

FEDERALISM: A COMPARATIVE PERSPECTIVE BETWEEN INDIA AND USA

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ABSTRACT

Federalism is essentially a system of self-rule and shared rule between the national as well as state governments. It is an important and broadly implemented feature in today's international community of politics. Around 70% of the world states are believed to have at least some elements of federalism and 20 of the nations are considered to be federal states. Among them two countries will be compared are American federalism and Indian federalism. The paper is dealing with attempt to prove that American federal system is more centralized as compared to Indian federalism by analyzing the divisions of powers of government in both countries. By analyzing the true nature of federalism, the paper will attempt to highlight the differences that are existing between the two federal constitutions. The USA federalism is very strong as well as more rigid as compared to Indian federalism which is more unitary than federal even we can say it a quasi-federal state.

Keywords: *Federalism, Federal features, Comparative federalism, Division of powers.*

INTRODUCTION

The word federalism defies any precise definition; federalism is 'not a definite concept' and lacks a 'stable meaning', because the mores of the one society may differ from the mores or social milieus of other society. It means different things to different people. As problems of one country can't be the identical problems of another country, so, no two federalisms are alike. But the most acceptable definition of federation may be that it is a system of government in which there is division of powers and functions between federal government and several regional governments, each of which in its own sphere, coordinates with the others and each of which acts directly on the people through its administrative machinery. There is no single ideal federal form. Many variations are possible in the application of the federal idea in general or even within the more specific category

of full-fledged federations. Ultimately, federalism is a pragmatic, prudential technique whose applicability may well depend upon the particular form in which it is adopted or adapted or even upon the development of new innovations in its application.

Federalism is an important and broadly implemented feature in today's international community of politics. Around 70% of the world states are believed to have at least some elements of federalism, around 20 of the nations are considered to be federal states. They include some of the biggest countries in the world USA, Canada, Australia and India, and the smallest countries like Switzerland, Austria and Yugoslavia. William H. Ricker says: "Well over half landmass of the world was ruled... by governments that described themselves as federations.

Here, an attempt has been made to analyze the comparative study of federalism between India and USA the two federations. Because a comparative study between the two countries is particularly advantageous for us to understand the political system in both countries, one which is called quasi-federal and the other, called classical federation. It is obvious that the need for a comparative study assumes a special importance, because the provisions of such constitution cannot be interpreted without applying the foreign precedents. Therefore, it is proposed to make a comparative study of relevant constitutional provisions.

DISCUSSION

Federal polity usually refers to the political system in a country with a written constitution defining and delimiting the powers and functions both of the central or federal legislatures and government on the one hand and local or state legislatures and the governments on the other. Federation, literally and historically is the result of an agreement. It is when two or more sovereign States resolve to surrender a part of their sovereignty and join hands to constitute a new union, a federal polity is born. It is union without the constituting units losing their own identities. However, there are also instances where an existing unitary system may decide to share powers with the units under an agreed system of devolution or distribution of powers. But in every case of federalism constitution occupies the supreme position. It is written and relatively rigid, that is, not easy to amendable and there are at least two levels at which government functions. In other words, two separate-federal and state-coexist, and as the arbiter of any disputes between the federation and the units as also between the units themselves, the highest judiciary- federal court or Supreme Court-enjoys great authority and prestige.

Many countries in the developing world which do not strictly fit in the definition of a federal polity and yet have many of its features are variously described by scholars as some kind federation or a polity covered by some variant of federalism. So, here is the case of Indian federation which has been compared with US federal system

through the comparative as well as analytical method. And also an attempt has been also made to study and compare the two federal polities at gross-root level.

Both India and US are the largest democratic countries in the world based on federalism in their political structure. India occupied the status of Socialist, Sovereign, Secular, and the Democratic Republic by enacting its Constitution in the year 1950, whereas US gained the status of Federal Republic State in the year 1789. Thereby both countries had attained dominion status in which several smaller states got associated with a strong central government which is known as Central Government in India and Federal Government in the US. Thus, both states became Federal Republics. During the Constitutional development so many features have been borrowed from Constitutions of other countries including US. Hence, both US and India, even though federal in character have certain similarities as well as differences between them.

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. The Constitution of India in its very first Article declares that, "India that is Bharat shall be union of states." It describes it neither as federation nor as unitary. However, there is no federation word mentioned anywhere in charter. Although it has some basic features of federalism which are mentioned in the constitution of both countries.

For any federation it is essential that the constitution should be a written one so that both the units as well the centre can refer to that as and when needed be. There can be no any federation without a written constitution. A written constitution specifies, in black or white, the dominion of both the federal and state governments. And also in federation every state has its own constitution. But in India, we have only one constitution as compared to US. The Constitution of both US and India falls in this very first category, which provides for a federal political structure where both the governments exercise their respective powers. The Constitutions of both the countries provide for amending the Constitution to meet the changing circumstances and the growing political, economic, social needs and demands political and economic needs and demands of their respective countries.

In all federation, it is the Constitution which is supreme. Both the federal government and state governments of the States have to work within the framework of the constitution. The Constitution is the supreme law of the land and the laws passed by the Union or the State governments must confirm to the Constitution. Any law contrary to

the Constitution is declared void, whether it is passed by Union Government or the State government is referred to the judiciary in both countries India and us.. In both the countries, the federal government works at the centre in which various states have acceded to. In US there are 50 states that have associated themselves to the federal government. Every state has its own constitution. But the supremacy clause makes three provisions. It makes the federal Constitution binding upon the States, it declares that the federal Constitution is the supreme law of the land and also it provides that the federal Constitution shall prevail over the State Constitutions by inserting a non obstante clause.

In a federal Constitution, there is a division of powers according to well established principles between the Central Government of the country and the Governments of the comprising units. In India, there is such a division of powers, no doubt, but it can be noticed that our Constitution doesn't adopt a static paradigm on the matters before it. Sometimes it functions on the theory of federalism and sometimes functions on the theory of unitarism. The Constitution provides the Central Government with overarching powers and concentrates administrative and financial powers in its hands. At the same time, there is sharing of powers and resources between the Central Government and the States in a limited fashion. Indian Constitutions provides for separation of powers among three institutions namely executive, legislature and judiciary. Each division is empowered with a separate power. The executive (headed by Prime Minister) powers between the union and the state governments are co-extensive with their respective legislative competence. In case, of state governments, its executive authority over a legislative field has been subjected to the qualificatory restriction of 'doctrine of territorial nexus'. The legislature makes laws, and the judiciary ensures justice. As regards the subjects of legislation, a threefold distribution of legislative powers between Union and States is envisaged as listed in Schedule VII. The union list includes 100 subjects over which the Union has exclusive power of legislation. List II comprises 61 items over which State legislature has exclusive powers. List III (Concurrent List) Comprises 52 items over which both the Union and States can legislate. In case of a matter overlapping between the three lists. Predominance has been given to union legislature. The residual powers under the Constitution are vested in the union legislature. As in financial field, the states depend on the centre for all development. They have much less resources of income but many more needs of expenditure. An autonomous finance commission is appointed every five years to make recommendations as to tax-sharing and fiscal-need grants. Since 1950, when the Constitution was made effective, four such commissions have made recommendations on these points resulting in a larger transfer of Central funds to the States each time. 75% of the income-tax revenue and 20% of the excise revenue are now transferred to the States. Unitary in emergency, appointment of governor by the Centre can withhold assent to legislation passed by

the State legislature and his role in formation of government, dismissal of state government under Article 356 etc. are the some non federal features mentioned in Indian constitution.

Whereas US Constitution follows a simple method of dividing powers between the federal government state governments. This federal arrangement, by which the central federal Government exercises delegated power over some issues and the State Governments exercise power over other issues, is one of the basic characteristics of the US Constitution that checks Governmental power. Other such characteristics are the separation of powers among the three branches of Government—the legislative, executive, and judicial. State Governments are expected to exercise checks and balances on the national Government to maintain limited Government over time. Because the States were pre-existing political entities, the US Constitution did not need to define or explain federalism in any one Section. However, it contains numerous mentions of the rights and responsibilities of State Governments and State officials vis-a-vis the federal Government. The federal Government has certain expressed powers (also called enumerated powers), including the right to levy taxes, declare war, and regulate inter State and foreign commerce. In addition, the so-called elastic clause gives the federal Government the implied power to pass any law "necessary and proper" for the execution of its express powers. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. There is only one legislative list in the United States i.e. a Union list enumerating the powers of the Union, and the remaining items/subjects are left to the States (except matters expressly prohibited by the Constitution to the States). The position is unlike India and other Federal form of Government. The Governor of a State in the United States unlike India is not subject to any control by the President. He is elected by the people of the State. Therefore, the American Constitution does not envisage the possibility of a Bill passed by the State legislature being reserved by the Governor for the consideration of the President of the United States. Of course, a Governor, himself, may be given power to veto a Bill passed by the State legislature.

In United States, executive authority of the Union and that of the States runs in parallel streams. Enforcement and execution of laws of the Federation are, looked after by federal officials only and execution of State laws is looked after by State officials only. There is a dual system of Courts in the United States. Disputes under federal laws will be adjudicated by the federal Courts, while those under State laws are, in general, adjudicated by State Courts, subject to an appeal to the Supreme Court of the United States in certain cases. The federal judiciary is supreme in the exposition of the Constitution.

Both US and India have a bicameral legislature. In US the Senate is the upper house which recognises the equality of status because each state, small or large, sends two representatives to the senate and the House of

Representatives is considered the 'The House of People' represents the Congressional districts, divided among the states according to their population and the Indian Parliament has Lok Sabha which is considered the 'House of People' is the lower house of parliament. Its members are elected directly elected by the people and Rajya Sabha the (Council of States) is Upper house represents the States which is unequal as compared to US.

Rigid constitution is another real feature of any federal constitution. The natural corollary of the supremacy of the constitution and it being a written document is that it should not be alterable either by the central legislature or by regional legislatures under their ordinary law- making procedure. This rigidity is specially desired by the federating units so that the centre subsequently does not change the list of subject to suit its convenience. A rigid constitution, as we know is one which cannot be changed easily. In India, the approval of the amendment of every Article is not sought from the States, yet, under Article 368, the approval of the States is sought for amending. All the provisions concerning Union-State relations can be amended only by the joint actions of the State legislatures and union parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute absolute majority of the total membership) and ratified by at least one-half of the States. In United States amendment to the constitution is very difficult. Sometimes, even one senator can make it impossible to enforce it. Both the general government and regional constituent units have voice in the amending process. Under Article V, an amendment has to undergo the two-fold process of proposal and ratification. A proposal of amendment can be moved either ways: the congress may itself propose amendment by two-third majority of both house voting separately; or, legislatures of two-thirds of States may apply to the Congress when the latter should call a convention for proposing amendments. An amendment becomes valid and effective only when it has been ratified by either the legislature of three-fourths of the States, or by conventions, called for the purpose in three-fourths of the States. Till to date only 27 amendments have been made since the Constitution was ratified among them only 16 have been adopted since 1800. The first 10 amendments serve as the 'Bill of Rights' while as Indian constitution is consisted of 122 Amendment Bills including new 'GST Bill' which is newly approved Bill since independence.

An independent judiciary plays an important role in protecting the supremacy of the constitution through exercising the powers of the judicial review over the laws of the central and state governments in federation. Not only it is being used for interpreting and upholding the constitution of the federation but also performing the role of an arbiter of disputes between centre and the states or among the state governments in respect of their areas or action and powers in almost all federations. Both US falls in the same category. US being a developed country have an advanced judicial system. There is a double system of courts where by the federal laws are enforced by the federal judiciary and the state laws by the state judiciary. States have their own judicial system unrelated to

and uncoordinated with, the federal judiciary. The judicial system of India is however rapidly developing. There is an integrated judicial system with the Supreme Court at the top and the state high courts below it this single system of courts enforces both the Central laws as well as of the state laws. A Judge in the US holds office as long as he is capable of performing his duties. Indian Constitution on the other hand states that a District judge holds his post till the age of 58, a High Court judge holds till the age of 62 and a Supreme court Judge retires at the age of 65. In a federal judicial system in the United States, the courts in order of hierarchy are the as follows – the Supreme Court, 13 courts of appeal and over 90 district courts. In India, the judicial system consists of the Supreme Court, High Courts and district courts. In both cases, the judiciary is independent, and can rule actions of the Executive as being ‘unconstitutional.’

In dual polity state, dual citizenship is another character of federal state where a citizen of the same country is subject to both of central as well as state governments. Although India has federal government yet double citizenship has not been provided for. The constitution adopted the system of single citizenship. There is no separate citizenship this is why a citizen of India has a fundamental right to move freely in and to reside or settle in any part of India without any interference from the states except Jammu and Kashmir. All citizens irrespective of the state in which they are born or reside enjoy the same rights of citizenship all over the country. In US the dual polity is followed by the dual citizenship with separate privileges and immunities. Every citizen is citizen of US as well as individual state. In this capacity he or she enjoy different rights and owe different obligations.

CONCLUSION

Ultimately, federalism cannot be proved to be either better or worse than unitary government, but it may work better or worse for particular countries. On above mentioned detail it is concluded that there are certain features of federalism which are common to both India and the USA. On the other hand, India and the USA differ in many aspects related to the federal character of their Constitution. However, both the US and the Indian Federalism despite having limitations are by and large successful. Essentially, India is a multi-party representative parliamentary democracy which shares various features with the political system and institutions of the United States of America, in terms of federal structure of government, independent judiciary, and bicameral legislature of the Union. However it differs in terms of the Executive, which is headed by the President rather than the prime minister, besides differences in the structure of the federation including number of component states, and the powers of their legislatures. At last, we can say it federal because of the distribution of powers between the Centre and States and it may be considered unitary because of the retention of Union control over certain State matters,

and also because of the Constitutional provisions relating to emergencies when all powers of a State would revert to the Centre.

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