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Examination of Federal Structure of India with Other Federations: An Analytical Study

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ABSTRACT

Federalism is a form of government where there is interdependence of central government at national level with state government at regional or state level. Federalism is basically a setup or a form of agreement for sharing of decision making authority, delegation of power at center and state level. The division of power is done in such a way that each of the assignee can exercise only such powers its in individual capacities while others must be shared equally between the center and state at national level and local/regional level. The central government with sole authority to mint money, raise and dictate army and declare war, while an intermediate level of government i.e. states have the sole authority to regulate education, criminal or civil law etc. The Indian model of federalism may be one of the most interesting federal structure in the world. Indian federalism is highlighted in the seventh schedule of the Indian Constitution, which gives subject each has jurisdiction in which are namely the three lists: The union list, state list, concurrent list. The union list talks about powers and functions the center has to deal with and the decision making authority solely rests with the central government, the state list talks about powers and functions which the state has to perform and the decision making authority solely rests with the state government. The concurrent list is where center and state equally have the power to make decision. Federalism as a concept is important for comparative studies of federations such as the United States, Canada, and India. Canada and India initially began as quasi-federations and then gradually become federations. They are not based on federalism as a concept. Through this paper India's position in present day would be highlighted and what it needs to adapt if it wishes to proceed beyond treating federation as the distribution of power, It has to reappraise its parliamentary tradition and, in due course, evolve its own concept of federalism.

Keywords: *Federalism, Government, Constitution, Authority, List.*

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I. INTRODUCTION

The First Article of our Constitution reads, India, that is Bharath, shall be a Union of States. Dr. B.R. Ambedkar, the architect of the Indian Constitution, said that this union was a federation and called it a flexible federation, so as not to make it as rigid as the American Federation. The reason why federalism as a constitutional principle was articulated differently was because of the historical context in which our constitution was made, as the thought of a more potent federalism would weaken the feelings of national unity in the country. The constitution of 1950 was to be implemented throughout the length and breadth of the country with myriad of religions, races, languages and other diversities in our extremely heterogeneous society. The Indian model of federalism may be one of the most interesting federal structure in the world. Indian federalism is highlighted in the seventh schedule of the Indian Constitution, which gives subject each has jurisdiction in which are namely the three lists: The union list, state list, concurrent list². The union list talks about powers and functions the center has to deal with and the decision making authority solely rests with the central government, the state list talks about powers and functions which the state has to perform and the decision making authority solely rests with the state government. The concurrent list is where center and state equally have the power to make decision. Federalism as a concept is important for comparative studies of federations such as the United States, Canada, and India. Canada and India initially began as quasi-federations and then gradually become federations. They are not based on federalism as a concept. The U.S. Constitution was not only the blueprint for a federation, but was inspired by a political theory we call federalism, a set of interlocking principles of government very different from the parliamentary tradition that Canada and India inherited from the United Kingdom.

(A) Body

Federalism is a political system which creates in a society broadly two levels of Government with assigned powers and functions arising from a variety of social, economic, cultural, and political factors. It is one element of power dispersion among others in the creation of political order which is built in consonance with the principles of constitutional government. The principles of federalism are grounded on and formed with the combination of self-rule and shared rule. In the broadest sense, federalism involves the linking of individuals, groups, and politics in the lasting but limited union in such a way as to provide for the energetic pursuit of

² Raghav Dhoot, Comparative Analysis of Indian Federalism and American Federalism, IJARIT, Volume 4, Issue-I

common ends while maintaining the respective integrity of all parties³. Federalism as a political principle deals with the constitutional diffusion of power so that the constituting units in a federal arrangement share in the processes of common policy making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrity. Federalism constitutes a complex governmental mechanism for the governance of a country⁴. It binds 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, centralisation with decentralisation and nationalism with localism. The originality of the federal system which lies in that power is, at one and the same time, concentrated as well as divided. There is centralisation of administration and legislation in certain areas along with decentralisation in other areas⁵. The essential features of federalism are dual government, distribution of powers, and supremacy of the constitution, the authority of courts, written Constitution, decentralization, and a real division of power, though the aforementioned principles are not exhaustive, they do encompass major elements of federalism. A federal constitution establishes a dual polity, comprising two levels of government—a central government having jurisdiction over the entire country in some areas, and state governments, each of which exercises jurisdiction within defined regional boundaries. A citizen in a federal country is subject to the decrees of two governments. The totality of governmental powers and functions are divided between the Centre and the states. Each level of government thus functions within its assigned field⁶. The several governments do not, however, function in watertight compartments.

II. COMPARATIVE ANALYSIS WITH US AND CANADIAN FEDERALISM

Both India and US have a different history, The American Federation can be described as the outcome of the process of evolution, in that, the separate States first formed into a Confederation (1781) and then into a Federation (1789). The Declaration of Independence adopted on July 4, 1776, acknowledged the independence, freedom, and sovereignty of thirteen colonies which became the States. On June 12, 1776, the Continental Congress had appointed a committee which consisted of members from each colony, to prepare and digest the form of

³ *Id*

⁴ *Supra*. Note 2.

⁵ Ronald L. Watts, *Federalism, Federal Political System and Federations*, ARPC Vol.1

⁶ *Id*

a confederation to be entered into between these colonies, after independence. Accordingly, in November 1777 was adopted, by Congress, the Articles of Confederation which constituted the first Constitution of the United States of America. The Congress of the confederation had definite and express powers over subjects of common concern. In the coming years, however, the complications were caused in dealing of the states with each other and the central government. The climax was reached in 1786 when all attempts to improve Articles of Confederation failed and states were on a verge of civil war. And so, in 1787 was called a conference, at Philadelphia, of delegates from all States to review the whole system. The Federal solution of distributing power in the new republic was in harmony with the traditions of local autonomy which extended back in time a century or more and a dual system of government was established exercising legislative, executive and judicial powers within the mandate of the Constitution⁷. The American States were independent sovereign States and the territorial boundaries of those independent States cannot be touched by the Federal Government. It is these 13 independent sovereign units which together decided to form into a federation. In India, on June 3, 1947, the British Partition of India was announced and was accepted by both the League and the Congress. The Indian Independence Act which for the independence of a separate India and Pakistan was introduced Parliament on July 6, 1947, and was passed on, the same act provided more than 500 princely states with the option as to go with either go with India or Pakistan or declare itself as an independent. And so, the States were not independent sovereign units but they were formed by Article 1 of the Constitution and their areas and boundaries could, therefore, be altered, without their concurrence, by Parliament. Speedily now. Out of such 500 princely states, by virtue of States Reorganisation Act of 1956, 14 states and 6 union territories were created⁸. Due to the bad experience of Provincial Autonomy in India, which led to British occupation of Indian territory, our founding fathers made a strong centre to hold together all the component units together. The federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle the outcome of our own historical process and a recognition of the ground realities. And so, because of two different historical backgrounds, US became coming together federation, and India became holding together federation. The form of federalism prevailing in the US is very close to pure federalism, but there has been always a debate about which form of federalism is followed in India, Ivor Jennings stated that ours is a federal Constitution with strong centralizing tendencies. This debate has been much settled after the judgement of S.R. Bommai

⁷ Supra. Note 5.

⁸ Douglas Verny, *Federalism, Federative Systems and federations: The US, Canada and India*.

case⁹, in this case, Justice Ramaswamy while delivering the majority decision stated that ours is a co-operative federalism, which implies promoting mutuality and common purpose for rendering social, economic and political justice, equality of status and opportunity, he further mentioned that Indian Constitution federalism is not based on any agreement between federating units but one of integrated whole as pleaded with vision by Dr. B.R. Ambedkar on the floor of the Constituent Assembly.

The Constitution also provides for a federal system in Canada, meaning there are two key levels of government: the federal (or national) government and the provincial (or regional) governments. Canada is a federation with a strong Centre, wherein residuary powers lie with the Centre. The Constitution Act, 1867 outlines specific powers and jurisdictions for each of these levels of government, such as what public policy fields each may legislate in, as well as how each level of the government may raise revenue¹⁰. Over the years, these constitutional provisions have been further clarified and evolved by judicial decisions (first by the British Judicial Committee of the Privy Council, and later by the Supreme Court of Canada). There have also been several constitutional amendments that have had significant consequences for Canada's federal system¹¹. Over the years there has been a shift towards giving greater powers to the states. For example, the Constitution Act, 1930, transferred ownership of natural resources in Western Canada from the federal government to the Western provinces. Another significant amendment was the Constitution Act, 1982, which committed the federal government and provinces to ensuring some level of economic and social equality between Canadian regions. This, in turn, has led to the development of the Equalization Program and the sharing of public funds between governments.

III. CONCLUSION

Though the Indian constitution has been criticised as not being federal for having a powerful centre, Federalism does not consist of a set of fixed principles, which are applied, to different historical situations. Rather, federalism as a principle of government has evolved differently in different situations. And the form of federalism enshrined in Indian Constitution has worked fabulously for India. Both USA and Indian federalism has met with challenges, USA federalism was challenged with the new deal and Indian federalism was crippled in 1975-80 during an emergency, but afterwards, both federal systems emerged even strongly and this speaks volume

⁹ *Id*

¹⁰ M.G Khan, Federal System in India and Switzerland Recent trends. *The Indian Journal of Political Science*. Vol.70

¹¹ *Id*

about the competency of the Constitution and federal structure. The structure of federalism of US and India differs widely, but with a different history and different challenges both systems have worked efficiently and have secured the national integrity. Federalism is like a rainbow, where each colour is separate, yet together they make a harmonious pattern. Federalism has to continuously maintain a difficult balance between the centre and the States. No legal or institutional formula can guarantee the smooth functioning of a federal polity. Ultimately, the people and the political process must develop a culture and a set of values and virtues like mutual trust, toleration and a spirit of cooperation. Federalism celebrates both unities as well as diversity. National unity cannot be built by streamlining differences. Such forced unity only generates greater social strife and alienation and tends finally to destroy unity. A responsive polity sensitive to diversities and to the demands for autonomy can alone be the basis of a cooperative federation.
