Journey of the Indian Constitutional State

Why in News?

India celebrates the 75th anniversary of the coming into effect of the Constitution of India.

What is the character of Indian constitutional federal structure?

- **Union of States** - The term 'federation' has no where been used in the Constitution and Article 1 of the Constitution describes India as a 'Union of States'.
- **Reason** - According to Dr. B.R. Ambedkar, the phrase 'Union of States' has been preferred to 'Federation of States' to indicate two things
    - The Indian federation is not the result of an agreement among the states like the American federation.
    - The states have no right to secede from the federation.

KC Wheare described the Constitution of India as "quasi-federal". He remarked that "Indian Union is a unitary state with subsidiary federal features.

- **Canadian model** - The Indian federal system is based on the 'Canadian model' and not on the 'American model'.
- The 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre.
- **Co equals** - Dr. Ambedkar explained that the 'Centre and the States are co-equal' in matters of legislative and executive authority.
- The overriding powers for the Union are only placed "to be used in an emergency".
- **Regular conduct** - The regular conduct of democratic business in India is within a federal framework and not to be mistaken for a unitary one.
- **Basic structure** - Constitutional courts have confirmed that federalism to be a part of the basic structure of the Constitution, in S.R. Bommai vs Union of India (1994) and Government of NCT of Delhi vs Union of India (2024).

What are the recent federal constitutional issues?

- **Interpretation of India's federal structure** - Many of the constitutional issues that have been keenly debated in recent times have been around India's federal structure.
- **States vs Governor** - Tussles between State governments and some of the State Governors have made their way to the Supreme Court of India.
- **Simultaneous elections** – Conducting lok sabha and state assembly elections simultaneously has been debated between administrative efficiency and federal significance.
- **Regional languages** - The neglect of 'regional languages' such as Tamil, Kannada,

Bengali, Marathi and so on is being argued from the vanguard of multilinguistic equality and State autonomy.

- **Fiscal federalism** – It has been a major sticking point for States that are suffering under the dual regime of the Finance Commission and the Goods and Services Tax Act.
- **Delimitation exercise** – This will determine the democratic future of India and set to result in a showdown between the Union and States that have controlled their population.

What are the challenges to social democracy?

- **Threat of police state** - Preventive detention, arbitrary arrests, denial of fair trial through the impunity that is guaranteed statutorily in anti-terror laws such preventive detention and unlawful activities.

Preventive detention act was upheld in the A.K.Gopalan Case 1950.

- **Inequality** - Achieving a degree of equality among various cohorts in democratic manner.
- Dr. Ambedkar explained that the country must strive to remove social and economic inequality before they become a threat to democracy itself.
- **Caste system** - Terming the idea of an Indian nation as a delusion, Dr. Ambedkar asked how people divided into several thousands of castes can be a nation.
- **Threat to personal liberty** - Reductionist, mechanical readings of the constitutional value of personal liberty and human dignity.

What lies ahead?

- Clear-headed guidance on the future of our constitutional philosophy.
- Strengthen the constitutional guardians in the form of judges, bureaucrats, politicians, activists, journalists and citizens.
- Exercise of 'creative constitutionalism' by constitutional courts in the cause of the right to personal liberty as justice.

Supreme Court of India reinstated Justice S. Fazl Ali's dissenting opinion in A.K. Gopalan vs State of Madras, unanimously in Puttaswamy vs Union of India (2017), a case about the fundamental right to privacy.

References

1. The Hindu | Foundational values, the journey of the Indian state
2. The Hindu | Constitutional Justice and Personal Liberty



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