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An Analytical Study of Federalism Under Indian Constitution

Arush Khanna
Lucknow University

I. INTRODUCTION

The origin of the concept of federalism is a matter on which it is possible to have a variety of approaches, depending on the view which takes on the meaning of federation[1]. The term "Federalism" is derived from the Latin word "foedus" meaning covenant. It connotes the theory or advocacy of federal political orders, where final authority is divided between sub-units and a Centre. Sovereignty is constitutionally split between at least two territorial levels so that units at each level have final authority and can act independently of the others in some area. There are thus two authorities for the citizens to oblige politically. This allocation of authority between the sub-units and the Centre may vary. In a typical style, the Centre has powers regarding defense and foreign policy, and the sub-units have powers regarding administration and local activities, trade etc., but sub-units may also have international roles. The sub-units may also participate in central decision-making bodies.[2]

Federalism is a system of government in which the same territory is controlled by two levels of government. Generally, an overarching national government governs issues that affect the entire country, and smaller subdivisions govern issues of local concern. Both the national government and the smaller political subdivisions have the power to make laws and both have a certain level of autonomy from each other.[3]

In other words, a federal system of government is one that divides the powers of government between the central government and state government. In this each level of government has sovereignty in some areas and shares powers in other areas.

A. Federalism and Indian Constitution

Till 1935, we had unitary system in India, the Government of India Act, 1935 envisaged the federal scheme and first time introduced the federal concept in India and made legal use of the word 'Federation',[4] even though, the process of decentralisation and devolution of power had started since the earlier Government of India Act, 1919.[5] Indian federal system is not a result of any treaty or agreement amongst the constituent units/states. In India, unitary system of government was converted into a federal one by giving certain powers and responsibilities to the states under the constitution. The framers of the Indian constitution aimed at establishing a federal system in India in view of the social diversities and the vast size of the country.[6] Fissiparous tendencies[7] are dangerous to the unity of a nation and to override the fissiparous tendencies, the legitimate grievances of the states should be addressed within the framework of the Federal Constitution. "In framing of the Constitution, the Constituent Assembly had many models to draw upon, but it wisely decided to take the Government of India Act, 1935[8] as the basis on which the new constitution was to be formed."[9]

The Indian Constitution was framed by the Constituent Assembly according to Cabinet Mission Plan and its first meeting was held on December 9, 1946 and the framers used the term federal in their speeches. In view of the external conditions as well as the vastness of the country and its heterogeneous elements, there was consensus in the Constituent Assembly that a unitary system was not only undesirable, but unworkable.

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[1] Jeevan Nair & U.C. Jain, Centre State Relations, 1 (2000).
[2] www.plato.stanford.edu.entries.Federalism.
[3] http://www.law.cornell.edu/wex/federalism
[4] Available at: www.lawyersclubindia.com (last visited on July 10, 2019).
[5] The Government of India Act, 1919 introduced the diarchy or dual government. See, M.P. Singh, Outlines of Indian Legal and Constitutional History 169 (Wadhwa and Co, Nagpur, 2003).
[6] Pratiyogita Darpan, Indian Polity, 76 (2003). For solution of constitutional problem of multi-racial, multi-lingual and multi-communal country like India with a vast area and a huge population, federalism was only natural choice. Also see, M.V. Pylee, Constitutional Government in India 29 (S. Chand & Company, New Delhi, 2011).
[7] Causing division or fragmenting something.
[8] Broadly modelled on the pattern of The British North America Act, now Canada constitution Act, 1867.
[9] H.M. Seervai, Constitutional Law of India (Vol.I) 286 (Universal Law Publishing, New Delhi, 2008).

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Therefore, India was going to have a federal constitution.[10] In order to bring the Indian States under the federal scheme, it was also announced that the Union should have only those three powers of defence, foreign affairs and communications, which had been conceded by the Cabinet Mission Plan, and the states of the federation shall be autonomous units, having all residuary powers.[11] The Mountbatten Plan of the June 3, 1947 announced partition of the country and a separate Constituent Assembly for the proposed state of Pakistan.[12] After the decision to partition the country was announced, immediately, the Union constitution Committee met on the June 5, 1947 and decided that the constitution of India should be federal with a strong centre.[13] It was also decided that there should be three legislative lists and residue was left unenumerated, should go to the union and not to states and it was affirmed by the Constituent Assembly and implemented by the Union Powers Committee.

II. HISTORY OF FEDERALISM[14]

Federalism has evolved over the course of American history. At different points in time, the balance and boundaries between the national and state government have changed substantially.

In the twentieth century, the role of the national government expanded dramatically, and it continues to expand in the twenty-first century.

A. Dual Federalism (1789–1945)

The Dual Federalism describes the nature of federalism for the first 150 years of the American republic, roughly 1789 through World War II. In this the Constitution outlined provisions for two types of government in the United States, national and state.

In this the national government deals with some part like national defense, foreign policy, and fostering commerce, whereas the states dealt with local matters, economic regulation, and criminal law. In this system the states and the national governments each had their own distinct areas of responsibility, and the different levels rarely overlapped.

B. The Civil War and the Fourteenth Amendment (1861–1868)

Part of the disputes that led to the Civil War (1861–1865) concerned federalism. Many Southerners felt that state governments alone had the right to make important decisions, such as whether slavery should be legal etc.

Advocates of states' rights believed that the individual state governments had power over the federal government because the states had ratified the Constitution to create the federal government in the first place. Most Southern states eventually seceded from the Union because they felt that secession was the only way to protect their rights. But Abraham Lincoln and many Northerners held that the Union could not be dissolved. The Union victory solidified the federal government's power over the states and ended the debate over states' rights.

The Fourteenth Amendment, ratified a few years after the Civil War in 1868, includes three key clauses, which limit state power and protect the basic rights of citizens:

1) The privileges and immunities clause declares that no state can deny any citizen the privileges and immunities of American citizenship.
2) The due process clause limits states' abilities to deprive citizens of their legal rights.
3) The equal protection clause declares that all people get the equal protection of the laws

C. Industrialization and Globalization (1865–1945)

The nature of government and politics in the United States changed dramatically in the late nineteenth and early twentieth centuries. The national government assumed a larger role as a result of two major events:

1) Industrialization: The economy became a national, industrial economy, and the federal government was much better equipped than the states to deal with this change. For much of the nineteenth century, the government pursued a hands-off, laissez-faire economic policy, but it began to take a stronger regulatory role in the early twentieth century.

[10] XI, Constituent Assembly Debates, 657-58.
[11] I, Constituent Assembly Debates, 57-58
[12] Supra note 22 at 6.
[13] Supra note 26.
[14] http://www.sparknotes.com/us-government-and-politics/american-government/federalism/section2.rhtml

2) Globalization: Because of its vast economy and its extensive trading networks, the United States emerged as a global economic power. The federal government assumed a greater economic role as American businesses and states began trading abroad heavily.

Although these events played out over many decades, they reached their high points during the presidency of Franklin Roosevelt (1933–1945). The Great Depression, brought about by the crash of the stock market in 1929, was one of the most severe economic downturns in American history. Many businesses failed, roughly one-third of the population was out of work, and poverty was widespread. In response, Roosevelt implemented the New Deal, a series of programs and policies that attempted to revive the economy and prevent further depression. The New Deal included increased regulation of banking and commerce and programs to alleviate poverty, including the formation of the Works Progress Administration and a social security plan. In order to implement these programs, the national government had to grow dramatically, which consequently took power away from the states.

D. Cooperative Federalism (1945–1969)

Federalism over much of the last century has more closely resembled a marble cake rather than a layer cake as federal authority and state authority have become intertwined. The national government has become integrated with the state and local governments, making it difficult to tell where one type of government begins and the other types end. State and local governments administer many federal programs, for example, and states depend heavily on federal funds to support their own programs. This type of federalism is called cooperative federalism, or marble- cake federalism.

E. New Federalism (1969–present)

Since the 1970s, political leaders and scholars of the New Federalism School have argued that the national government has grown too powerful and that power should be given back to the states. Although the national government remains extremely important, state governments have regained some power. Richard Nixon began supporting New Federalism during his presidency (1969–1974), and every president since Nixon has continued to support the return of some powers to state and local governments. Although political leaders disagree on the details, most support the general principle of giving power to the states.

New Federalism has taken concrete form in a variety of policies. New Federalists have argued for specific limits on federal power, as well as devolution, a policy of giving states power and responsibility for some programs. For example, the 1996 welfare reforms gave states the ability to spend federal dollars as they saw fit. Supporters claim that local and state governments can be more effective because they understand the circumstances of the issue in their state. They argue that a one-size-fits-all program imposed by Washington cannot function as effectively.

III. FEDERAL FEATURES

The federal features of the Constitution include:

1) A written constitution which defines the structure, organization and powers of the central as well as state governments
2) A rigid constitution which can be amended only with the consent of the states.
3) An independent judiciary which acts as the guardian of the constitution.
4) A clear division of powers between the Center and the States through three lists- Union list, State list and Concurrent list.
5) The creation of an Upper House (Rajya Sabha) which gives representation to the states.

For the above reason we mention that the Indian constitution is Federal in nature[15] but Indian Constitution India is often described as a "quasi-federal" country. It may be that the Centre has been assigned a larger role than the states but that by itself does not detract from the federal nature and more power is given to the Centre.[16]

IV. FEDERALISM IN USA[17]

After the failure of the experiment of confederation in the United States of America and to remove its drawbacks, the delegates attending the Philadelphia Convention, for creating unity among the different States and keeping in view the need to build a strong nation, established the federal form of government in America. They were of the view that under federal system: -

1) Different States would be able to defend themselves against the powerful European States,
2) Different States together will be able to develop faster,

[15] V.N.Shukla, Constitution of India, 1969 p.40
[16] M.P.Jain, Indian Constitutional Law, 3rd edn. 1978 p.347
[17] J.S. Badyal, "Comparative Governance and International Politics", 242 – 247, 2013

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3) Federal government would be able to solve the inter-state boundary and water distribution disputes in an effective manner and
4) The states joining the federation would be able to maintain their separate existence.

So, keeping in view these objectives, 'Federal Polity' was provided in America and thus, United States of America became the first modern federal state.

Federal Features of American Constitutional System:

Following are the main features of American Federal system: -

a) *Written Constitution:* - Written constitution is necessary for the federal system and the constitution of USA is the first written constitution of the world. It has 7 articles and till now, it has undergone 27 Amendments.

b) *Rigid constitution:* - The constitution of the USA is the most rigid constitution of the world. According to Article V of the constitution, any amendment in the constitution requires approval of 2/3 majority of both the houses of congress and ratification by ¾ state legislatures.

c) *Supremacy of the constitution:* - In America constitution has been made the highest law of the land. In Article VI of the constitution, it is clearly accepted that constitution is the supreme law of the country and the action of the state government and the federal government which is incompatible with the constitution will be illegal. All the organs of the government are bound to exercise their powers in accordance with the constitution.

d) *Dual polity:* - In federal system, there is dual polity consisting of Union government and the State governments. The Union Governments manages the subject of the national importance whereas the State Governments manages the subject of the local importance. There is dual polity in United States of America.

e) *Distribution of Subjects:* - Under Section 8, 9, and 10 of Article I of the constitution. Subjects have been distributed between the Centre and the States which is briefly described as below: -

- Subjects under the control of the Union Governments: According to Section 8 of Article I, 18 subjects of national importance like defense of the country, control over currency and money, raising and repayment of loans on the guarantee of Federal government, regulation of foreign trade and inter-state trade, management of post and telegraph and telephone, establishing rail – roads, declaration of war, administration of forces and fixation of standards of measurement are within the control of federal government and the federal government makes laws about these subjects.
- Doctrine of Implied powers: - It has been stated in section 8 of Article-I that federal congress can make laws on all such subjects who are necessary and proper for the administration of the powers vested in the federation. While interpreting the words 'necessary and proper', Supreme Court has given birth to the 'Doctrine of Implied Powers' by which the federal government has got many such powers which are necessary for the administration of federal subjects. By the doctrine of implied powers, the federal government has acquired the power to set up banks and corporations in the states because it has been consider necessary for imposing taxes, raising loans and regulating the trade. Federal governments have also acquired the powers to open the military academies and to regulate trade by the Doctrine of Implied powers.
- Powers not given to the federal governments: In Section 9 of Article-I of the constitution some subjects are included on which federal governments cannot make any law. Therefore, these subjects are checks on the powers of the Federal Governments.
- Powers not given to the States: In Section 10 of Article-I of the Constitution, some subjects are included on which the State Governments cannot make any law. In other words these subjects come under the jurisdiction of the Congress.
- Residuary powers with the States: by the 10th Amendment to constitution. It has been provided that, "the powers not delegated to the United States by the constitution not prohibited by it to the states are reserved to the states respectively or to the people." Thus in America the residuary powers have been given to the States.

f) *Independent Judiciary:* - American Judiciary is supreme and independent. Judiciary enjoys the powers of Judicial Review by which it can declare ultra-vires, the laws passed by the congress and the executive orders issued by the president if they violate the constitution. Thus, the American Supreme Court is the protector and final interpreter of the constitution.

g) *Bi–cameral legislature:* - Bi-cameral legislature is considered to be the distinctive characteristic of federal system and American Congress has two houses-Senate and the House of Representatives, Senate which is also called the upper house represents the States and the House of Representatives, which is also called the lower house, represents common people.

h) *Double citizenship:* - In USA the citizens have got double citizenship. First the citizen gets the citizenship of the state in which he resides and the second citizenship he gets is that of the country as a whole.

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i) Separate Constitution of the States: - Besides a federal constitution in America, every state has its own separate constitution. However, the constitution of the states should be in accordance with the federal constitution and the constitution of the States should be Republican.

V. FEDERALISM IN INDIA[18]

Federalism in India is an adopted concept from the U.S.A. constitution although in India this concept is not as it is or totally adopted but by making some desirable change the drafting committee of the Indian constitution adopts the concept of federal form of government in India.

They were some factors which make India adopt a federal system the responsibility of uniting the provinces of former British India with the native states compel the constituent assembly to accept a federal system. The British provinces & the native states where of vastly differences in sizes & population. Moreover India had always a land diverse languages & culture. A unitary system of government would not have suited the social, political & economic condition prevailing at the time of independence & the need for decentralization for preserving the regional cultures. Finally the federal scheme was already embodied in the government of India act 1935, which was a major source for the drafting of the Indian Constitution.

A. Features of Indian Federal System

The following are the features of Indian federal system:

Dual PolitA federation has dual government i.e. union government at the center and state government at state level, thus, the constitution of India has provided for a common government as a center and one government each for states.

Written and Rigid Constitution: The most important feature of federal system is written constitution which is also rigid in nature. The Indian Constitution is written and it defines the structure, organizing & powers of the Central & State government. The Indian Constitution is also the lengthiest constitution in the world. The constitution of India is rigid. The provision that relate to the federation can be amended only by a difficult procedure involving approval by the state government.

Division of Powers: A federal constitution calls for a statutory division of powers between the federal & state governance. Accordingly the constitution of India enumerates three lists under Seventh Schedule.

1) *Union list* - containing 99 subjects upon which the Union government enjoys the exclusive power to make laws.
2) *State list* - containing 66 subjects on which the state government has exclusive power to make laws. E.g. Law and order, agriculture, public health.
3) *Concurrent list* – containing 52 subjects both the centre and the state can make laws.E.g. Education, marriage and divorce, electricity, etc.

Supremacy of Constitution: One of the important features of a federation is the constitution being supreme. The constitution of India is above laws – both national and state laws. The central and state governments have to function within the boundaries prescribed by the constitution failing which the laws become invalid.

Independent Judiciary: The existence of an independence judiciary is one of the important features of the Indian federal system. The Supreme Court which is the apex court in Indian acts as a guardian of the constitution. It is empowered to declare any law or order invalid, if it violate any provision of the constitution. The Supreme Court ensures that the central and state government work within their jurisdiction.

Bi-Cameral Legislature: Federal constitution provides for a bi-cameral legislature and so does the constitution of India. In India the parliament consists of two houses i.e. LokSabha (Lower house) and Rajya Sabha (Upper House). The Lok Sabha consist of representatives directly elected by people on the basis of universal adult franchise and the Rajya Sabha consist of the representatives of the state, the constitution of India thus maintain a balance between direct representation of the people and representation of units.

B. Central State Relations

A federation is composed of constituent units (state). A federation can succeed only when there is relationship & corporation between the Union and its units. The constitution of India has incorporated charter on central state Indian relations which is categorized into – legislative, administrative & financial relations.

[18] https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0CDYQFjAD&url=http%3A%2F%2Fsjecnotes.weebly.com%2Fuploads%2F5%2F2%2F5%2F1%2F5251788%2Findia_as_a_federation.doc&ei=bX1nVMP0D47_ugSo0YHYBg&usg=AFQjCNHVp0y2cn8Cm6Lu3rQK9bXO-E4GUA&cad=rja

1) *Legislative Relations:* The legislative power in the federation of India is divided into three list – Union, State and Concurrent list.

The Union government in a federation of India can legislate on subjects mentioned in the State list under the following circumstances:

a) If a resolution is passed by 2/3rd majority of the members of the members of Rajya Sabha present and voting, in the interest of the nation, the Union parliament can legislate for the state.
b) The Governor of the state is empowered to reserve a bill passed by the state legislature for the assent of the President
c) Some bills in the State Legislature can be introduced only upon the recommendation of the President of India.
d) In times of emergency the Union parliament is empowered to make laws for the whole nation.
e) It is the union which gives effect to the treaties signed by the state with foreign countries.
f) In case of conflict between the Union and the state on the subject of concurrent list the constitution says that it is law of the union government at shall prevail.

Thus, the Union enjoys the predominance over the units in matters of legislative relations.

2) *Administrative Relations:* The executive power of Union is exercised over the subject falling under the Union list and similarly the executive power of the state is exercised over the subject falling over the States list with respect to Concurrent list it is the state which are given executive power and even the power to administer the subject. The constituent unit of the Indian federation of subordinate to the Union. The administrative relation between the Union and the state can be listed below:

a) The executive of the State Government in exercising its power shall comply with the executive of Union Government.
b) The Union enjoys the exclusive prorogate to determine the size of the state. Disputes concerning boundary river waters and so on shall be decided by the Union by establishing a separate tribunal.
c) The Union government shall give orders to the state to improve National Highways to facilitate transport and communication it is also the duty of the state the maintain railways in its territory.
d) The Union Government calls for a common all India services.
e) The governors of the state are appointed by the Union government.
f) Single election commission which are unchanged with the Union parliament and the state.

3) *Financial* Relations: The constitution of India speaks about financial relation between the union and the state. The duties which belong to the centre and the state are listed below:

a) There are some duties which are levied by the Union but collected by the State like Stamps and exercise duties on medicine and toiletries.
b) Some duties levied by the Union and collected by the Union but appropriated by the state like Duties in agriculture, property inherited duties on estate, newspaper and advertisements and also duties on goods and passengers carried by rail, air and water. They are levied and collected by the state like duties on profession and trade and commerce within the state and between the states.
c) The state also receives grant-in-aid from the consolidated fund of India.

An analysis of the Indian federal system makes it clear that the constitution of India is “federal in form but unitary in spirit.”

Because in India the union list combines with the concurrent list provides the major share of legislation to the centre, moreover during emergencies and under certain other circumstances the Union Parliament gets the power to make laws on subject in the state list also. Hence, here in India the Centre is more powerful than State In other words there is inequality within the powers of centre and the State.Under the constitution of India residuary powers belong to the parliament. The practice of appointment of the Governors by the President of India is an important federal feature. The governors enjoy office during the pleasure of Union government. The Governor can recommend President for the imposition of President’s rule in the state these are other unitary features of Indian Government. Common-all-India-Service, single election commission and a single office of the comptroller & the auditor general of India are the other unitary feature of Indian federation.

VI. CONCLUSION

The American model of federalism shows the pure form of federalism where the Federal and the State Governments both have the separate powers and administration but on the other hand they are connected with each other through federal laws. Indian system has the quasi Federal and quasi Unitary form of government i.e. “Federal in structure and Unitary in spirit”

Federalism in India is at once similar and distinct from other federations like that of America; distinct in that it is not a group of independent States coming together to form a federation by conceding a portion of their rights of government, but a distributed entity that derives its power from a single source – the Union. Sovereignty and the powers of governance are distributed and shared by several entities and organs within the Indian Constitutional system. Dr. Bhim rao Ambedkar, who chaired the Drafting Committee of the Constituent Assembly, stressed the importance of describing India as a 'Union of States' rather than a 'Federation of States' He Said:'… what is important is that the use of the word "Union" is deliberate… Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single emporium derived from a single source. 'The similarity between the systems of government in the two countries, however, is remarkable. Bothe governments exhibit a strong Union control, where the Individual states give up a significant portion of their autonomous right to the Central Government in return for security and pursuit of common interest; in contrast, in a confederation the individual States retain most of their sovereignty and are only loosely bound together.

Some of the Unitary nature of Indian federal system which makes it different from other federal systems are:

1) Although Under Seventh Schedule the three different lists are made to segregate the powers of State and Central government and subjects were provided on which the respective Governments can makes laws but its Unitary features make the Central strong in this as when any conflict arises in between Central and State the Central law always prevail over state.

2) The appointment of the Governor in the State is done by the President shows its another feature of Unitary Government.

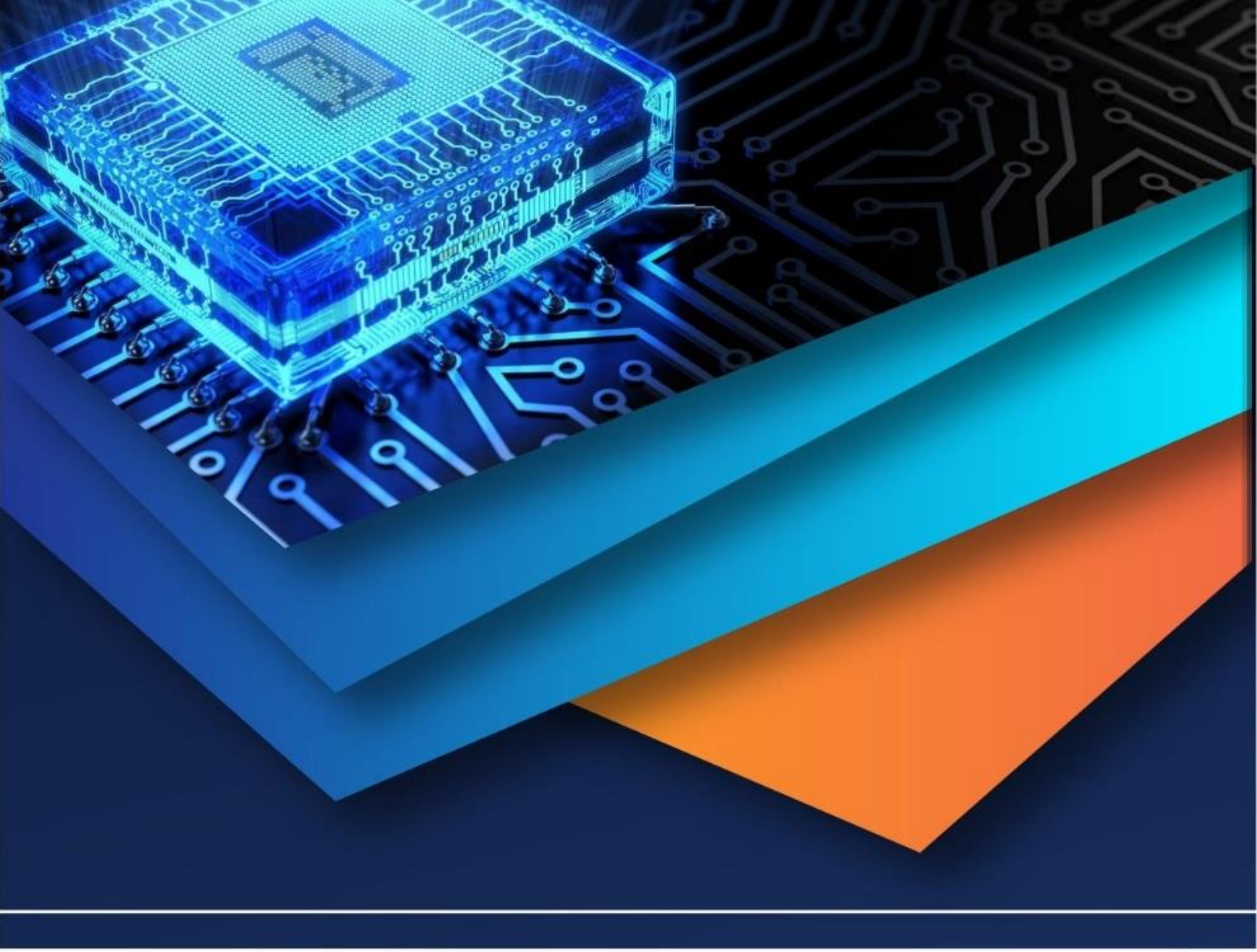
3) Article 356 under the Indian constitution gives power to the Central Government to declare State emergency in which all the Administrative power of the country will accumulate in Central Government also shows the Unitary Character of Indian Federal system.

4) On this Article The Sarkaria Commission[19] [headed by Justice R.S.Sarkaria (retired Judge of Supreme Court)] gave its recommendations that there should be extremely rare use of Article 356. According to the Commission, Article 356 provides remedies for a situation in which there has been an actual breakdown of the constitutional machinery in a State. Any abuse or misuse of this drastic power would damage the democratic fabric of the Constitution and also affect the Central-State relationship.

BIBLIOGRAPHY

[1] Comparative Governance and International Politics J.S.BADYAL RAJ PUBLISHER, JALANDHAR EDITION 2013 PAGE NO. 242 – 247
[2] WEBLINKS REFERRED: http://www.sparknotes.com/us-government-and-politics/american- government/fed eralism/secti on2.rht ml
[3] http://www.studylecturenotes.com/social-sciences/law/449- characteristics-of-federalism
[4] http://theviewspaper.net/a-comparative-study-of-the-usa- government-with-india/
[5] http://www.slideshare.net/AhmedShahid/federalism-in-india
[6] http://en.wikipedia.org/wiki/Federalism#Federalism_as_a_concept: _history
[7] http://www.youspeakindia.org/federalism-in-india/
[8] http://www.jstor.org/discover/10.2307/2145299?uid=3738256&uid=2483969067&uid=2&uid=3&uid=60&sid=21105205340653

[19] http://www.slideshare.net/AhmedShahid/federalism-in-india



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