



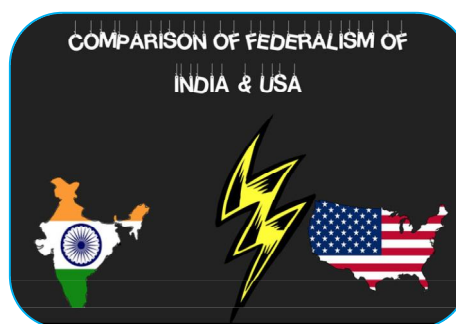
FEDERALISM: THE COMPARATIVE AND THE SHIFTING DIMENSIONS OF INDIA AND U.S.A.

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ABSTRACT:

The Constitutional Law lays down the framework of a political system according to which a country is administered. The location and the distribution of power between the different governing units determines whether a government is federal or unitary and manifest the political behaviour. In federal system, sovereign power to govern is constitutionally divided at two levels of government- a central governing authority and constituent units. In unitary system, the central governing authority exercise all the sovereign powers in the form of central government. The human pursuit for the attainment of stable and justiciable political system has led to the evolution of different government systems. America is having the oldest federal system in the world and India being a largest democratic country as adopted the federal polity in the Constitution. This paper highlights on the comparative study of federal system in India and U.S.A.



KEY WORDS: Constitutional Law lays, federal system, sovereign power.

INTRODUCTION

The Constitutional Law, written or unwritten is the most significant and foundational basis of all the laws in any polity. It lays down the framework of a political system according to which a country is administered. The State policies are determined and enforced through the institution of government. Governments are categorized into various forms based on ideologies and the basis of power source. The power structure determines the government system. A government system may be federal or unitary depending on how the power is organized between the central and regional governments. The location and the distribution of power between the different governing units determines whether a government is federal or unitary and manifest the political behaviour. In federal system, sovereign power to govern is constitutionally divided at two levels of government- a central governing authority and constituent units. In unitary system, the central governing authority exercise all the sovereign powers in the form of central government. The human quest for the attainment of stable and justiciable political system has led to the evolution of different government systems. Any political order aims to attain the goals enshrined in the Constitution through a government system.

Research paper, concentrates on the federal governmental system functioning on the structure-based division of sovereign authority. The paper explores the concept and traces the origin of federalism. This paper studies a comparative study of federal system in India and U.S.A. The American

model of federalism is considered as the basic model of federal system providing for the distinctive features of federalism from the unitary system. A federal system provides for intergovernmental relations. It is an arrangement wherein two separate entities exercising political powers try to attain a balance and establish a political order for the common good. The paper aims to make a comparative study of changing dimensions of federalism in India- world's largest and United States- world's oldest democracy.

CONCEPT OF FEDERALISM

The concept of federalism entails a design of the division of political powers of administration between different levels of government—federal government and the state governments. Federalism is a model of political organization that unites separate states within a predominant general political system (federal) which allows each state entity to maintain its own integrity.¹ In a federal state the same territory is controlled by multiple levels of government.² Federalism is defined as, “an institutional arrangement creating relatively autonomous levels of government each able to act directly on behalf of the people with granted authority”.³ Both the levels of government have the authority to make the laws and administer in the respective jurisdiction. Division is based on democratic rules arrived at through negotiation in the form of written Constitution. The governments at distinct levels enjoying their own jurisdictions remain co-ordinate and independent.⁴ In unitary systems, the power concentrates with the national government and the lower levels of government exercise the delegated powers at the discretion of the national government. In contrast to the federalism and unitary systems, a confederation is one more system where the substantial authority vests with the state governments with some powers delegated to the national government.

Federalism, is an outcome of historical experiences of different polities with a quest for a stable and peaceful world overpowering conflicting national, ethnic, linguistic and racial issues. There is no any universally accepted definition nor criteria of standards to describe a polity as federal. In the absence of precise definition different political experts have explained the concept according to their own perspective, understanding and experience.

Daniel Elazar, exploring the concept has very aptly provided for the basis of Federalism as ‘self-rule plus shared rule’.⁵ According to him, federalism involves some contractual relationship of a permanent character which provides for power sharing; upholds sovereignty and permits autonomy. Thus, federalism promotes political integration through intergovernmental relations and makes the all the territorial units and government strong in toto. The celebrated author of India Prof. M. P. Jain in his book titled ‘The Constitution of India’, has described Federalism as,

“Federalism constitutes a complex governmental mechanism for the governance of a country. It has been evolved to bind into one political union several autonomous, distinct, separate and disparate entities or administrative units. It seeks to draw a balance between the forces working in favour of the concentration of power at a central point and the forces which favour a dispersal of the power in a number of units. Federalism thus seeks to reconcile unity with multiplicity, centralization with decentralization and nationalism with localism. The originality of the federal system which lies in the division of power is, at one and the same time, concentrated as well as divided. There is centralization of administration and legislation in certain areas along with decentralization in other areas.”⁶

Another famous scholar Garner, defines federation “as the system of central and local government combined under a one common sovereignty, both the central and local organisations, being

¹ Britannica, The Editors of Encyclopaedia, *Federalism* Encyclopedia Britannica (14/05/2020) available at <https://www.britannica.com/topic/federalism>, last seen on 12/10/2020.

² *Infra* 9.

³ W. S. Riker, *Federalism* 391 in *Handbook of Political Science* (Fred Greenstein and Nelson Polsby, 1975).

⁴ K.C. Wheare, *Federal Government*, 11(4th ed., 1963).

⁵ D.J. Elazar, *Exploring Federalism*, 5 (1st ed., 1991).

⁶ M.P. Jain, *Indian Constitutional Law* 690 (J. Ruma Pal, Sr. Adv. Samaraditya Pal, 6th ed., 2010).

supreme within definite sphere, marked out for them by the general constitution or by the act of parliament which creates the system”.

Prof. Arend Lijphart, points out the five principal attributes of federalism:

- A written Constitution specifying the division of power with a guarantee that the allotted powers of both the central and regional governments cannot be taken away;
- A bicameral legislature- one chamber represents the people at large and the other the component units of the federation;
- Over-representation of the smaller component units in the federal chamber of the bicameral legislature;
- The right of the component units to be involved in the process of amending the federal constitution and having the right to change their own constitutions unilaterally.
- Decentralized government, i.e., the regional government's share of power in a federation is relatively large compared to that of regional governments in unitary states.⁷

Professor of Political Science, Prof. Ivo D. Duchacek, in his work furnished ten yardsticks in the form of ten questions to determine the federal nature of a State. Prof. Duchacek's yardstick broadly deal with matters of foreign relations, immunity against secession, independent sphere of central authority, amending the federal constitution, indestructible identity and autonomy, residual and significant powers, bicameralism and equal representation, two sets of independent courts, the supreme court, and clear division of power.⁸

Thus, division of power between the different governmental levels- national and regional is the essential feature and legal test to determine federalism. A common source namely, Constitution provides for the distribution of powers and the regional governments do not function as the agents or delegates of the national government. Independent and competent Court have the jurisdiction to declare any transgression of powers by either of the government as *ultravires* and void in a federal polity. The federal or national government represents the nation in the international world and thus have sovereign authority in the matters of foreign policy and maintaining international relations. The regional or the component State units do not have jurisdiction to deal with the international affairs.

HISTORICAL OVERVIEW

The term "federal" is derived from the Latin term *foedus*, i.e., covenant. Many philosophers, political theorists and theologians have historically traced the roots of federal idea in the Bible. The first usage of the term has been found to be used for theological purpose so as to define the partnership between God and man. The reference to the 'Israelite Tribal Federation'⁹ finds the mention in the Bible. The federation - a polity of tribes, came into existence on the principle of federalism by transforming the 'vassal treaty'¹⁰ among unequal into a covenant among equal partners (equal at least for the purposes of the covenant) maintaining their liberties within the framework of a common Constitution and law. Jewish people hence are referred as the 'first federal people'.

The second happening which led to the experimenting and evolution of federalism is the 'Swiss Confederation'.¹¹ In August 1291, about more than 700 hundred years ago, an alliance of cantons

⁷ A. Lijphart, *Non-Majoritarian Democracy: A Comparison of Federal and Consociational Themes*, 15 (2) *Publius: The Journal of Federalism*, (1985), available at <https://doi.org/10.1093/oxfordjournals.pubjof.a037544>, last seen on 13/09/2021; D.J. Elazar, *Exploring Federalism*, 23 (1st ed., 1991).

⁸ I. D. Duchacek, *Comparative Federalism: The Territorial Dimensions of Politics* (1987).

⁹ D.J. Elazar, *The Book of Judges: The Israelite Tribal Federation and Its Discontents* 339 *Interpretation- A Journal of Political Philosophy*, 23(3) (1996), available at <https://interpretationjournal.com/shop/the-book-of-judges-the-israelite-tribal-federation-and-its-discontents-by-daniel-j-elazar/>, last seen on 13/10/2020.

¹⁰ A treaty between two unequal parties is known as vassal treaty.

¹¹ Maissen, Thomas, Wachter, Daniel, Egli, Emil and Diem, Aubrey. "Switzerland". *Encyclopedia Britannica*, (19/03/2019) <https://www.britannica.com/place/Switzerland>, last seen on 12/11/2020.

against the Habsburg dynasty was established to form the *Confoederatio Helvetica* (CH) or Swiss Confederation. abbreviation. ¹² The Federal Charter is the founding document of Swiss Confederation. Switzerland is a multi-ethnic, multilingual and multi-confessional nation. It has been a federal state since 1848 formed by the will of its people. Switzerland has a federal structure with three different political levels- the Confederation, the cantons and the communes.¹³

A federal arrangement is established and regulated by a covenant like partnership. The internal relationships amongst the territorial units reflect the special kind of sharing that prevail among the partners, based on a mutual recognition of the integrity of each partner and attempts to foster a special unity among them.¹⁴ Federalism is based on the principles of self-rule and shared rule. In federalism, individuals, groups and polities are linked with each other in such a way that provides the limited union and at the same time protects the integrity of all the constituent units. Such an arrangement approves the constituent territorial unit's authority to adore the legitimate internal diversities and link with the national polity for the purpose of economic advantage and security. It is through this federal arrangement that all the polities- national and regional units participate, share and frame the common policy for achieving destined goals and ends.¹⁵ Thus, based on consent in covenant, there is simultaneous constitutional diffusion of political power to maintain autonomy and concentration to have a united and a strong government. A federal system is a political structure wherein two political forces act in opposite direction and attain equilibrium and sustainability. One force aims to realize national unity and another force towards diversity and autonomy. The main aim of the federal process is to establish a federal nation-state, an independent, sovereign entity *de jure* recognizable in the family of nations.

MODERN FEDERALISM:

In the modern world, most of the countries have accepted either the federal or unitary system.

Many largest democratic states in the world have approved federal system of government viz., India, USA, Mexico, Canada, Australia, Switzerland, Germany, Brazil, etc. The political systems in the world though having a federal system differ in many ways. The term 'federal arrangements' a plural word meant different ways of incorporating the federal principles. The modern concept of federalism originated in United States of America in 18th Century. Since then, American federalism has set a standard and impelled other democratic society in the world. In 19th century, the federal system of government became popular and most of the largest democratic countries simulated the concept of federalism suited to their social, economic, cultural and political state of affairs. Though, roughly there are 25 federal countries in the world, they represent 40 % of the world's population.¹⁶ German Politician Karl Loewenstein analyzing the concept described federalism as a "system of territorial pluralism" in contradiction to monolithic Unitary State.¹⁷

AMERICAN FEDERALISM:

Today, United States federal system is the oldest known and operational federal Constitution in the world. The American Revolutionary War led to the 'Declaration of Independence' on 4th July 1776 rejecting the centralized unitary government.¹⁸ The first Constitution of the United States was adopted by the Continental Congress in 1777 in the form of 'The Articles of Confederation'. The agreement led to

¹² Ibid.

¹³ Rise of the Swiss Confederation, available at <https://www.myswitzerland.com/en-in/planning/about-switzerland/history-of-switzerland/rise-of-the-swiss-confederation/>, last seen on 14/11/2020.

¹⁴ D.J. Elazar, *Exploring Federalism*, 5 (1st ed., 1991).

¹⁵ Ibid.

¹⁶ Countries, available at <http://www.forumfed.org/countries/>, last seen on 14/09/2020.

¹⁷ K. Loewenstein, *Political Power and the Governmental Process* (New ed., 1965).

¹⁸ Through this Declaration adopted by the Continental Congress, 13 American colonies severed their political connections from Great Britain.

the establishment of the government structure- loose confederation of sovereign states and a weak central government. Nevertheless, discontentment with the Articles, ineffective confederation in accomplishing the goals, congregated the second Constitutional Convention in 1787 so as to make the changes in the government structure. The Convention of 1787, resulted in the adoption of a new government structure- Federalism. Thus, federalism in United States is the result of a political movement.¹⁹

The American federal structure has evolved over a period of time. The Supreme Court's interpretations of the Constitutional provisions related to the federal and state power explained and widened the nature and operation of the American federal system. In conclusion, the federal government was established in 1789 and America became a 'Federal Republic State'.

An American federal structure intends to safeguard the states interests and create a strong union led by an operative central government.

In a federal structure, the sovereignty is constitutionally divided between a central governing authority and the constituent territorial political units, called as 'dual federalism'. However, it is not a decentralized hierarchy. States are not the administrative bodies of central government. The fifty component states of United States are not the administrative divisions but constituent members of the Union.²⁰ The original structure of America federalism adopted in 1789 aimed to strike a balance in political powers between the federal and State governments. In the beginning, the federal system intended to promote autonomy of the states. The U.S. Constitution through its Preamble incorporated the goal to form a more perfect 'Union' between the federal and state governments, a federal system of dual federalism. Even the Tenth Amendment 'The rights reserved to states or people' confirmed the understanding of the people at the time the Constitution was adopted and promoted the state sovereignty. Balancing the horizontal and the vertical division of powers is the unique feature of United States federal structure. The U.S. Constitution nowhere provides for the definition or required parameters of the federalism.

The Constitution of the United States, consists of a preamble and seven articles. The first three articles provide for the structure and powers of the federal government. The three branches of government, provide for the incorporation of the doctrine of separation of powers viz., Legislative (Congress), Executive (office of the President,) and Judicial (Federal court system). A system of checks and balances prevents any one of these separate powers from making misuse of powers and becoming dominant.

Article IV to Article VII describes the relationship of the states to the federal government, supremacy of the Constitution, define the amendment process and the precedence of the Federal Law.²¹

The basic propositions and the Salient features of the American Federal System are:

➤ Written and Supreme Constitution:

The written Constitution provides for the federal government. Two levels of government exist with their respective division of powers. The Constitution is the supreme law of the land aimed to have a perfect union of States. It includes the provision to carry out amendments.

➤ Dual Government:

The Constitution provides for the dual government at two levels- federal and state governments. Both the governments simultaneously exercise the direct authority over the people. The Constitution demarcates the sovereign powers and the state government units are co-ordinate and not subordinate to the federal government.

¹⁹ *Federalism in the Constitution*, Boundless Political Science, available at <https://courses.lumenlearning.com/boundless-politicalscience/chapter/federalism-in-the-constitution/>, last seen on 14/11/2020.

²⁰ D.D. Basu's, *Comparative Federalism*, (J. B. P. Banerjee, B.M. Gandhi, 2nd ed., 2008).

²¹ *America's Founding Documents*, National Archives, available at <https://www.archives.gov/founding-docs/constitution/what-does-it-say>, last seen on 15/11/2020.

➤ **Distribution of Powers:**

The constitutional provisions delegate the limited powers and responsibilities to the federal government and all other residuary powers remain with the states. Federal government is referred as the government of enumerated powers²² and responsible to deal with national subject matters affecting the whole country. Thus, the American federalism is peculiar in establishing federal sovereignty in the enumerated areas of law and governance and at the same time protected State sovereignty in other subject matters governing public life.

➤ **Precise and Rigid Constitution:**

The American Constitution is precise. It consists of only seven articles and a preamble that provide for the structure and sovereign authority of the federal and the regional state governments. A provision under Article V explains the amendment process.²³ Only 27 amendments to the United States Constitution have been ratified since its adoption in 1789. The constitutional provisions cannot be changed without the substantial consent of state governments.²⁴

➤ **State Sovereignty:**

The Constitution provides for the state sovereignty. States are the fully functioning constitutional polities within the sphere of domestic matters of jurisdiction. States have their own system of laws, implementation mechanism of governmental institution, its own Courts and also possess the general regulatory and taxation power. In the words of President Woodrow Wilson, "the State Governments are the ordinary governments of the country; the federal government is its instrument only for the particular purposes".²⁵ The Tenth Amendment, further explained the idea of state sovereignty that the powers of the federal government are limited to those powers granted in the Constitution. In *Texas v. White* case²⁶ the U.S. Supreme Court held that the United States is "an indestructible Union of indestructible States" from which no State can unilaterally secede.

➤ **Supremacy of Federal Government:**

In case of a conflict between federal and state power. The Congress has the power to preempt state regulation over particular issues or over particular areas of activity.²⁷

➤ **Equal Representation of the States:**

Equal status of the constituent States is an essential principle of American Federalism irrespective of size or population. Based on this principle, States are equally represented in the Upper House i.e., Senate of the Federal Legislature.²⁸

²² Art. I, Section 8, Clauses 1-18 (declare war, raise armies, coin money, regulate foreign commerce etc. as to the powers of the national government; Art. IV, Section 3; Amendment 16.

²³ Art. V, The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

²⁴ Art. V, the Constitution of the United States.

²⁵ Woodrow Wilson, *Constitutional Government*, quoted in *New York v. United States*, (1946) 326 US 572 (592).

²⁶ 74 U.S. 700 (1869).

²⁷ Art. VI, Clause 2 of the United States Constitution (Supremacy Clause) establishes the U.S. Constitution, Federal Statutes, and U.S. Treaties as "the supreme law of the land".

²⁸ Art. V... no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

➤ Independent Set of Courts:

The American Legal System consists of two independent set of Courts- separate for the Federal and State governments. The federal court system consists of three levels of courts: District Courts (Trial Courts); Circuit Courts (First Appeal Courts) and the Supreme Court (Apex Court). State Courts have local jurisdiction in respect of cases involving State law and the Federal Courts exercise federal jurisdiction. The federal Supreme Court, has the jurisdiction to adjudicate the disputes between the States *inter se* and between the Union and the State. The two judicial systems are not completely distinct as the federal Supreme Court is the highest court of appeal and moreover the concurrent jurisdiction is shared by both the federal and the State Courts. Limited matters fall within the exclusive jurisdiction of the Federal Courts and the State Courts.

➤ Dual Citizenship:

The United States Constitution provides for the dual citizenship of the Federation and of the States.²⁹ Individuals are entitled to claim the wide range of rights and privileges from both the governments.

➤ Judicial Review:

The Constitution establishes the Supreme Court of the United States.³⁰ The supremacy of the Constitution is maintained by vesting the final power in the Supreme Court to interpret the Constitution and to declare void any action on the part of any of the authorities which transgress the limits imposed by the Constitution. The landmark precedents in United States have established the federal basis of judicial review.³¹

However, subsequently with the passage of time, change in the social and political conditions, and the international developments had an impact on the nature of governmental functions. Universalization of the concept of human rights and the necessity to tackle terrorism and maintain peace and order made the original American federalism to undergo the change. Many such instances arose wherein, the two levels of government while exercising their constitutional powers came in conflict with each other in respect of various subject matters. The U.S. Supreme Court, dealt with such issues involving inter-governmental relations and expanded the scope of the federal powers. Most of the Supreme Court judgments enabled the federal government authority to grow and expand maintaining the State sovereignty integral.

In 1895, the U.S. Supreme Court in *Pollock v. Farmers' Loan & Trust Co.* case, held the Congress's attempt of the previous year to tax incomes uniformly throughout the United States as unconstitutional. The first national income tax enacted in 1894 was struck down by the Supreme Court. The Supreme Court's decision resulted in the XVI Amendment to the U.S. Constitution which allowed Congress to levy

²⁹ Amendment XIV Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

³⁰ Art. III, Section 1 of the Constitution of United States.

³¹ *Marbury v. Madison*, 5 U.S. 137, is a landmark U.S. Supreme Court case that established the principle of judicial review in the United States, meaning that American Courts have the power to strike down laws and statutes that they find to violate the Constitution of the United States.

an income tax without apportioning it among the states on the basis of population.³² The XVI Amendment enabled Congress to enact the first federal income tax law.³³

Another event took place in 1930s in the American history which brought change in the nature of American federalism. These events depict the change in the actual working of the federalism. President Franklin D. Roosevelt's New Deal³⁴ gave the federal government much more power at the expense of states' rights, a rebalancing of responsibilities called as cooperative federalism. More powers got vested in the Federal government by redirecting many of the state's powers and autonomy.

Subsequently, the period of 1950s marks the beginning of the 'Civil Rights Movement' a struggle for social justice and a claim of Black Americans for equal treatment under the U.S legal system. Though, the Civil war resulted in the abolition of the slavery practice but continued with discrimination.

In landmark *Brown v. Board of Education of Topeka* Case³⁵ the U.S. Supreme Court in 1954, held that U.S. State laws allowing racial segregation in public schools are unconstitutional, even if the segregated schools are otherwise equal in quality. The Supreme Court held that 'separate but equal' doctrine has no place in the field of public education and amounts to the violation of equal protection of laws guaranteed by the 14th Amendment.

The Supreme Court invalidated such State laws. Many such judgments were issued by the Supreme Court and the States were bound to confirm with such judgments. The civil rights included the right to a fair trial, right to vote, right to a public education, right to government services, and the right to use public facilities. The Civil Rights Act of 1964, ended segregation and unequal treatment in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin. The social and economic changes taking place had an impact on the concept of federalism. In 1965, the U.S. President Lyndon B. Johnson vision of 'Great Society' aimed to end poverty and racial injustice and bring the national reforms. An attempt to achieve the vision was made through distinct programs of social welfare legislation, federal support for education, hospital care for aged. Critics have termed the substantial growth of federal powers as 'coercive federalism'.

In 1969, U.S. President Richard Nixon coined the phrase 'New Federalism' and initiated returning powers to the states.³⁶ It is also called as "states' rights". New Deal created a revenue sharing that allowed the states to make use of federal funds more liberally. Through this ideology the task and authority to accomplish desegregation was shifted from federal to the states. The 'New Federalism' aimed to restore the states autonomy and power which was lost as a result of President Franklin Roosevelt's New Deal. In 1980s, President Reagan, continued further and worked to return more power to the states and rescind some powers from the federal government pledging 'roll back the frontiers of the state'.

³²The Sixteenth Amendment was ratified by the requisite number of states on February 3, 1913, and effectively overruled the Supreme Court's ruling in *Pollock*. Prior to the 16th Amendment, the constitution required direct taxes to be proportionate to each state's population. Most Federal revenues came from tariffs and excise taxes.

³³16th Amendment, Investopedia, available at <https://www.investopedia.com/terms/s/sixteenth-amendment.asp>, last seen on 15/09/2019.

³⁴The New Deal programs were known as the three "Rs"; Roosevelt believed that together Relief, Reform, and Recovery could bring economic stability to the nation. Reform programs focused specifically on methods for ensuring that depressions like that in the 1930s would never affect the American public again.

³⁵347 U.S. 483. In this case, a plaintiff named Oliver Brown filed a class-action suit against the Board of Education of Topeka, Kansas, in 1951, after his daughter, Linda Brown, was denied entrance to Topeka's all-white elementary schools, available at <https://www.history.com/topics/black-history/brown-v-board-of-education-of-topeka>, last seen on 15/09/2019.

³⁶*Federalism Today*, Boundless Political Science, available at <https://courses.lumenlearning.com/boundless-politicalscience/chapter/federalism-today/>, last seen on 14/09/2020.

Later, in 1996 reelected U.S. President Bill Clinton in his address said that 'the era of big government is over'.³⁷ Subsequently, under George W. Bush and Obama's presidentship, the power tended to move from states to federal government for various new challenges: the necessity for nationally applied standards, national crises requiring national solutions, Supreme Court judgements and deliberate efforts to increase presidential power.³⁸

INDIAN FEDERALISM:

The federal system in India is considered as unique in character throughout the world. Since the establishment of independent government, nature of vertical division of sovereign political powers amongst the two levels of government has always been a question of debate and analysis. Dr. Babasaheb Ambedkar, the Chairman of the Drafting Committee while presenting the draft Constitution to the Constituent Assembly described the proposed Constitution to be federal.³⁹ There was consensus in the Constituent Assembly based on the reasons of external state of affairs, vastness and diverse elements. However, the Indian Constitution in Article 1(1), refers India i.e., Bharat as 'Union of States'. Dr. Ambedkar explained the purpose of making use of the term 'Union' for two reasons to indicate that, Indian Federalism is not the result of an agreement by the units and the regional units have no freedom to secede from the Union.⁴⁰

The word 'Union' is used in both the Indian and American Constitution – Preamble.⁴¹

In the Indian Constitution neither the Preamble nor any of the Constitutional provisions make use of the term 'federal'. Moreover, independent judiciary and the provisions relating to the Centre-State relations depict the exceptions from the traditional concept of federalism as established in United States. Jurists and academicians from the world have analyzed and explained the nature of Indian Constitution in their own perspective on different yardsticks. K.C. Wheare, an Australian academician called the Indian Constitution as 'quasi-federal'.⁴² According to him, quasi-federal refers to a system of government where the distribution of powers between the Centre and the State are not equal. In Indian structure of government there is division of powers between the central and state governments but with a strong Centre.

American federalism, been considered as the classic example of 'federation of states' is based on the model of 'coming together'. Few adjoining regional units- 'The Thirteen Colonies' having political, constitutional similarities voluntarily came together on the issue of independence and formed a federation. However, if the Indian Constitution is tested on the propositions laid down by the American federalism, then many incongruities are found. The Indian Constitution does not confirm to the salient features of the American federalism. Hence, the enquiry and scholarship to analyse the true nature of Indian government system.

³⁷ President Clinton's 1996 State of the Union address, The White House, available at <https://clintonwhitehouse4.archives.gov/WH/New/other/sotu.html>, last seen on 15/09/2020.

³⁸ The Main Characteristics of U.S. federalism, hoddereducation, available at <https://www.hoddereducation.co.uk/media/Documents/PAWorkbooks/2017/Edexcel-A-level-Politics.pdf>, last seen on 15/09/2020.

³⁹ Constituent Assembly Debates Vol. VII, 31.

⁴⁰ Ibid.

⁴¹ We the People of the United States, in Order to form a more perfect Union establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

⁴² K.C. Wheare, *Federal Government*, p. 15 (4th Ed., 1963).

Essential and Salient features of the Indian Constitution are:

➤ Mode of Formation:

The Government of India Act, 1935 for the first time used the expression 'Federation of India'.⁴³ The Act incorporated provisions to establish a federation system wherein the provinces derived their authority directly from the crown and exercised their powers within a definite sphere completely free from the control of the Centre.

Indian federation is not an outcome of any agreement or 'coming together' but 'holding together'. The founding Fathers of India, realizing the economic disparity, cultural diversity and the geographical vastness rejected the idea of complete unitary system. The Cripps and Cabinet Mission Plan advocated a weak Centre. However, the eventual partition of India and Pakistan compelled the Constituent Assembly to come up with a federal Constitution with a strong Centre, and three legislative lists with the residual power to vests with the Union.⁴⁴

Formation of federation is the first distinctive feature between the American and Indian Federalism. The Indian model of federation is based on centrifugal principle of formation and the American model is based on centripetal formation of federation.

➤ Single Written and Supreme Constitution:

The Indian Constitution one of the longest written and elaborate document in the world is the fundamental law of the land.⁴⁵ The Constitution of India provides for the detailed provisions including the division of powers between the dual governments.

In I.R. Coelho's Case, the Supreme Court had described the Indian Constitution as a 'controlled Constitution' and its supremacy mandates all the constitutional bodies to comply with the provisions of the Constitution.⁴⁶

➤ Dual Government:

In India, the political powers are distributed through the Constitutional provisions amongst the Union government and the State government. Thus, the two-tier Governments with the Constitutionally assigned powers and functions, a peculiar feature of federal polity is fulfilled by the Indian Constitution. The Union or the Central government governs the matters of national concern and the State government governs the State matters.

➤ Distribution of Powers:

The Constitution provides for the division of powers between the Union and the States in the form of three legislative lists (I, II, III), viz., the Union, the State and the Concurrent List in the Seventh Schedule.⁴⁷

The pattern of the distribution of powers is not the same under the different federal systems. The matters of the national concern are dealt by the Union and the State units deal with the matters of regional concern. Thus, the national and the State government are supposed to exercise its sovereign powers within assigned sphere, co-ordinate and independent.

⁴³ S. 5(1) The Government of India Act, 1935 (Chapter 1- Establishment of federation and Accession of Indian States).

⁴⁴ Supra 20.

⁴⁵ In the commencement the Constitution contained 395 Articles into 22 parts and 8 schedules. After the enacted of the Constitution (One Hundred and Fifth Amendment) Act, 2021 the Constitution consists of 448 Articles divided into 24 parts and 12 Schedules.

⁴⁶ I.R. Coelho v. State of Tamil Nadu, AIR 2003 SC 2363.

⁴⁷ The Union List consisted of 97 subjects, the more important of which are defence, foreign affairs, diplomacy, war & peace, United Nations, treaty-making, railways, posts and tele-graphs, currency, etc. The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning, etc.

In India, Article 246 provides for the jurisdictions over the subject-matter of legislations: the exclusive power of the Union government to legislate in respect of matters (important) enumerated in the Union List; the exclusive power of the State governments to legislate on the subjects of the State List; and the jurisdiction of both the governments to legislate on the matters provided in the concurrent List. The residuary power to legislate vests with the Union government.⁴⁸

Powers of both the Union and State legislatures are enumerated in the Constitution. Both the legislatures exercise sovereign powers of legislation within the respective jurisdiction assigned by the Constitution.⁴⁹

In certain cases, inspite of division of powers, the Constitution provides for the exercise of control by the Union over the administration and legislation of the States. The provision relating to the appointment of the Governors of a State, the tenure during the pleasure of the President⁵⁰ and provision 'Bills reserved for consideration'⁵¹ of President depict the powers of a strong Union. The distribution of powers in India has a strong Central bias.

➤ **Strong Federal Government:**

In India, the three legislative lists provide for the powers vested in the Union legislature, the Provincial Legislature and both of them concurrently. The residuary power vests with the Union Legislature- Parliament. In case of inconsistency between the Union and the State law in the concurrent sphere, predominance is of the Union Legislature.⁵²

The distribution of power in India has a strong central predisposition. In spite of the elaborated enumerated powers the balance of power favours the Union.⁵³ The sphere of legislation assigned to the Union can be enlarged at the stake of States even in normal times. The following provisions depict the strong Central government and the central bias:

Article 201 – Legislation by a State shall be subject to disallowance by the President, when reserved by the Governor for the consideration of the President.

Article 249 – Power of the Parliament to legislate with respect to State list subject matter in the national interest.

Article 250 - Power of the Parliament to legislate with respect to State list subject matter when the proclaimed emergency is in operation.

Article 251 - Predominance of Parliament legislations in case of inconsistency between the Parliament laws under Art. 249 & 250 and the State laws.

Article 252 - Power of the Parliament to legislate for two or more States in case consent is granted by States through agreement. This includes the power to withdraw the legislation from States. The provision has proved useful to have uniform legislations in case of common interests.

Article 254 -Predominance of Parliament legislations in case of inconsistency between the Parliament laws competent to enact under List I & II and the State laws.

Article 256 – Power to give directions to the States in specific matters.

Article 257 – Control of the Union over States in certain necessary cases.

⁴⁸ Art. 248- Residuary power of legislation, the Constitution of India.

⁴⁹ Art. 245-254; VII Schedule, the Constitution of India.

⁵⁰ Art. 155- Appointment of Governor; Art. 156- Term of the office of Governor, the Constitution of India.

⁵¹ Art. 201, the Constitution of India.

⁵² Art. 254, the Constitution of India.

⁵³ During the Constituent Assembly debates, the first prime minister, Jawaharlal Nehru cautioned that "it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere."

Article 293 –Borrowing power of the States subject to the consent of the Union in certain cases. The Union government is empowered in respect of financial resources and is financially strong and independent.

Article 352, 353 – When an emergency is proclaimed by the President, the power of the Union executive to give directions to the State executive extends to any matter along with the legislative powers.

Article 356 – Coercive power in case of failure of the constitutional machinery in a State.

Article 360 - Power to give directions to the States in case of declaration of financial emergency.

The working of the Indian federal system depicts the position of Governor as of the Centre's agent in the States, thus exercising control over State administration. Moreover, the important appointments of the Constitutional institutions such as the Chief Election Commissioner, the Comptroller and Auditor-General of India are made by the Union. Even the power of the Parliament in amendment procedure indicates the paramount position of the parliament.

These are the distinctive features of Indian Constitution in comparison with the American Constitution. In America, the division of powers is not superseded at the mere will of one of the parties (federal/regional) to federation although the judiciary has expanded the federal powers in certain cases.

➤ **Blending of Rigidity and Flexibility:**

Amendments to the Constitution can only be made by the Union Parliament. The States cannot propose the amendments. The Indian Constitution is rigid in the sense that some amendments require the special majority in both the houses and even the ratification by at least half of the States.⁵⁴ Important amendments affecting the federal structure of the Constitution are carried through this procedure requiring the ratification of half of the States and hence the Constitution is rigid.

At the same time, some provisions of the Constitution can be amended by the simple majority procedure making it flexible.⁵⁵ The Constitution of India is not rigid, till today 105 amendments have been carried in the Constitution.

Position of States, 'Indestructible Union of destructible States' makes the Constitution flexible. The Indian federation is an outcome of 'holding together' and since the States were not 'sovereign' entities immediately before forming federation, there is no specific provision relating to the 'State Sovereignty'. In the Indian federal arrangement, no States have power to determine its own Constitution except the special status imparted to the Jammu and Kashmir.⁵⁶

After independence, a huge administrative unit- British India Provinces, a colony of British regime was divided into numerous administrative units for the appropriate conduct of administration and wellbeing of people. In 1953, the state reorganisation commission was set up to establish the administrative units. However, the linguistic movement resulted in the division of India on lingual basis and accordingly the State Reorganisation Act, 1956 was enacted.

The Indian Constitution, under Article 3 empowers Parliament by law to form a new State⁵⁷, alter the areas, boundaries or name of any State. Thus, the Parliament has been empowered to change the territorial limits, political map of India by simple majority or by the ordinary legislative process based on the historical and political experience. The States can merely express their views on the Bill referred to the State legislatures but need not require concurrence from the States. The Constitutional provisions enable the restructuring of India without seeking the consent of States. The territorial

⁵⁴ Proviso to Art. 368 (2)-Any change in Art. 54, 55, 73, 162, 241, 279A, Part V, VI, XI, any of the Lists in the VII Schedule or the representations of States in Parliament requires ratification by States.

⁵⁵ Art. 2, 3, 4, 11 and V & VI Schedule, the Constitution of India.

⁵⁶ The Jammu and Kashmir Reorganisation Act, 2019 No. 34 Of 2019 reorganized the State of Jammu and Kashmir into Union territory of Jammu and Kashmir and Ladakh.

⁵⁷ A new State may be formed by separation of territory from any State or by uniting two or more States or parts of States.

integrity of the States is not guaranteed by the Constitution. The Parliament is empowered under Article 2 to determine the terms and conditions on which it may admit any area into the Union or establish new States.

However, the States within Union cannot secede. Union is indestructible so as to protect the sovereignty, integrity and unity but States are destructible. Thus, American federation is an “indestructible Union of indestructible States” and Indian federation is “indestructible Union of destructible States”.

➤ **Unequal Representation of the States:**

In Indian Constitution there is no equality of representation of the States in the Council of States. Thus, the theory of ‘equality of State rights’ is not incorporated in the Indian Constitution. In India, the collective sharing in federal system is secured by unequal representation of unequal units in the bicameral system.⁵⁸ Even Article 80(1) of the Constitution of India provides for the President’s right to nominate twelve members to the Council of States.

➤ **Unified System of Independent Judiciary**

The Indian Constitution provides for unified and integrated system of Courts for both the Union and the State laws.⁵⁹ The American model of dual set of Courts is not incorporated in India. The Supreme Courts and the High Courts have the jurisdiction to interpret the Constitutional provisions and the Union as well as the State laws. The Constitution provides for a Supreme Court as the apex court of India supervising the High Courts. President empowered to make the appointment of the judges to the Supreme and the High Court’s belonging to any of the States and can even be transferred from one High Court to another.⁶⁰

➤ **Single Citizenship**

The Indian Constitution provides for the single citizenship. In India, the concept of State citizenship is not incorporated.

➤ **Judicial Review**

The Supreme Court and the High Court’s exercise the inherent power of the judicial review by interpreting the Constitutional provisions according to its spirit.⁶¹ Judicial authority stands above the Union and the component State authority. The Superior Courts of India conferred with various kinds of jurisdiction determine whether the functioning of both the national and regional governments and the governmental actions is according to the Constitution through the judicial process. The Supreme Court of India exercises the original jurisdiction under Article 131 of the Constitution.

Apart, from the above salient features, the All-India Services have been created under the control of the Union to ensure the uniformity of the administrative system in India.⁶² The States have to work in close co-operation with the Centre. The Union always have the power of administrative supervision over the States. Centralized planning by the Centre through the Planning Commissions and now NITI Aayog shows the predominance of the Centre.

The Supreme Courts in its various judgments have explained the true nature of Indian Constitution. In the landmark the full bench of 13 judges Case of Keshavananda Bharati,⁶³ few judges held federalism as the basic feature of the Constitution of India. Subsequently in other Cases Judges

⁵⁸ Schedule IV- Allocation of seats in the Council of States, the Constitution of India.

⁵⁹ Art. 132-136, the Constitution of India.

⁶⁰ Art. 222- Transfer of a Judge from one High Court to another, the Constitution of India.

⁶¹ Art. 13 read with Art. 14, 32 and 226, the Constitution of India.

⁶² Art. 312, the Constitution of India.

⁶³ Keshavananda Bharati v. Union of India, AIR 1973 SC 1461.

have described the Indian Constitution as quasi-federal.⁶⁴ In 1978, the C.J. M.H. Beg in Karnataka's Case, described the Indian Constitution as "pragmatic federalism".⁶⁵

The unique system of federal Indian government, does have subsidiary variations from the American Federalism. The framers of the Indian Constitution have deviated from the American federal structure. The analysis of literature of the various Constitutional experts and testing the yardsticks provided by them confirm that the Indian Constitution is basically Federal with few unitary features. The federal polity with unitary features provides for a device to maintain solidarity and unity in diversity. The federal model adopted in India intended to avoid friction and function as a successful democratic polity promoting justice and equity.

The Constitution of India although provides for the vertical division of powers in the form of three lists elaborately, the strong central bias is patent in the Constitutional scheme. Rather the history and the diverse situation compelled the framers of Constitution to adopt asymmetric division of powers showing an inherent bias towards Centre, which is also referred as "asymmetrical federalism".

Indian federalism like American federalism is functioning overcoming challenges in the changing political, social and economic influences. In 1975, during emergency in India, although the federalism structure collapsed soon it gained momentum and revived the balancing of political powers.

CONCLUSION

Understanding the concept of federalism and making the comparative study of the operational federal political systems- India and U.S.A., explicit that the federation does not operate in a standard way or isolation. Rather several circumstances and factors such as history, ideology, politics, culture, economic status and emergency situations determine the functioning of federalism and the model of federal arrangement. In his writings Prof. Duchacek, has expressed that "any yardsticks chosen to test federalism are necessarily of unequal weight and, therefore, different relevance."

In America, dual model of federalism was conducive in the 18th & 19th centuries when the federal-state relationship was simple. However, with the new social exigencies, the intergovernmental relations between the federal government and the several states evolved which in turn led to transformation of the federalism concept with new features. The growth in social inequities based on the ground of economy, sex challenged the capacity of the existing federal government. The contemporary situations encountered by American government industrialization, universalization of the concept of human rights, population growth and immigration, led to the advent of the model of cooperative federalism emphasizing on the collaboration amongst the governments. The new model of cooperative federalism addressed the social and economic problems through forceful governmental actions. No doubt, there has been the growth of federal government. However, the role of state governments and the local governments is also significant. The American federalism over the time has experienced variations overcoming challenges and attaining sustainability.

From the study of the above provisions, it is clear that Constitution of India is basically federal with unitary feature. The Constitution has established a strong Centre by providing the important subject-matters of national interest such as defence, foreign affairs and international relations, railway, telegraph, income tax, custom duties in the Union list and also other provisions discussed above favouring Centre. The State has to exercise its power in such a way as to conform with the laws made by the Union Parliament. The Centre-State legislative, executive and the financial relations depict the strong Centre with the limitations imposed on the State powers in certain matters and control by the Union. Thus, the State autonomy and sovereignty is interfered by the strong Centre. Indian federalism surely is distinct from American model of federalism. In a federal system the territorial distribution of powers has never been intended to be on equal basis. Rather, a federal system favours the national power by entrusting nationally important subject matters within its jurisdiction. The quantification of division of powers varies from nation to nation. The framers of the Indian Constitution have taken into

⁶⁴ Shamsher v. State of Punjab, AIR 1974 SC 2192; Union of India v. Sankalchand, AIR 1977 SC 2328.

⁶⁵ State of Karnataka v. Union of India, AIR 1978 SC 68.

consideration the experiences gained from the functioning of the earlier federal governments. These adaptations have led to the establishment of new model of federalism in India.

Moreover, several Constitutional experts has described the Indian Constitution in different ways. During the framing of Indian Constitution, the national leaders due to the happening of partition aimed to prevent further disintegration and hence favoured the model of federalism with a strong Centre. Hence, the pre-dominant role has been assigned to the Centre establishing a co-operative federalism. The Indian Constitution, qualifies most of the yardsticks of federalism given by Prof. Ivo D. Duchacek's in respect of foreign relations, immunity from secession, independent sphere of the Central authority, amendment of the Federal Constitution, indestructible identity and autonomy, residual and significant powers, bicameral legislature, the Supreme Court, and Clear division of power. The only yardstick not complied with is in regard to two independent and parallel sets of Courts and equal representation of the States. In India, one integrated system of judicial hierarchy exists to overcome the complexities and delay in administration of justice. However, the role of the Supreme Court - competent, independent and an impartial institution as the guarantor, protector and interpreter of the Constitutional provisions, fulfill the yardstick of judicial review.

Jurists have provided for different standards and parameters for determining a federal system. Federalism as a system of political structure has evolved in different ways in diverse situations. Irrespective of identifying and giving a particular nomenclature to the functioning of a governmental system as federalism, unitary, quasi-federalism, what is more important is achieving goals of intended legal system to have an ordered, secured, progressive and sustainable society. Federalism is a way to achieve these ends. From the study of working of different federal governments in the world and specifically of United States and India it is pragmatic that the implementation of federal system of government *in spirit* increases efficiency, promotes public and private modernization providing solutions to the upcoming challenges.