



UNION OF STATES: TRACING INDIA'S UNIQUE FEDERAL FRAMEWORK

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ABSTRACT

This article analyses the structure and evolution of the federal structure in India, tracing its roots from colonialism under the Government of India Act 1935 to the present-day federal structure derived from the Indian Constitution. Federalism, defined as a system where power is vertically shared between two or more governments at different levels, was first formally introduced to India through the Government of India Act 1919, but federalism was more substantially established via the Government of India Act 1935, with a three-list division of legislative powers. However, the All India Federation was never fully enforced due to the reluctance of the native rulers of the princely states for joining it and the onset of World War II. Many of the 1935 Act's features were later adopted and modified by the Indian Constitution after independence, but they were changed to fit a democratic and sovereign framework. It created a "Union of States" model, having a quasi-federal organisation comprising a powerful central government. Thus, Indian federalism is a special hybrid model that reflects the pluralistic demands of a diverse country as well as historical legacies. This article thus explores the similarities and differences between the Government of India Act 1935 and the Indian Constitution, shedding light on how they together shaped the distinct and unique federal structure of modern India.

Keywords: Federalism, Constitution, Division of Power, Quasi-federal, Dyarchy, Bicameralism.

INTRODUCTION

Federalism essentially means a governance structure where power is shared between two or more 2 types of governments. One is generally the Central authority or government, and the others, which include the various constituents of the nation, are usually referred to as the state or provisional government. Here, the power is shared vertically between the different types of

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governments. Under the federal structure, the Central and the state governments have their jurisdiction of governance and decision-making demarcated, usually by a written constitution. Federalism is derived from the Latin word “foedus”, meaning pact, covenant or treaty. Federalism, as we see in the modern world, is derived from the US Constitution. The US Constitution states that there exist two levels under the US Government- federal and state. It stated that the federal government's power and authority over the states is limited. There are also mutual checks on power by the two governments on each other, ensuring that none of neither violates the constitutional machinery. States also have an independent power to interpret the Constitution in its original sense. Via the 10th Amendment, the constitutional makers gave the states the power to make their own laws, which are under their jurisdiction without interference from the federal government. It emphasised that the federal government can derive its power only on those subjects which the constitution grants. Furthermore, it proclaimed that the states retained any authority and power that the Constitution does not give to the federal government. There is essentially a difference between the federalism practised in India and the USA. Indian government structure is quasi-federal in nature and is a “Union of states”, implying that a stronger central government retains substantial control over the states over major essential matters, whereas under the American constitution, the government structure is a “Federation of states” wherein both the federal and state government, have their jurisdictions and own set of functions and decision making power. The current federal government structure’s roots can be traced backed to the colonial roots wherein during the First Round Table Conference in 1930, the support for India's federal system of government grew as the idea that the new Indian government would be an All-India Federation that included both British India and the Princely States was formally accepted by the British government at the end of the conference. However, the main framework of the federal system of government, as ultimately developed by the Constituent Assembly that drafted the current Constitution of the Republic of India, was later laid out in the Government of India Act 1935. Later in 1946, when the Constituent Assembly approved Pandit Nehru's Resolution, it formally endorsed federalism as the framework for the new India. As a result, when India gained its independence in 1947, it was a quasi-federal system with a very strong central government that controlled the majority of the powers, and the states had very little autonomy. The current hybrid model of Indian federalism, encompassing both unitary and federal government structures, exhibits the pluralistic character of the Indian constitutional and political framework.

GOVERNMENT OF INDIA ACT 1935

Historical Background and Importance: A pivotal milestone in British India's constitutional development and a turning point in the country's transition to self-governance is the Government of India Act 1935¹. This legislative framework was enacted to maintain imperial interests while redefining the legislative and executive composition and operations of the British Raj in the face of rising political unrest and increasing calls for more autonomy. This Act was the result of discussions at the Round Table Conferences and Simon Commission recommendations. With 321 sections and 10 schedules, this Act² is one of the longest pieces of legislation passed by the British Parliament, and its significance stems from its unparalleled breadth and complexity. It was intended as a comprehensive framework that would introduce aspects of federalism while retaining ultimate British control, thereby fundamentally changing colonial governance in India.

Significant Aspects: The significant aspects of this Act included the establishment of the Federal Court, separation of Burma and Aden from British India, establishment of the Federal Public Service Commission and Provisional Public Service Commission, the introduction of dyarchy or dual government at the centre and its abolishment at the provisional level, creation of an all India federation with both provinces and princely states under it as well as the introduction of direct elections. It also led to the creation of bicameral legislatures at the federal level and in about half of the provinces.

Federal Structure under the Act: The most groundbreaking feature of this Act was an attempt to create a federation that would bring British India and the princely states together under a single political system. The previously centralised colonial administration was significantly altered by this proposed federation system. 3 separate lists³ were created, which would demarcate the jurisdiction of the legislative authority between the federal and the provisional governments. The federal list contained 59 subjects such as defence, currency and foreign affairs. These subjects were of pan-India importance and significance and thus required consistency and uniformity. The provisional list contained 54 subjects such as public health, agriculture and police. They could be legislated upon by both federal and provincial governments. They were subjects that were of regional importance and thus could marginally

¹ Government of India Act 1935

² *Ajayan Thankappannair*, 'Evolution of Federalism in Modern India' (2024) In Gremium <https://ingremium.pl/index.php/IG/article/view/438> accessed 25 July 2025

³ Government of India Act 1935, 7th sched

vary from province to province. The concurrent list⁴ contained around 36 subjects, such as forests and education. These subjects required consistency and uniformity but were primarily of regional importance. In a situation where provincial and federal laws clashed on a concurrent subject, federal law would take precedence. The Governor-General had the (residuary power⁵) authority to decide whether a subject was under federal or provincial jurisdiction if it was not specifically listed under any list.

Federal Diarchy and Provincial Autonomy: Dyarchy or dual government at the federal level was introduced, while it was abolished at the provincial level by this Act. The subjects under the Federal list were divided into two parts: reserved and transferred. The reserved list subjects were controlled directly by the Governor-General and his counsellors and were not responsible to the legislature at all. These subjects included⁶: defence, finance, foreign relations, control over British Indian military forces, taxation, justice, tribal affairs, etc. The transferred subjects were administered by the Governor-General along with his council of elected Indian ministers, and this council⁷ was directly responsible to the legislature. It contained subjects such as local government, education, health, forests, etc. The actual autonomy granted was greatly diminished, as the Governor-General had special powers to interfere in the transferred category subjects. The Governor-General also had the power to issue ordinances during legislative recess periods⁸. The bicameral legislature at the federal level consisted of the Council of States (Upper house) and the Federal Assembly (Lower house). Each had a term limit of 5 years. The Upper consisted of 260 members, wherein 156 (60%) were to be elected from British India, and the remaining 104 (40%) members were representatives of the princely states. The lower house consisted of 375 members, wherein 250 (2/3rd) members were elected from British India and the remaining 125 (1/3rd) were representatives of the princely states. The representatives of the princely states could be nominated by the respective rulers, and this composition of the 2 houses was set to ensure that the Indian National Congress could never rule the government alone on its might. At the provisional level, dyarchy was abolished and all provisional subjects were placed in the hands of elected ministers, who were responsible directly to the provincial legislatures. The Britishers appointed provincial governors⁹, who could take control over the entire province in

⁴ Government of India Act 1935, pt. V, Ch. 1, § 100 (2)

⁵ Government of India Act 1935, pt. V, Ch. 1, § 104

⁶ Government of India Act 1935, pt. II, Ch. 2, § 11

⁷ Government of India Act 1935, pt. II, Ch. 2, § 9

⁸ Government of India Act 1935, pt. II, Ch. 4, § 42

⁹ Government of India Act 1935, pt. III, Ch. 2, § 48

a situation of political breakdown¹⁰. Thus, when provincial autonomy was implemented in 1937, elected ministers were given more authority to lead provinces than previously, but they were still subject to the governors' unique duties and authority.

Limitations and Drawbacks: The Act had a lot of drawbacks despite its ambitious scope. The federation structure at the federal level could never materialise primarily due to the non-fulfilment of the condition of half the States assenting to federate. Participation of the princely states under this federation structure was voluntary, and as a result, they vetoed it by not joining it due to fear of losing autonomy and suspicion of growing democracy reforms being propagated by the Indian National Congress. Ultimately, this federation structure was indefinitely suspended and postponed due to the outbreak of World War 2. Furthermore, the Act strengthened social divisions, which would eventually lead to partition by extending the concept of communal representation through distinct electorates for Muslims, scheduled classes, women, and labourers. Moreover, the central diarchy guaranteed British control over important facets of governance due to its significant powers. Nevertheless, the Act had a significant impact on India's federal structure development. It established a federal structure with delegated legislative authority, which would later have a direct influence over the drafting and framing of India's constitution.

INDIAN CONSTITUTION

Indian Context and Conceptual Framework: The Indian Constitution establishes federalism in India, wherein Part XI demarcates the executive, judicial and legislative power between the Central and the state governments. Article 1 of the Indian Constitution refers to India as a "Union of States" rather than a "federation of states". Because of this careful wording, Dr. B.R. Ambedkar clarified that although India is not a federation in the conventional sense, on the other hand, it is also not totally unitary. Because of this, constitutional academicians have classified India's system as "quasi-federal" or a mixture of both federalism and unitary forms of government, with a strong central government, in comparison to the provincial units. India embraced "holding together" federalism, which is different from the "coming together" federalism of the USA. In the case of India, a formerly unitary system established decentralised structures to guarantee political stability and administrative autonomy, rather than the constituent units choosing to form the federation. The historical background of India, especially the horrific experience of partition in 1947,

¹⁰ Government of India Act 1935, pt. III, Ch. 6, § 93

which sparked legitimate concerns about national fragmentation, had an impact on this strategy.

Federal provisions under the Indian Constitution: The Indian Constitution, under Schedule 7¹¹, divides the legislative power between the centre and states under 3 lists: Union, State and Concurrent. The Union List¹² contains subjects that are of national importance and can be legislated by the centre only. At present, there are around 100 items such as citizenship, atomic energy, defence, foreign relations, finance, communications, airways and railways, etc. The State List¹³ contains items that are of regional importance and can be dealt with by only the state governments, legislating on them. At present, there are around 61 items such as police, healthcare, law and order, transport, village administration, etc. However, the Parliament can legislate on state list items under special circumstances, such as in national interest¹⁴, or under emergency¹⁵ or on legislation to give effect to international agreements¹⁶. The third list, the Concurrent list, includes items that can be legislated by both governments, but in the situation of an inherent contradiction between the two, then the central government's statute always prevails. It contains around 52 items such as education, forests, marriages and divorce, administration of justice, trade unions, etc. Items or subjects that don't fall under any of the 3 lists are administered by the Residuary list. These items are exclusively governed by the Parliament as per Article 248¹⁷. There is a bicameral legislature followed in the Parliament and in 6 states, which essentially means that there are 2 houses: Lok Sabha¹⁸ (House of people) and Rajya Sabha¹⁹ (Council of states) at the Parliament level and Legislative Assembly and Legislative Council at the state level. The rest of the states have a unicameral legislature. The Lok Sabha, at present, has 543 members and contains representatives who are directly elected via the Rajya Sabha currently has 245 members (233 members and 12 nominated) who are indirectly elected. It should be observed that there is constitutional rigidity for changing the federal system under the Indian Constitution. These federal provisions can only be changed by achieving a special majority in both houses (at least 2/3rd of the members present and voting in favour, and should overall be passed by a

¹¹ India Const sch VII

¹² India Const sch VII, List I

¹³ India Const sch VII, list II

¹⁴ India Const art 249(1)

¹⁵ India Const art 250(1)

¹⁶ India Const art 253

¹⁷ India Const art 248(1)

¹⁸ India Const art 81

¹⁹ India Const art 80

majority of the total membership of the house), along with getting ratification from at least half the total number of state legislatures²⁰.

Third Tier of Governance: A unique feature of Indian federalism is that the governance structure is decentralised further down to the Third tier of governance: Panchayats²¹ and Municipalities²². This was done by adding Part IX and Part IX-A, respectively, by the 73rd and 74th Constitutional amendments in 1992.

Emergency Provisions: The Indian Constitution includes emergency clauses to protect the country's sovereignty and integrity in times of crisis. Article 352 defines a national emergency, Article 356 defines a state emergency or president's rule, and Article 360²³ defines a financial emergency. These clauses give the Centre the authority to temporarily alter the federal structure, suspend fundamental rights, and take on more authority over states. Armed rebellion, external aggression and war are the 3 bases for invoking Article 352²⁴, while Article 356²⁵ can be invoked due to the breakdown of constitutional machinery in a state or a group of states.

COMPARATIVE ANALYSIS OF FEDERAL PROVISIONS UNDER THE GOI ACT 1935 AND THE INDIAN CONSTITUTION

Similarities in the Federal Structure: The Government of India Act 1935 served as a major source of inspiration for the Indian Constitution, especially regarding its federal structure. This inheritance is illustrated by several important similarities between the two statutes:

Division of Powers through Lists: The three-list system for allocating legislative powers is arguably the most notable similarity. The fundamental structure of the Federal (Union), Provincial (State), and Concurrent Lists was adopted by the Constitution, albeit with significant changes to its scope and content. Indian federalism is still based on this list of enumerated powers of the 3 lists, given under Schedule 7 of the Constitution.

Union Government's Supremacy in Concurrent Matters: Both statutes stated that federal/union law would take precedence over provincial/state legislation on concurrent subjects in the event of a conflict. This idea, which was incorporated in the 1935 GOI Act

²⁰ India Const art 368(2)

²¹ India Const pt IX, art 243

²² India Const pt IXA, art 243P

²³ India Const art 360

²⁴ India Const art 352(1)

²⁵ India Const art 356(1)

and later as Article 254²⁶ in the Indian Constitution, strengthened the Union government's control over items of shared jurisdiction.

Residuary Powers: Both legislations gave the central government control of residuary powers, which are subject to matters not specifically listed in any list. The Constitution expressly gives Parliament residuary powers under Article 248, while the 1935 GOI Act allowed the Governor-General to distribute these powers.

Administrative Relations: The fundamental framework of administrative relations between the Union government and the provinces/states exhibits a significant degree of continuity, as both statutes allowed for the delegation of responsibilities (decentralisation of powers) and the establishment of mechanisms for intergovernmental coordination.

Institutional Continuity: Several important institutions, such as the Federal Court, an organisation established by the 1935 GOI Act, were given more authority and renamed the Supreme Court²⁷, respectively, under the Indian Constitution. Some other prominent examples include the Federal and Provincial Public Service Commissions, which changed to the Union²⁸ and State Public Service Commission, respectively.

SIGNIFICANT MODIFICATIONS IN THE FEDERAL STRUCTURE

Sovereignty and Democratic Foundation: The primary distinction is that the 1935 Act upheld British imperial sovereignty, while the Constitution created India as a democratic republic with popular sovereignty. As a result, federalism changed from being a colonial administrative structure to a system of democratic power sharing. This was especially reflected in the expansion of items under lists such as the Union list, expanding from 59 to 100 items, thus reflecting the broader responsibilities and duties of a sovereign nation. Also, Railways and Industries became part of the Union list under the Constitution, while earlier they were under the concurrent list.

Abolition of Diarchy: The Constitution replaced the central and provincial diarchy systems with fully accountable parliamentary government at both levels. The 1935 Act's distinction between "reserved" and "transferred" subjects, which had little provincial autonomy, was eliminated as a result.

²⁶ India Const art 254(1)

²⁷ India Const art 124

²⁸ India Const art 315(1)

Flexibility: In contrast to the 1935 Act's comparatively rigid structure, the Indian Constitution established a more flexible federal system. This adaptability can be seen via the incorporation of various provisions which upheld federalism but also maintained the unity and integrity of India, such as provisions of proper parliamentary form of government, Inter-state councils and Finance commission²⁹, which weren't there in the 1935 GOI Act.

Third Tier of Governance: Through the 73rd and 74th Amendments, the Constitution acknowledged local self-government (Panchayats and Municipalities) as a separate tier of governance, establishing a three-tier federal structure that was not present in the 1935 GOI Act.

Liberties Given to Princely States: Under the GOI Act 1935, Princely states could stay out of the federation via Instrument of Accession, they could have their own constitution, as well as the right to mint coins, have separate flags, maintain military forces for their respective states and enforce different civil and criminal codes. All these liberties and relaxations weren't allowed under the Indian Constitution.

Emergency Provisions: Under the GOI Act 1935, the Governor General can only make laws for the entire nation when a central emergency is enforced and the central legislative assembly is dissolved. While under the constitution, the Parliament makes laws even under a National emergency. Also, during a state/provincial emergency, the governor alone could make laws under the GOI Act 1935, while the Parliament is authorised to make laws under the Constitution.

Amendment: The GOI Act 1935 could only be amended by the UK parliament, while the Constitution of India can be amended via a special majority in both houses, and the ratification of at least half of the states for some provisions.

CONCLUSION

India's transition from a colonial administrative structure to a sovereign, democratic, and pluralistic governance system is reflected in the country's evolving federalism. Although it was still subject to British imperial control, the Government of India Act of 1935 established the framework for Indian federalism by formally dividing powers between the federal government and the provinces for the first time. Several functional elements of the federal

²⁹ India Const art 280

provisions of the 1935 Act were reinterpreted within a democratic and republican framework and kept by the drafters in the Constitution of Independent India. The "Union of States" model chosen by the Indian Constitution ensures a powerful central government, which ensures that the integrity and unity of the country are sustained while permitting a considerable decentralisation of power to the states. For a nation as diverse and heterogeneous as India, where regional ambitions coexist with broad national interests, this balance was essential. Furthermore, the 1935 Act lacked certain progressive innovations that were subsequently brought about by the Indian Constitution, as the latter is rooted in popular sovereignty. These innovations include the removal of the dyarchy, the creation of a distinct bicameral parliamentary system, the inclusion of emergency clauses appropriate for a sovereign state, and the acknowledgement of a third level of local government through municipalities and Panchayati Raj, all demonstrate how flexible and developed India's federal structure is. The current framework has changed via amendments, judicial interpretations, and political practices to meet modern needs, even though it still faces difficulties, particularly in upholding the delicate balance between state autonomy and central authority. Thus, the Indian federalism model embodies a special kind of "Hybrid or Quasi" federalism which ensures unity in diversity by fusing aspects of unitary and federal systems.