

### Abstract

Indian Political System has many distinctive features and federalism is one such unparalleled feature. This paper tries to cover the changes in the federal system during the Modi government after 2014. It tries to understand the changes Indian federal system has witnessed during last 6 years. It specifically covers the issues related with the establishment of NITI Aayog, introducing Goods and Service Tax (GST), misuse of Anti Defection Law, Abrogation of Article 370, the Citizenship Amendment Act 2019 and situation of Covid-19 pandemic. The paper analyses the challenges posed by these changes and its impact over the Indian federal system. It explores the paradigm shift towards Nationalistic federalism in Indian federal system under Modi government.

**Keywords:** Federalism, Nationalistic federalism, Anti-Defection law, Article 370, Covid-19 Pandemic.

### Introduction

After Independence the most pertinent question in front of the constitutional makers was to decide the form of government structure to be adopted for the country and they logically adopted federalism with clear separation of power between centre and states.(Shukla & Bishnoi, 2020) With time the Indian federal system took many forms and shapes and in this context under the present government it is taking a new shape. In the 16th and 17th general elections, the BJP participated with various local political parties, and got an absolute majority, and from this the Indian federal system entered a new era. Since the elections of 2014, the BJP government under the leadership of Narendra D. Modi emphasized on Nationalism and Hinduism in India which also reflected and brought many unprecedented changes in the Indian federal structure. These changes have an impact on the centre-state relations in Indian federal structure and the power has got concentrated with centre which has nationalism as its political ideology. That's why various scholars called this era of Indian federal system as an era of nationalist federalism.(Gerken, 2014) In this context several incidents have occurred in past 6 years which are covered in the separate sections in the paper.

#### Mockery of Anti Defection Law

Transfer of the loyalty or allegiance is the popular phenomena of Indian politics since independence. Even not only in India but in the democracies over the world like USA, Australia and Canada are aware of this fashion of swapping loyalties. There have been several instances of great politicians changing party allegiance, for example Winston Churchill, Ramsay McDonald,

William Gladstone etc.(Diya Sarkar, 2018) But this phenomenon became a disease for Indian democracy even in the decade after independence, and destabilised various governments persistently. Subhash Kashyap analysed the figures of the 4th general election and provided the glimpse of sad reality and he said "Approximately 3,500 members of the legislative assemblies of the States and the Union Territories were elected in 1967; of these some 550 changed their political affiliations that are, indulged in the politics of defection".(Kashyap, 2010) Therefore in December 1984, Rajiv Gandhi Government amended the Constitution for 52nd time and introduced the Anti-Defection Law and placed it under the Tenth Schedule of the Constitution, which aimed to control the menace of changing loyalties and toppling governments.

The pill of anti-defection has so far failed to cure the ailment under concern, and the present central government using this phenomenon to the disestablished the state governments in various forms. The BJP has made a mockery of the anti-defection law, as it has been used from time to time to form and topple various state governments. The change in governments in Tamil Nadu, Andhra Pradesh, Arunachal Pradesh, Goa, Manipur, Nagaland, Telangana, Uttarakhand, Madhya Pradesh and Maharashtra in recent years provides the long list of examples. The weakening of the anti-defection law has a direct impact on the Indian democracy and the federal system. Since 2014, the way in which the government of opposition parties have been brought down by misusing the anti-defection law has raised fear in the States ruled by non-BJP parties that even their governments may face the similar fate. This has weakened the state governments' assertive position on various issues. These examples and analysis prove that Indian Federal System is facing a serious challenge from the weak Anti Defection Law and its misuse by the central government and therefore over a period of time the mooring of Indian federal system has been toward a unified federal system.

#### From Planning Commission to NITI Aayog

Since 2014 lots of things have undergone changes, NITI Aayog replaced the Planning Commission; it was the beginning of a new era in the field of Indian economy as well as Indian federal system. NITI Aayog has been mandated the task of evolving a shared vision of national development priorities, sectors and strategies with the active involvement of States.(NITI Aayog). Centralising states capacities is its foremost strategy for national development. Hence it is an intrusion in the areas of

competence originally reserved for states. It has defined its role as a national planner and agenda setter. In this way, with the establishment of NITI Aayog, the situation of the states in the economic field has not changed much; even today the states are financially dependent on the centre. Due to the strong presence of the NITI Aayog there is a shift in the locus of sovereignty from the state capital to the national capital where choices are rarely politically negotiated, but rather decided through the compulsives of techno bureaucratic and the monopoly of resources by the centre. (Tillin, 2019) The NITI Aayog has further strengthened the hypothesis of Gluck and Gerken through its methodology, as they said in their perspective that this is the time of the Emergence of National Federalism.

### **Goods and Service Tax (GST) – The New Taxation System**

Equity, capacity, stability and growth are four important pillars of fiscal federalism in India. The union is also expected to create level playing fields in various states. (Singh, 2018) In India states do not enjoy the kind of financial autonomy that states in federal countries like United States and Canada enjoy, although they do enjoy a fair degree of autonomy with respect to fiscal powers. The central government has made the financial issue more complex by bringing GST instead of improving it. It was an old demand of the states that the states should get financial freedom, but the government tried to satisfy the states through GST, but the question remains the same. GST promotes a single national market which is based on common tax laws for the centre and states. Goods and Service Tax is established of the supra fiscal assembly which is known as GST Council. The GST Council comprising of Union Finance Ministers and State Finance Ministers, has been constituted to recommend on the GST rate, exemption and thresholds taxes, to be subsumed and other features, besides suggesting a mechanism to resolve disputes related to GST between the centre and states or among states. (Singh, 2018) Therefore decision making authority tilted towards the centre and have nominal role in the GST council. Also, there have been complaints from the various states that the central government is not providing funds to the states and GST share too. Eventually the central government has created a system of centralization of economic power, which is not right from the point of view of economic federalism.

### **Abrogation of Article 370**

Abrogation of Article 370 and bifurcation of Jammu and Kashmir into Union Territories will go as a turning point in Indian democratic history. Government of India has abrogated the article 370 and downgrade the status of the Jammu and Kashmir along with creation of new union territory, the Union Territory of Ladakh. Its change the political geography of north India and it will also have an impact on Indian federal structure. Yamini Aiyar argued

that the “Beyond the specific context of Kashmir, the move to strip Kashmir of its semi-autonomous status and downgrade the state of Jammu and Kashmir to a Union Territory undermined the central tenet of India’s federal aspiration— the aspiration to peacefully accommodate India’s multiple linguistic, ethnic and religious identities”. (Aiyar, 2020) In the process of abrogation of Article 370, constitutionally Government may be correct, but in the context of constitutional morality and federalism it was completely wrong. India is a multicultural society with amalgamation of diverse cultural identities. In this situation, the government must be responsive to the demands of minorities and must keep their trust intact in the multiple governing institutions. But in the process of abrogating the article 370, government ignored the opinion and interests of multiple stakeholders of the regions. In the whole process of the abrogation the central government displayed misuse and abuse of its power. The government of India first imposed the President's rule in Jammu Kashmir and after that, the entire power of the assembly transferred to the Parliament and displayed the unitary form of government. Here the question of rights of the state and functioning of the federal system arises. The state's rights were severely violated by the central government and undoubtedly it shows that the Indian federalism is shrinking. Such incidents can be extremely damaging to the Indian federal structure. Louise Tillin argued that the “abrogation of Article 370, bifurcating Jammu and Kashmir and downgrading the status of the successor units to union territories, the government has used the flexibility of the federal provision of the constitution to other ends”. (Tillin, 2019) If the centre starts abusing its power in changing the structures of the states to establish its control then it will hamper the provisions of entire federal structure.

### **Citizenship Amendment Act 2019**

In the spectrum of Citizenship Amendment Act 2019 various Non-BJP rule chief ministers have emerged as unexpected allies in the battle against the Citizenship Amendment Act (CAA). Chief Ministers from the Punjab, Kerala and West Bengal and others have reasonable question against the Citizenship Amendment Act and they passed the resolution in their assembly to not implement the Citizenship Amendment Act in their respective states. Even the Kerala government has filed a suit under Article 131 making the CAA a Centre-state dispute. Clearly, such a provision places an onerous burden on the federal structure envisaged by the Constitution. (Bhushan, 2020) Interestingly, the subject of citizenship is in the central list in the constitution despite of it state governments are opposing the Citizenship Amendment Act. Regardless, the political symbolism of this resistance is significant. This is the first time that chief ministers have collectively taken a strong, vocal stand against the central government, and asserted their federal rights. (Aiyar,

2020). As protests across the country gained strength, Naveen Patnaik and Nitish Kumar, whose parties voted for the CAA in Parliament, were forced to take a position against the NRC, taking the tally of the state governments opposed to the NRC up to 11. (Aiyar, 2020) The Central Government passed the Citizenship Amendment Act 2019 without taking the states into confidence, due to this the state and central governments are in a conflict situation. Such decisions taken by the central government certainly causes deterioration in the Indian federal system. Citizenship is a sensitive subject and instead of coercion, one should move towards a solution through mutual dialogue. Preservation, protection and promotion of the federal spirit are the essence of Indian society and democracy, India can move forward with this spirit only.

### **Federalism and Covid-19 Pandemic**

Covid-19 pandemic gave rise to unforeseen situation before the federal system and it poses a unique challenge as well as opportunity to the federal system in India. Due to Covid-19 pandemic tensions have arise between centre-state relations not only In India but several other federal countries around the world as well. Most of the central governments around the world declared the lockdown without consulting the state governments, which hamper the states approach in tackling the situation in the manner best suited for them. Prarthana Kashinath argued that the Central Government neither drew up any plan, nor did it consult the State Governments before it imposed the lockdown. State had no time, to could make some plans to handle the economy and migrant labourers. (Kashinath, 2020)Although constitutionally speaking, during the COVID-19 pandemic, the centre has the power to legislate and execute the laws and policies with respect to inter-state migration, inter-state quarantine, social security and social insurance, employment and prevention of the spread of infection in the country; and the states have the legislative and executive power in the area of public order, police, public health, sanitation, hospitals, social security, and containment of infection.(Agrawal, 2020)In order to operate in a federal system certain norms must be established along with rules and regulations. In a federal system, the mutual respect for each other jurisdiction is necessary and mutual trust must be kept all the time. The response to the COVID-19 situation highlighted the unitary tilt in the Indian federal structure. The central government implemented a national lockdown using its arbitrary powers under a central disaster management law, and its Ministry of Home Affairs issued extensive guidelines to states for controlling the pandemic. This law empowers the central government to commandeer state and local authorities if necessary.(Burman, 2020)Due to all these reasons, many challenges have arisen in front of the states; the states are feeling serious problems in the economic, social, administrative and agricultural fields. But the states are

helpless, because the centre has concentrated the powers under the cover of COVID 19,for example prohibiting sale of alcohol, withholding of GST compensation, denial of State disaster funds from the benefit of CSR contributions to the suspension of MPLADS and so on.(Ghosh, 2020)The story doesn't end here, even the Central government has also declared that the corporate donating in PM- CARES fund can avail CSR exemption, but those donating towards any Chief Ministers Relief Fund cannot. This directly disincentives donation to any Chief Minister Relief Fund which resulted in diversion of huge sum of money from potential state revenues to PM-CARES, and makes the states largely dependent on the centre.(Pranav Verma, 2020)It is clear from the above that the Central Government has divested the powers of the states in the name of pandemic. The pandemic situation has created an avoidable deadlock in the functioning of Indian federal system. The challenges posed by pandemic could have been dealt in a better manner without swaying away from the ethos of federal system.

### **Conclusion**

The present government has been working on the Nationalist agenda since 2014, under which it has tilted the Indian federal system toward the nationalism, through the Demonetisation, Implementation GST, Abrogation of 370, CAA promoting the Hindi as national language etc.Looking at the policies of BJP, Yamini Aiyar made an accurate analysis that “Despite the rhetoric of “co-operative”, “competitive” federalism, since coming to office in 2014, the Modi government has carefully sought to centralise political, administrative and financial powers with relatively meek opposition from states”.(Aiyar, 2020)Rajeev Bhargava has commented accurately on the current nationalism oriented federal system. He said that the contemporary crisis of federalism is due to attack on coalescent, democratic Indian nationalism by a conceptually limited and morally weak idea of Hindu nationalism. Unless this offensive is curbed, and these trends reversed I fear we might begin to see major cracks in our distinctive nationalist project. That would be nothing short of disastrous for the Indian republic.(Bhargav, 2020) The Indian federal system as adopted by constitutional makers though had ‘central tendencies’ but over a period of time it evolved to be more accommodative and become ‘cooperative’ and ‘competitive’ in nature. But after 2014, it will not be an exaggeration to state that central government is saying towards nationalistic federalism. This paper has made one such attempt to understand this from the point of view of several developments which have taken place during Modi government and had a considerable impact on Indian federal system.

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