

---

# Indian Constitution - Unitary or Federal

Ashok Kumar Chakrabarti

Senior Advocate High Court of Kolkata

**T**he burning question arises in our Country on national issues as to whether the states can question each and every issue of the nation and even the laws made by Parliament on the pretext that Indian Constitution is federal.

In the recent past, the amendment of the Citizenship Act (hereinafter called Citizenship Amendment Act) of 2019 and the enactment of the Farm laws of 2020 gave rise to unprecedented Political Stir throughout the Country and those who were opposing such enactments took the main shelter and/or pretext of the federal structure of the Constitution of India.

Before coming to the moot question as to whether such a justification is valid within the Constitutional frame work, a cursory glance on the meaning of federalism may enlighten us. It is true that some federal principles are dominant in our Constitution; establish the essence of federalism i.e. having states and Sovereign Union Government with a division of functions between them. Furthermore, questions still arise as to whether India is a federal State in the traditional sense and/or on the basis of agreements between various states including the territories of the Country.

In the case reported in AIR 1994 Supreme Court, page 1918 (1994)3 SCC Page-1 (S.R. Bommai-Vs-Union of India) a nine Judge Bench of the Hon'ble Supreme Court considered Inter-alia the nature of federalism under the Constitution of India. Hon'ble Apex Court held that there is a significant absence of expressions like 'federal' or 'federation' in the Constitutional vocabulary and the Parliament's Power under the Constitution is supreme. It had further been held in the

said judgement that the Power to intervene in the matters of State given by the Constitution to the Central Government and to the Parliament negate the very concept of federalism.

In the United States, the states are Sovereign and enjoy their own separate existence. States have their own Constitutions; they have their rights to collect income tax independently. Supremacy of the States, independence of

---

*In the recent past, the amendment of the Citizenship Act (hereinafter called Citizenship Amendment Act) of 2019 and the enactment of the Farm laws of 2020 gave rise to unprecedented Political Stir throughout the Country and those who were opposing such enactments took the main shelter and/or pretext of the federal structure of the Constitution of India.*

---

the Judiciary, decentralization and the actual separation of powers constitute United States as a federal country.

Some people take the plea that list II of the Seventh Schedule of the Constitution of India gives power to the State Legislatures to enact their own laws and the existence of the upper house of the Parliament being the Council of States. But a comparative study of Indian Constitution and the Constitution of United States reflects that both the Constitutions are completely different on the issue of federalism.

The Sovereign power is divided in a Federal State between the national Government and some other local

---

governments and the same territory is controlled by the two levels of government. In other words, in a federal state, there exist unique features of balance between horizontal and vertical division of Powers. The diversity of public policy is also allowed in the federal Constitution and the Constitution allows the States to make important Policies for the States.

The Constituent Assembly incorporated List II of the Seventh Schedule of the Constitution of India and gave powers to the State Legislatures to enact their own laws since some independent States like Hyderabad and North Eastern States merged in India. In our Constitution Parliament can by law form a new state, alter the size of an existing state, alter the name of an existing state and can even curtail the power, both executive and legislative by constitutional amendments.

Article 352 of the Constitution of India gives power to the President on the recommendation of the Central Government to proclaim emergency on the objective satisfaction that a grave emergency exists whereby the security of the country or any territory thereof is threatened and on various other grounds.

Article 353 of the Constitution of India describes the effect of proclamation of emergency; and the executive power of the Union shall extend to the giving of directions to any State and the manner in which such power is to be exercised. The said power of the Parliament are enough powers to make laws with respect to any matter regarding imposition of duties upon the Union officers even if the same is not included and/or enumerated in the Union list, being the list to enact laws by the Union only.

Article 354 talks about distribution of revenues while Proclamation of emergency is in operation and the power of the President to pass an order that all or any of the Provisions of Articles 268 to 279, being the provisions regarding distribution of revenue between Union and states, shall cease to operate during such Proclamation,

Article 355 of the Constitution of India clothes the Union to protect states against external aggression and Internal disturbances and to ensure that the government

of every state is carried on according to the Provisions of the Constitution. This term 'external aggression' in Article 355 is a word of wide import and not limited to war, but comprises many other acts other than war. The question of national security and to maintain the same is primary to the Union under the said Article and the question of national security is not a question of law, but a policy of the Union government.

The President, on receipt of a report from the Governor of a State or otherwise, if, is satisfied that a situation has arisen in which, the government of a State cannot be carried on in accordance with the provisions of the Constitution, the President may, by Proclamation (a)

---

*The Constituent Assembly incorporated List II of the Seventh Schedule of the Constitution of India and gave powers to the State Legislatures to enact their own laws since some independent States like Hyderabad and North Eastern States merged in India. In our Constitution Parliament can by law form a new state, alter the size of an existing state, alter the name of an existing state and can even curtail the power, both executive and legislative by constitutional amendments.*

---

assume to himself all or any of the functions of the government of that state and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State other than the legislature of the State, (b) power to declare, under the said Article that the Powers of the legislature of the State shall be exercisable by or under the authority of the Parliament and (c) to make such incidental and consequential provisions as shall appear to the President to be necessary or desirable for giving effect to the object of Proclamation including Provisions for suspending whole or in part the operation of any Provision of the Constitution relating to anybody or authority in the state.

---

The appointment of the Governor and the report for exercising power under Article 356 of the Constitution of India itself shows that power of the Parliament and Union of India is supreme under the Constitution of India.

The Constitution of India also gives power to the Parliament to confer on the President the Power of the legislature of the state to make laws and the power to delegate. Powers upon the Union officers and authorities. It is also provided in Article 357 that the President of India is given power to deal with consolidated fund of the state pending the sanction of such expenditure by Parliament. Article 357(2) gives another independent power to continue in force with laws during Proclamation and even when such Proclamation ceases to operate.

Article 360 gives power to the President to issue proclamation of financial emergency in the Country if the situation so exists. The President of India and the Governors of States or Raj Promukhs have been various protections under Article 361.

In case of a conflict between the laws made by the Union and the states and particularly the laws made under List III of the Constitution, the laws of the Union shall prevail.

List I being Union list of the Seventh Schedule of the Constitution of India gives power to the Union under Entry I and (IIA) for deployment of Forces in the States. The State laws require the assent of the President as head.

On a plain reading of the above provisions and the structure of the Constitution of India, it is crystal clear that the Indian Constitution is not federal in the same manner and object of the Constitution of United States and India is not a free federation as has been held in the cases reported in *Kuldeep Nair Vs. Union of India* (2006(7) SCC Page-1], *ITC Limited -Vs.- Agricultural Produce market Committee* [2002(9) SCC 232], *State of West Bengal-Vs.- Union of India* [AIR 1963, SC 1241].

The Constitution of India is Supreme and Constitution gives the President of India to exercise all independent

and unfettered powers on the aid and advice of the Council of Ministers of the Union Government including right to suspend freedom of expression conferred under Article 19, during emergency. The object of the Constitution of India is to provide a strong Centre which is unitary and the power of the Parliament to legislate with respect to matters in the State list in national interest, in case there is a resolution of the Council of States, and the power to give effect to provisions regarding All India Services, unmistakably demonstrate and/or destroy the basic concept of federal state in India Constitution.

*The Constitution of India also gives power to the Parliament to confer on the President the Power of the legislature of the state to make laws and the power to delegate. Powers upon the Union officers and authorities. It is also provided in Article 357 that the President of India is given power to deal with consolidated fund of the state pending the sanction of such expenditure by Parliament. Article 357(2) gives another independent power to continue in force with laws during Proclamation and even when such Proclamation ceases to operate.*

Finally, under Indian Constitution, there is one citizenship i.e. the Citizenship of India and the Preamble to the Constitution of India begins with the words 'We, the People of India, having solemnly resolved to constitute India a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens, justice, liberty, equality and fraternity.

Indian Constitution is unitary with some federal features and is completely distinguishable with the federal Constitution of the United States. 