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One Country, One Polity: A Case against India's Federalism

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ABSTRACT

The article focuses upon the federal structure and the problems related with it. India is often characterized as quasi-federation, an administrative federation, organic federation, and a territorial federation. However, this does not mean that it is accommodative of all the concerns that governing such a large, populated, and diverse country puts forth. Federalism is the model that has divided the sovereignty between the national and the state or regional governments. For declaring India, a federal country had a lot of debate and was one of the most heated topics of the constituent assembly debates. The primary decision-making power in a unitary system lies with the central government, and the State and regional government are playing a passive role as mere administrative units of the central government. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. The presence of the civil services and an integrated judicial system further buttress this claim.

Indian democratic system was famously characterized as "*a Unitary Constitution in the name of a Federation*" by Damodar Swarup Seth, a member of Constituent assembly, from the United Provinces (now Uttar Pradesh). Polity in India is unique in the sense that it is not solely a unitary government or a federal government, but it is one of a kind or *sui-genris*. The jurists and scholars have often characterized this system as "*a quasi-federation, an administrative federation, organic federalism, and a territorial federation.*"² This, however, does not mean that it is accommodative of all the concerns that governing such a large, populated and diverse country puts forth. It has been argued several times that the existence of federalism in the "*quasi-federation*" is hampering and slowing down the governance of the country.

Federalism can be defined as the model of the political organization that is dividing

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² H. M. Rajashekara, *The Nature of Indian Federalism: A Critique*, 37 Asian Survey 245-253 (1997), <https://www.jstor.org/stable/2645661> (last visited Jun 29, 2020).

sovereignty between national and regional governments.³ A state is enjoying territorial sovereignty and the intervention-free central government in its internal affairs when there is a federation. This is opposed to a unitary system, in which *"governments exercise only those powers granted to them by the central government."*⁴

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Nehru initially envisaged a federal setup for India. However, series of events – from the partition of the country to the dispute in Kashmir, to the internal rebellion by the Nagas, changed the perception of members of the Constituent Assembly. After that, the decision-makers preferred a more centralized federal system. Dr B. R. Ambedkar was never in favour of federalism in the first place and refused to insert the word 'Federal' into the Constitution.⁵ Instead he, along with a considerable number of other members of the Constituent Assembly, emphasized on the necessity for India to be a 'Union': *"what is important is that the use of the word 'Union' is deliberate ... The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible."*⁶

This is how India, as we know it today, a 'Union of States', came about. However, a more in-depth analysis shows that the demerits of the federal traits of our democracy far outweigh the merits, thereby doing nothing but handicap our country when it comes to efficiency in governance. The argument presented here is two-fold: firstly, our democracy and its Constitution is already biased towards its unitary elements. Secondly, the demerits of the federal features make governance a slow, expensive, and less efficient process.

As opined by various scholars, India's democracy can be compared to that of prefectorial federalism, where the central government has preponderant powers as compared to the state government. These overriding and extensive powers not only help them keep a check on the

³ Craig Calhoun, *federalism* Oxford Reference (2020), <https://www.oxfordreference.com/view/10.1093/acref/9780195123715.001.0001/acref-9780195123715-e-604?rskey=C4rhxS&result=604> (last visited Jun 29, 2020).

⁴ Craig Calhoun, *unitary state* Oxford Reference (2002), <https://www.oxfordreference.com/view/10.1093/acref/9780195123715.001.0001/acref-9780195123715-e-1733?rskey=QMioKO&result=1732> (last visited Jun 29, 2020).

⁵ Rajashekara, *supra* Note 1 at 246

⁶ Constituent Assembly Debates (CAD), vol. 7, p. 43

state governments but also "*stultify their autonomy and dismiss their governments.*"⁷ There are various instances where we can see this preponderant power in exercise. For starters, States in India do not have any territorial autonomy when it comes to their size, boundaries and names. Article 3 of the Indian Constitution gives the Parliament the autonomy to completely change the identity of the State, or even extirpate it. In fact, in *Babulal Parate v. the State of Bombay*⁸, it was held that the Parliament in no way is obliged or bound to accept the views of state legislatures in this matter, even if the Parliament receives these views in time. Secondly, even though matters of legislation are segregated into the Union List, State List and the Concurrent List,⁹ Article 200, 248, 249, and 368 of the Constitution of India display the legislative ascendancy of the central government over the states. According to Article 248, residual legislative powers, that is, the power to legislate on matters not listed in any of the lists lies solely in the hands of the central government. Article 249, on the other hand, allows for the centre to intrude into the legislation making powers of the State under the State List, and legislate on such a matter in the name of national interest, if a resolution for the same has been passed in the Rajya Sabha.

Further, Article 368 of the Constitution gives the Parliament alone the power to amend the Constitution. Article 200 of the Constitution of India empowers the Governor to reserve specific legislation passed in the state legislature to be considered by the President of India, and this is the non-justiciable authority of the Governor. Article 201 further empowers the President to either give his/her assent to the Bill or veto it, without any time limit. Not only is legislative intervention by the central government possible, but the Constitution also dictates that the legislative¹⁰ and executive¹¹ actions of the states must comply with the legislative and executive actions of the central government under the Union or Concurrent List.

The central government may exercise its pre-emptive powers against the states in the case that they do not comply¹². Therefore, Dr Ambedkar's reasoning that "*The States under our Constitution are in no way dependent upon the Centre for their legislative or executive authority*"¹³ is nothing but a parable that does not hold in practice today.

Apart from the above mentioned legislative bias, other operational features of the government give it a primarily unitary characteristic. The existence of the position of the Governor in

⁷ Rajashekara, *supra* Note 1 at 246.

⁸ AIR 1960 SC 51

⁹ The Constitution of India, 1950, Schedule VII.

¹⁰ The Constitution of India, 1950, Article 254(1)

¹¹ The Constitution of India, 1950, Article 256

¹² The Constitution of India, 1950, Article 254(1)

¹³ Constituent Assembly Debates (CAD), vol. 11, p. 976.

every State is the foremost example. As an executive officer of the Union (President) and the nominal head of the State, the Governor has the authority to appoint the state government, dismiss state governments that do not hold a majority in the state legislature, and exercise their legislative powers as discussed above. The presence of the civil services and an integrated judicial system further buttress this claim. Even though each State has a High Court with territorial jurisdiction over the State, the power to create High Courts, decide on their composition and appoint judges lies in the hands of the central government. Those recruited by the Union Public Service Commission (UPSC) are officers of the central government.

Furthermore, when it comes to the powers of the President in case of emergency under Article 352 (National Emergency), Article 356 (State Emergency) and Article 360 (Financial Emergency) of the Indian Constitution, the entire system shifts from a quasi-federal government to a unitary government. The central government also enjoys a more affluent position when it comes to matters of finance listed in List I and II of the Indian Constitution. The central government's share in the tax collected is higher than that of the state government, and the state governments may not borrow money from outside the country, or borrow from public funds without the consent of the central government.

Apart from the existing unitary-biased structure, the second fold of this argument is that the central elements of our system make it an institutionally inefficient, expensive and weak one. Operating 29 state governments, along with the central government, is a costly affair. Federalism requires more number of elections to be conducted and more number of elected office-bearers. This not only increases the cost on the election front but also increases other administrative expenses related to these additional elected members. Overlapping roles between elected officers can also lead to redundancy and increase the possibility of corruption within the institution. When it comes to disaster management and other emergency response, overlapping jurisdictions between the centre and State governments may lead to confusion and utter chaos. This point of chaos caused by the federal elements is essential; in fact, a study shows that when it comes to federalism, the chaos it causes actually "tends to dampen public responsiveness and representation substantially."¹⁴ Accountability on policy becomes another issue, with citizens unable to correctly assign responsibility for policy, and therefore unable to make informed political choices and put forth informed opinions.¹⁵ Decentralization as a result of these federal elements also leads to unhealthy competition

¹⁴ Christopher Wlezien & Stuart N. Soroka, *Federalism and Public Responsiveness to Policy*, 41 *Publius* 33 (2011), <https://www.jstor.org/stable/23015052> (last visited Jun 30, 2020).

¹⁵ *Id.*

among the various state governments as well: not only do the states compete among themselves when it comes to development, resources, education, et cetera but when the surrounding states felt policy changes by one state government, it may lead to disputes that can side-track the governments from their primary purpose.

Furthermore, disagreements between state governments and between a state government and the central government may pose a substantial challenge to our country's integrity. Unequal distribution of resources geographically across the country would mean that individual states may prosper more than the others, and provide better opportunities. This leads to a further increase in income inequality.

Supporters of a federal structure may argue that a unitary system does not take local opinions into account, bloats the government and would increase response time by the government. These concerns can be accommodated in a unitary structure with the help of proper planning, vigilance within the institution and solidifying the structure within the central government. A well-planned unitary system would enable decisive legislation and executive action, efficient use of taxes, better management of the economy, and would focus on one, central agenda: to develop and protect the country as a whole.
