional process in the state; and, (iv) ensuring financial stability or credit of the union and the units. Under the various provisions of the emergency articles of the constitution, the union parliament assumes to itself, certain regulatory powers which otherwise affect the normal distribution of competences between the union and the states. The union can confer onto itself competences to make laws with respect to any matter of state list or on those subjects on which state legislature is competent to legislate. "The executive power of the union shall extend to the giving of direction to any state as to the manner in which the executive power thereof is to be exercised", says Article 353(a). Further, the union can make such incidental or consequential provisions (in order to give effect to the objects of proclamation) for "suspending in whole or in part the operation of any provisions of this constitution relating to anybody or authority in the state", (Article 356(c)). On the fiscal front, the executive direction of the union may seek from the state observance of such canons of financial propriety as may be specified in that executive orders of the union, besides seeking that all money bills of the state to be reserved for the consideration of the President.

On the other hand, *consensual centralization* refers to centralization of federal powers on the basis of express consent of the states or on the basis of authorization by the council of

states. Assigned centralization takes place when two or more states request the centre to legislate a common law or laid down the common policy framework on the matters of mutual concern. Thus, Article 252 provides that "if it appears to the legislatures of two or more states to be desirable that any of the matters with respect to which parliament has no power to make laws for the states...should be regulated in such states by parliament by law, and if resolutions to that effect are passed by all the houses of the legislatures of those states, it shall be lawful for parliament to pass an act for regulating that matter accordingly,

**Region, regional and regionalisation have been constitutionally documented as autonomous space for the formation of future polities, a site of further democratisation and decentralisation of governance, promotion of ethnic self-governance and a potential locale of finding content for federal nationalism. In addition, it is also a space preserving societal autonomy and a check post for restraining state from becoming unfederal and undemocratic.**

and any act so passed shall apply to such states and to any other state by which it is adopted afterwards....". Two important things to be taken note of are: (i) the consent must be based and backed by the legislative resolve of the concerned states, and (ii) parliament's power to make law is restricted only to the transferred subjects of state list, either in whole or parts. If transfer of Jurisdiction is in parts, the concerned legislature retains its legislative competence on non-transferred area or part of the subject. Further, Article 249 provides "if the council of states has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that parliament

should make laws with respect to any matters enumerated in the state list specified in the resolution, it shall be lawful for parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remain in force". This provision too restricts or limits parliament's competence to the extent as specified in the resolution. A careful construction of the meaning of this provision would probably suggest that the constitution does permit for contextualized centralization for reasons of securing and serving national interests.

### **Federal Autonomy**

Autonomy, decentralisation and regionalisation are as constitutionally entrenched as centralisation and unionisation processes are. Region, regional and regionalisation have been constitutionally documented as autonomous space for the formation of future polities, a site of further democratisation and decentralisation of governance, promotion of ethnic self-governance and a potential locale of finding content for federal nationalism. In addition, it is also a space preserving societal autonomy and a check post for restraining state from becoming unfederal and undemocratic. It is space allowing varied experimentations with autonomy arrangements. In fact, union model offers multiple opportunities for allowing multiple models of autonomy to be worked out. Each Article from 370 onwards and fifth and sixth schedules represents distinct models of autonomy. The extent of autonomy may range from granting of specific right to identity, right to development, and the right to self-governance. Autonomy is communitarian in appeal and functionally local. It is as integrating as centralisation is. It may take a federal route as well as a democratic passage. Essence of Article 40 may be worked out to promote local governance as self-sufficient unit of rural-urban governance. In fact, union model is flexible enough to

allow for innumerable forms of autonomy and decentralisation. In more than six decades of its working, Indian federalism has shown enough resilience to accommodate societal pressures for federalisation of polity, economy and society. What we need is reorienting our federal-political culture towards establishing a more inclusive polity where 'demos' have adequate institutional space for decision-making within the broader constitutional framework of India. To this end, constitution appears to be soundest one.

#### Author's note

(Some of the portions of the present text have been suitably adapted from the author's previous publications on the theme-(1) "Understanding Indian Federalism: A Reading into the Content, Intent and Working of the Distribution of Responsibilities" in A. Majeed (ed.), *Federalism within the Union: distribution of Responsibilities in the Indian System*, New Delhi :

Manak Publications Pvt. Ltd., 2004, pp 108-170; (2) *Union Model of Indian Federalism*, Manak Publications Pvt. Ltd., 2009 (3) *Federal Perspective, Constitutional Logic and Reorganisation of States*, Manak Publications Pvt. Ltd., 2009; (4) "NCTC and Federalism", in *Indian Journal of Federal Studies*, vol. xii, no. 2, 2011, pp104-111; (5) "Vedanta, Bauxite and Dongaria Kondh", in *Indian Journal of Federal Studies*, vol. xiii, no. 1, 2012, pp93-111; and, (6) "Constitutional Semantics and Autonomy within Indian Federalism" in Francesco Palermo and Elisabeth Alber (eds.) *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden (Netherlands): Brill, 2015).

#### Endnote

1. Murray Forsyth, "The Region in Political Science Analysis" in Gisel Farber and Marray Forsyth (eds.), *The Regions—Factors of Integration or Disintegration in Europe?* Baden-Baden: Nomos Verlagsgesellschaft, 1996, pp.43-44.
2. Daniel J. Elazar, *Exploring Federalism*,

Tuscaloosa: The University of Alabama Press, 1987, p.12.

3. Johannes Althusius, "Politics as the Art of Associating," in Dimitrios Karmis and Wayne Norman, (eds.), *Theories of Federalism: A Reader*, New York : Palgrave Macmillan, 2005, p. 28.
4. (1994) 3 SCC 1 para 247.
5. Ibid., paras 168-169.
6. M. P. Jain, *Indian Constitutional Law*, 7<sup>th</sup> edition, Gurgaon: LexisNexis, 2014, pp19-20.
7. B. Shiva Rao (ed.), *The Framing of India's Constitution: Select Document*, Delhi: Universal Law Publishing Co. Pvt. Ltd., 1967, Rept. 2006, p.777.
8. This was observed by Balkrishna Sharma during the debate on the report of the Union Powers Committee on 21 Aug. 1947 *CAD* (Published by Lok Sabha Secretariat, New Delhi, 3<sup>rd</sup> Sept., 1999), *Book No.1, Vol.V*, p.74.
9. *Bommai Case*, op.cit. para 247.
10. M. P. Jain., op.cit. p. 20.

(E-mail: drkumarajaysingh@gmail.com)

# www.smart-foundation.com

Consistently producing results since last 4 years :



## Join GS e-course :

...we organise your efforts

Compilation of relevant topics from The Hindu, The Economic Times, Yojana, World Focus etc in a ready to use in Q&A format.

Synoptic review of every topic is provided for last minute revisions.

Test Series with explanation for both Prelims. & Mains every 15 days.

Students can mail their desired topic of interest that would be duly drafted and compiled in accordance with the GS paper.

**Smart Foundation**  
IAS COACHING ACADEMY  
...the distinct advantage

8822489467 | 99541 02034

Opp. Goswami Sevice, Silpukhuri, Guwahati - 781 003

Admissions are open !!!!