

Comparative Study of Indian Federalism with USA

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Abstract

A Federal government system is one in which, different states or provinces of the country has been vested important powers by the central government of that country to manage and the control the nation efficiently and smoothly. The issue which formerly arises while dealing with the topic of federalism is that it has not been given any concrete definition. A constitution of any particular country can either be unitary or federal. This research deals with the peculiar combination of both the conditions imparted in the constitution of India.

Different countries like U.S.A., Canada, Australia, and Switzerland have adopted the concept of federalism in their respective constitutions, U.S.A. having the oldest constitution (1787). India has adopted the Canadian Federal structure in its constitution. This article furthermore lays out a comparison between the Federal structure in India and in U.S.A.

The article thus concludes by throwing light on the heterogeneous structure of Indian constitution, which is a complex analogy between the federal and the unitary anatomy.

Keywords: Federalism Vested, Efficiently, Powers, Unitary, Comparison, Analogy, and Anatomy.

Introduction

Federal is derived from a Latin term “Foedus” which denotes ‘Treaty or an Agreement’. It is basically a form of a written document which defines the powers which has been vested between the Central and the State government, so as to prevent each from encroaching upon each other and work systematically.

In Part I of the Indian Constitution, Article 1(1) says: “India, that is Bharat, shall be a Union of States.”, instead of federation of states as the provinces in India has not given independent existence and recognition and the union of all the Indian states collectively forms ‘India’, which is how it is meant to be recognized internationally.

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Indian citizens do not enjoy dual citizenship, unlike the American citizens who are citizens of both- the particular province and the country. Dr. B.R. Ambedkar while drafting the Indian constitution had said, “*Although the Constitution may be Federal in structure*”, the drafting committee had used the term Union keeping in mind the several advantages.² One of the many reasons for choosing federal system for India is the enormous size of the country and its socio-cultural diversities; also federal system not only ensures efficient governance but also reconciles national unity with regional autonomy.

Typical Features of an Indian Federal Polity

Distribution of Power

While in a unitary State, there is only one government- the central government also known as the union or the national government, in a Federal State, there are two governments- the Union and the government of each component state.

Though a unitary state may create local sub-divisions but those local authorities fail to enjoy any autonomy of their own and exercise only such powers as are from time to time assigned to them by the central government and becomes competent for the national government to revoke the delegated powers or any of them at its will.

A Federal State, on the other hand, is the fusion of several states into a single state in regard to matters affecting common interests, while each component states enjoy autonomy regarding matters.

Written Constitution

Since a division powers between two governmental authorities is an essential attribute of a federation, it is evident that such division must be effected by a written Constitution.

A Federal system thus postulates a written constitution which sets up two governments- national and regional, and demarcates the powers that may be exercised by each of them. Distribution of powers as between the several Governments and their organs, in order to be

²DURGA DASBASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 55(LEXIS NEXIS ed. 2014).

workable and stable and the limitations upon them to be enforceable must be precisely defined by a written instrument.³

Supremacy of the Constitution

India's Constitution is additionally preeminent and not the hand-made of either the Centre or of the States. In the event that for any reason any organ of the State sets out to abuse any arrangement of the Constitution, the courts of laws are there to guarantee that pride of the Constitution is maintained no matter what.

Rigid Constitution

The Indian Constitution is to a great extent an inflexible Constitution. Every one of the arrangements of the Constitution concerning Union-State relations can be corrected just by the joint activities of the State Legislatures and the Union Parliament. Such arrangements can be corrected just if the amend-ment is passed by a 66% lion's share of the individuals present and casting a ballot in the Parliament (which should likewise establish the total larger part of the all-out enrolment) and approved by somewhere around one-portion of the States.⁴

Authority of Courts

In India, the Constitution has accommodated a Supreme Court and each exertion has been made to see that the legal executive in India is autonomous and incomparable. The Supreme Court of India can announce a law as illegal or ultra vires, in the event that it repudiates any arrangements of the Constitution. So as to guarantee the unprejudiced nature of the legal executive, our judges are not remov-able by the Executive and their pay rates can't be abridged by Parliament.

Dual Government Polity

³DURGA DAS BASU, COMPARATIVE FEDERALISM 23(WADHWA AND COMPANY ed. 2008).

⁴NegiMohita, 7 Main Federal Features of the Indian Constitution, YOURARTICLELIBRARY.COM (Jan. 12, 2019, 3:09 PM),<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjTmvHQ9OffAhXNR30KHZ6hAKYQFjAAegQICxAB&url=http%3A%2F%2Fww, w.yourarticlelibrary.com%2Findian-constitution%2F7-main-federal-features-of-the-indian-constitution%2F24924&usg=AOvVaw1Hxt2x9m96EuE1y6Gu-GN9>.

In a federal State, there are two governments—the national or central government and the legislature of every segment unit. Be that as it may, in a unitary State there is just a single government, in particular the national government. In this way, India, as a bureaucratic framework, has a Central and State Government. Central having most of the powers vested in it and the states are under the authority of the Union government.

Bicameral Legislature

A bicameral framework is viewed as basic in a league since it is in the Upper House alone that the units can be given equivalent portrayal. The Constitution of India likewise accommodates a bicameral Legislature at the Centre comprising of Lok Sabha and Rajya Sabha.

While the Lok Sabha comprises of the chose agents of individuals, the Rajya Sabha principally comprises of delegates chosen by the State Legislative Assemblies. In any case, every one of the States has not been given equivalent portrayal in the Rajya Sabha.

Indian Federation in Particular

When Dr. Ambedkar had presented the Draft Constitution to the Constituent Assembly,⁵ he described the Constitution proposed to be federal, even though the word ‘Union’ was used in article 1(1) and it doesn’t mention the word ‘Federal’ in the preamble or part of the Constitution- *“in times of war, it is so designed as to make it work as though it was a unitary system.”*⁶

Indian Constitution is also known as Quasi-federal, because India is called as the “Union of States” and not Federation of States, as each sovereign state has no independent recognition as a state, but as a whole referred to India; and also because each state was not formed by any treaty with each other, but was imposed on them by the Indian statute and are not free to secede from India to accrue as an individual region.

Immediately after the decision of the partition of the country, a strong centre was inevitable reaction to the partition of India of the national leaders who were anxious to prevent any further fragmentations caused by regional and communal forces.

⁵VII CAD, pp. 31, 33, 35-57, 42-43.

⁶DURGA DAS BASU, COMPARATIVE FEDERALISM 116(WADHWA AND COMPANY Ed. 2008).

It was also decided that there will be three lists- Union, Concurrent & State list; whatever matters would be residue would be in the authority of the Union to decide and not the States, unlike in the U.S.A. where the residuary powers are vested to each sovereign state.

Before building the Constitution of India, Bangladesh and Pakistan had sequestered itself from India to be an independent country altogether. Nevertheless, during partition all the member states of India had been asked whether or not they want to secede from India or continue to be a part of the country, because once the constitution is written no state shall have the authority to ask to get separated and become an independent state. States can be reorganized to form new states.

Therefore, India in article 1(1), has written in it as “Union of states” and not federation of states as all the provinces are united to be collectively known as India, and none of the states shall have the privilege to get international recognition as an individual state, as no agreement or treaty had been signed between the states so as to have the liberty to secede itself from the country at any time according to their will.

American Federalism

In proclaiming autonomy in 1776, exceptionally incorporated unitary government under a lord was obviously dismissed. In sharp complexity, the first U.S. constitution, The Articles of Confederation, advanced a confederation of the states with exceptionally decentralized power aggregated at the state level and a frail focal government. As recently talked about, the Articles were not effective, and the 1787 Constitutional Convention met to make changes in our legislative structure. Instead of tweaking the confederation structure, a third alternative was basically invented- what we consider today a government framework or federalism. The bureaucratic plan isolates control between numerous dimensions of government- regularly state and national. As characterized, federalism is an institutional plan making generally self-governing dimensions of government, each ready to act straightforwardly for the benefit of the general population with allowed expert.

American federalism tries to adjust decentralization and centralization powers. We see decentralization when we cross state lines and experience distinctive tax collection levels and casting a ballot controls. Centralization is evident with the government's one of a kind expert to print cash. State outskirts intersections may welcome us with beautiful announcements, yet behind them lies a perplexing administrative plan that has organized connections among states and the national government since the late 1700s.

A remarkable component of the American legislative structure is a parity of both even and vertical division of forces. As an institutional/basic structure, federalism is expected to both protect state interests while making a solid association driven by a powerful brought together national government. Federalism separates control between different vertical layers or dimensions of government—national, state, province, area, neighbourhood, extraordinary district—taking into consideration numerous passageways for natives. The administrations by plan at the national and state levels, check and parity each other.

At each dimension of the U.S. government structure, control is additionally partitioned evenly by branches—authoritative, official, and legal. This detachment of forces highlight makes the U.S. government framework considerably increasingly particular, since not every administrative framework have such division of forces.⁷

The American federation has been described as “an indestructible Union composed indestructible states”.⁸ One of the essential elements of American federalism is the equality of the states under the Constitution. This principle is shown in the equality of the representation of the in the Upper House of the Federal Legislature i.e. the Senate.

Comparative Scrutiny between Indian & U.S.A. Federalism

Citizenship

In a unitary State, since there are not regional units, there is a provision of only single citizenship and a citizen of any part from that country, owes its citizenship to the Central government.

U.S.A. - The United States of America, as we know is formed by the Federation of States. Each provincial state has an agreement between each other and has the right to separate itself from the entire country at its own free will. Hence, the American Constitution provides for a dual citizenship to the citizens- one at birth or by naturalization, becomes a citizen of the country as well as of the state in which they are born.

⁷Federalism: Basic Structure of Government, Courses.Lumenlearning.Com/Americangoverment (Jan. 12,2019,3:10

PM),<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=15&cad=rja&uact=8&ved=2ahUKEwiH3K6i-->

LfAhUHTY8KHcUKDK0QFjAOegQICxAB&url=https%3A%2F%2Fcourses.lumenlearning.com%2Famericangovernment%2Fchapter%2Fintroduction-3%2F&usg=AOvVaw2wTWM3RnKjILt17zObWoHB.

⁸Texas v. White, (1868) 7 Wall, 700(720).

In the 14th Amendment, sec. 1(1), says, “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.”⁹

India – Although, India is a Federal country, yet in article 1(1), it is mentioned that India is a “Union of States”. Considering the mammoth size of the country and the socio-cultural diversity, our Constitution does not have a provision of Dual Citizenship, to avoid the possible accruing complications.

India provides with Single Citizenship, which adds to one more peculiarity of the Indian Federal Polity. There is no separate state citizenship in India, leading to which a citizen of India has the freedom to move freely and reside in any part of India as provided under section 19(d)(e).¹⁰

Nomenclature

It is ironic how curious the interpreters of the Constitution are to decode whether a particular form of Government is Federal or Unitary, and thus the Constitution one adopts, itself is not decisive in nature.

U.S.A.– Federation of a country includes a Dual Government, i.e. the Union Government and that of each existing Province. Since there are several regional governments, a single name cannot be assigned to such, hence the regional governments in America are known as “United States”, even though each regional province in America has an individual recognition.

India–Unlike the Federation of America, the Indian Federation is a contradictory to the very term of “Federal Government”. Even after being a Federal Government, the nomenclature of India is peculiar in its own kind. Each regional province has failed to acquire any independent recognition and as mentioned earlier, instead of being a Federation of States, India is a Union of States. The regional governments of India are called as “Union”.¹¹

Impact of Emergency upon Federal Powers

⁹ U.S.Const. Amend. Xiv, §1

¹⁰ India Const. Art.19, Cl.1 (D), (E).

¹¹India Const. Art. 300.

U.S.A.– There is provision for emergency in the American Constitution. Hence, this has resulted in no distribution of powers allotted to a particular government during any national emergency cannot be suspended by the Union.

In the American Constitution, the Legislative and the Executive power relating to national emergency is vested in the Central Government and the States have no authority to participate to exercise their powers.

India–Article 352-360, Part XVIII of the Indian Constitution, has provisions for national emergency. So far as an Emergency is concerned due to war, the Constituent Assembly shall have no difficulty in deciding whether the Central or the Regional government has the power to give out the orders.

The power of Proclamation of Emergency by declaring that India or any part of India is in a threat to be attacked by war is vested in the President, whenever he is satisfied (such a satisfaction is not personal, but felt by all the Union and the Cabinet Ministers headed by the Prime Minister, recommended to him) that there is enough threat for the country and is a possibility that it might be attacked by war.

Strong Central

Federalism means equal distribution of powers between the Union and the state.

U.S.A.–In the U.S.A. federation, there is a hierarchy of courts that is followed, with the Supreme Court at the head for the trial cases and other Federal cases and then each State has States Supreme Court, looking exclusively into the matters of each State and resolving regional disputes. Residuary powers are given to the States in the American Constitution.

India– India has therefore not adopted the American model of dual concept system of Courts. It has adopted the Canadian form of federation, where majority of the powers are vested in the Central, including the residuary powers.

Supreme Court is the head Court where all the appeals are meted out, then is High Court for each State, and then are the District Courts and Talukas.

Supremacy of the Constitution

U.S.A. – The United States of America has two Constitutions. The Federal or National Constitutional is Constitution of U.S.A., while each of the 50 States a separate written

Constitution of its own. Though the States have their own Constitution, yet the content of all the Constitutions are familiar to each other as well as the National Constitution of U.S.A. which gives a detailed provision of the Legislative, Executive and Judiciary. The State Constitution also has provisions of making amendments to itself.

India-India has a single written Constitution which is bound to be followed by all the states and citizens (except in the state of Jammu & Kashmir).¹² Indian Constitution is the lengthiest constitution of the world. As India is known as the Union of States, it has no bifurcation in the quantity of the Constitution and has a single Constitution which is applicable to the whole of India. Also, another reason to have only one Constitution was to maintain the regional autonomy and to avoid any further complication which was a probability due to the socio- cultural diversity.

Authority of Courts

U.S.A. – Having a Bi-Constitution system, gives rise to a perplex and complex situation and ambiguity as to which government (Union or State) has majority of powers vested in itself.

In the United States of America, the States have been vested the residuary powers and enjoy the superior position along with independent existence and international recognition.

India-While America has let the States enjoy a superior position, India does not enjoy so. The States do not majorly enjoy any specific power and are bound to follow the orders from the Union Government. The residuary powers are allotted to the Central Government and also the States cannot make any amendment to the Constitution.

Appointment of the State Governor

U.S.A.-In the U.S.A., the Governor is directly elected by the people of the State, the Central Government doesn't interfere in the election of the Governor.¹³

India-Unlike American Constitution, the Governor of each State is appointed by the President.¹⁴ As mentioned under Article 155 of the Indian Constitution, "The Governor of the State shall be appointed by the President by warrant under his hand and seal". Regional State has no authority regarding the appointment of the Governor.

¹²India Const. Art.370.

¹³Stedman, State And Local Governments 127 (1976).

¹⁴India Const. Art.155.

Federal Control Over State

U.S.A.-The Constitution of America permits the States to have their own Constitution which must share equal ideals as those of the National Constitution. While the Constitution of U.S.A. permits the States of America to have their own Constitution, it can so occur, provided the following conditions are fulfilled:

1. If any State Constitution adopts a Constitution which does not have a “Republican form of Government” or overturn such a Government, the Federal Government shall have the right to restore the Republican order.¹⁵
2. In case any conflict arises between the Federal Constitution and the State Constitution, the Federal Constitution will prevail, “notwithstanding anything in the Constitution of any State to the contrary.”¹⁶

India-As mentioned earlier, the States do not enjoy any exclusive power over the Federal Constitution, hence only the National Constitution of India prevails which the citizens of India are to abide by.

There is no separate Constitution for any State but for Jammu & Kashmir which has been given special provisions in Part XXI (under Article 370), but the President of India still has the right to declare emergency upon the State as per his satisfaction.¹⁷

Administrative Functions

U.S.A.-The application of the principle of ‘dual government’ and both the governments i.e. the Union and the States do not encroach upon each other’s administration.

Thus, the Union has separate administration police for the enforcement of the administrative laws of the Union & the State has its own set of administrative police. The States are also responsible for the administration of subjects which are not granted by the Union Constitution.

India-The powers related to administrative functions are provided under the Articles 256-263 of the Constitution of India.¹⁸

¹⁵U.S. Const. Art. IV, §4.

¹⁶U.S. Const. Art. VI, §2.

¹⁷India Const. Art.370.

The State has no authority to exercise any administrative function without getting the permission of the Union Government. Constitution of India has imposed restrictions on states to give scope to the Union for the executive authority. In compliance with the Articles, the executive power of State should be exercised abiding by the laws of the Parliament and does not impede the exercise of Union's power in State. There is no bifurcation of the Administrative powers between the State and the Union.

Position of States in the Federation

U.S.A.—States in America hold a superior position than that of the Federal Government. Each Federal Government has an independent recognition and has its own Constitution which its member citizens follow in its home State and every State has the power to amend its Constitution's provisions and has provisions for state administrative laws.

India—It has been evidently vivid, from the history of the Constitution of India as well as written earlier in this article, the States hold a status inferior to that of the Union.

Location of Residuary Powers

Allocation of residuary powers by the Constitutional distribution of powers was regarded as an element to test the Federalism of a particular Constitution. A "true" Federal Constitution is considered one in which allocates its residuary powers to the States.

U.S.A. —The American Government is regarded as a real Federal Constitution. Federalism government when formed in a country due to the agreement between the States and the Union, the States shall not surrender to the Union which necessarily should remain in the States.

The 10th Amendment of the Constitution of U.S.A. says , *"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."*¹⁹

India—While in Unitary form of Government, all the powers are vested in the Union Government the Federal Government distributes its powers equally to the Union and its member States. Federal Constitution of India is known as Quasi-Federal or Pseudo-Federal as the States of India does not have the permission to secede itself from the Union neither

¹⁸India Const. Art.256, Art.257, Art.258, Art.259, Art.260, Art.261, Art. 262, Art.263.

¹⁹U.S.A. Consti. Amend. X.

has an independent recognition as the States hold an inferior position to that of the Union and no Residuary Powers are given to the State and are vested in the Union.

Provision of Settlement of Disputes

The powers of all the units of the Government are limited to the Federal Government. The disputes between Union and Union, State and Union and State and State are to be resolved as mentioned in the written Constitution of a particular country.

Through 'Judicial Review', the courts take up the cases of disputes and resolve them.

Violation of some substantive limitation imposed by the Constitution:-

U.S.A—Substantive limitations are to be found in provisions such as Article I, section 10; Article I, section 9(clause 5-6).

India— Under Article 286, 301,303-304, of the Constitution of India limitations are imposed on the State and Union legislatures.

Sovereignty in a Federation

“Sovereignty” is the root of Federal Government. If a country doesn't adopt sovereignty in the functioning of their Constitution, it shall not be declared as a Federal Government.

U.S.A.— Political Power vested by the Constitution into the Federal and the State Government are well within the boundaries of the respective functions and both the governments maintain the sovereignty of both the governments and do not interfere in each other's administration.²⁰

India—Unlike U.S.A., the States do not have the sovereignty to function and exercise their powers without the permission of the Union. They hold an inferior position as compared to the Union and therefore the Constitution of India, in Article 1 has it written as:“India is the Union of States.”

Right to Secede

²⁰U.S.A. Consti. Amend. X.

U.S.A.-All the 50 States of America had made an agreement with each other, hence U.S.A. is known as “Federation of States”. Hence every State has the right to separate itself from the Federal Government at their free will at any time.

India -Before the drafting of the Constitution, every State had been asked to decide whether or not to be a part of India, hence there had been the partition between India and Pakistan and Bangladesh, therefore the Indian Constitution does not permit its member States to secede its territory from the territory of India.

Nature of Polity

U.S.A.-To resolve the issue of reconciliation of national unity with the States, the framers of the American Constitution made a logical nomenclature of every essential element with respect to Sovereignty and created a dual polity with a feature of dual citizenship along with a double set of officials and double system of Courts.

A citizen of America is not only the citizen of the United States of America but also a citizen of the State he is born in; both the Federal and the State Governments are independent to each other and operate directly upon the citizen who is a citizen of both the governments.

India-Like the Canadian Constitution, Indian constitution does not permit its citizens to have a dual citizenship and is considered to be the citizen of the Central Government only.

Though the Union and the State has separate public services, there is no bifurcation in the administration of the Union and the State laws as in the American Constitution.

Modes of Acquisition

International law provides certain provisions through which a territory may be acquired by a State. These are:

Cession- A territory may be ceded by one State to another by voluntary agreement such as sale, gift of exchange or treaty.

Occupation- In order to acquire valid title of occupation, there must be some official act of appropriation on behalf of the occupying state.

Prescription- Title to a territory may be acquired by long possession and user, on a principle akin to that of prescriptive acquisition under municipal law.

Accretion- This means the addition of new land to the existing territory of a State by the action of water.

Subjugation- Means military conquest followed by annexation.

U.S.A.-Article IV, section 3(2) of the American Constitution confers plenary makes a provision “to make all needful regulations respecting the territory, belonging to the United States”, but does not make any provision of how a territory may be acquired by the U.S.A.

Examples:

1. Purchase: Louisiana was purchased from France, Alaska from Russia, Virgin Islands from Denmark.
2. War: Philippine Islands, Puerto Rico, Guam, by the Spanish American War.
3. Treaty: Panama Canal Zone by treaty with Panama
4. Cession: California, Utah, Arizona, Nevada, Florida

India-Article 1(c) of the Indian Constitution provides that apart from the territories included in the several parts of the first schedule, similar other territories may be acquired by India at any time and shall include to be a part of the Indian territory and no existing State shall not secede itself from the territory of India.

Like Pondicherry became a part of the ‘Territory of India’.

Conclusion

This research paper has covered a wider area of comparison between the Federal nature of India and U.S.A.

U.S.A. has one of the oldest constitutions in the world (1787), whose elements have been adopted by several countries, India being one of them. The concept of federalism was adopted from the American Constitution, though Indian Federalism has the same concept of that of the Canadian Federalism (Union of States).

As we know, a country can either be a unitary form of government or a Federal form. Unitary is one in which there is only Union or Central or National government, which has the authority to run the whole country (Britain, Belgium, China, Finland, Switzerland, etc.), i.e. the whole power is vested with the union of the country. Whereas the Federal form of government is one in which, the Union and the respective states, both have power to run the

country in coordination & cooperation, for efficient functioning of the country (Australia, Canada, U.S.A., India, Switzerland, etc.).

This research paper has exclusively given a glimpse of the Indian and the American Federal polity and henceforth has drawn a critical scrutiny between the federal structures of both the countries and how both have similar and distinguishable Federal features in their respective Constitutions, making them both importantly distinguishable in their character.