AMERICAN AND INDIAN FEDERALISMS: A COMPARATIVE ANALYSIS

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ABSTRACT

Federalism, in its most basic form, is the division of legislative and executive power between the federal government and state and local governments, allowing each government to operate independently within its own sphere. This paper explores the concept of federalism and attempts a comparative analysis of Indian and American federalism. It looks at both countries' federal structures in light of the traditional conception of federalism. The importance of federalism in a country like India is critical because different people from various backgrounds and cultures coexist. It is neither possible nor desirable for a single government to make laws for the entire country in the interests of people of various cultures, languages, and backgrounds. As a result, the Central government may make laws for the entire and any part of India's territory, while state governments may make and implement laws based on the social, economic, and political conditions of people living in various areas. Federalism in the modern era is a principle of compromise between two opposing forces: the expansion of common interests and the need for local autonomy.

Keywords- Division, co-exist, legislative, executive, power, traditional.

1. INTRODUCTION

In the current nation-state system, the word "federalism" refers to the legally assigned allocation of powers between two or three tiers of government—one at the national level and the other at the regional, state, or local level. The most important feature of a federal system is that the central and state governments operate in their respective states with absolutely sound independence from one another. The word "federation" comes from the Latin word foedus, which means "treaty" or "agreement." A federation, then, is a constitutional arrangement established through a treaty or agreement between constituent units; it entails the sharing of decision-making authority and devolution of power between national and local governmental units so that each unit is given a sphere of power and authority that it alone can exercise, while other powers must be shared.

The federation should strive toward a mutually interdependent political leadership, with an emphasis on maintaining balance so that neither level of government becomes so dominant that it can control the decisions of the other. It's a kind of political organization that brings together independent states or other polities under a larger political structure while preserving their independence. Federal systems do this by ensuring that basic policies be developed and adopted through some form of negotiation, allowing all members to participate in the decision-making process. The political principles that underpin federal institutions emphasize the importance of bargaining and negotiated coordination among multiple power centres, as well as the benefits of decentralized power centres in protecting individual and local liberty. A
federation should be able to exert power, but not hegemony; to negotiate, but not to stipulate, and to convince, but not to coerce the other sovereign.

Understanding the definition of the word "federation" opens up a glimpse into the various types of federal policies. A federation is created when a few contiguous provincial units come together jointly to form a strong union. The United States of America is a classic example of a "federation of states." Aside from this concept of provincial units "coming together" to form the federation, there is another federal model in which a geographically expansive and culturally fragmented state grants autonomy to its provinces for administrative convenience and to represent regional interests. The "holding together" federation is the name for this kind of federation. The second model has been widely adopted in India's federalism. The Indian Constitution established a federal political structure, which means there are two levels of government: national and state. The Indian Constitution, on the other hand, has made the Union government structurally more dominant than the provinces, resulting in the apparent paradox of "centralized federalism."

1.1. Research Question

This research paper highlights the real meaning of Federalism and its different types. The researchers have prepared a well analysed comparative study among two different countries for the better understanding of the subject. It also attempts to look at “whether India has involved to become a true form of Federation after 73 years of Independence?"

1.2. Literature Review

Federalism existed before the sovereign state and has a wider resonance than state sovereignty and nationalism. Federalism and the research and experience of European integration have a complicated and mixed relationship. The EU has clear federal characteristics, but no one agrees that it is federal or even has the capacity to become one. According to John Defterios, the more widely accepted EU federalism is, the more analogies to federal states are drawn. Defterio: The fact that the EU's nature is so contested has bearings on the propensity for compare it with federal systems. Agriculture, democracy, environmental policy, and institutional development are the main areas of focus for Tortola, he writes. He cites a 2014 study of 104 EU-US comparisons, noting that the majority of the comparisons are post-Maastricht. The most of these experiments have a federal orientation, but not all, he adds, with 17 out of the 104 being non-federal.

Recent research has compared the EU and the United States as two federal-style regimes. There are some contributions on the role of legitimacy in multilevel federal regimes like the United States and the European Union. Kelemen (2011)\(^1\) explores the degree to which the EU adopts an American-style adversarial legalism in Euro-legalism. In Search of the Federal Spirit (2012)\(^2\), Burgess looked at a variety of

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\(^1\) Kelemen(2011)- The Transformation of Law and Regulation in the European Union

\(^2\) Federal Spirit(2012)- New Theoretical and Empirical Perspectives in Comparative Federalism
federal philosophers in an attempt to define the vague yet essential concept of federal spirit. He considers the EU to be an unfinished federation. In this post, we look at some of the more recent EU-US parallels. Finally, we evaluate the EU's status as a federal-style organization. According to Michael Burgess (2012) and Mikhail Filippov, the EU is a "federal-type entity" (2004).

Concluding that the EU is a federal federation in need of completion. Jenna Bednar, Thomas Hueglin, and Alan Fenna: In a globalizing environment, European treaty federalism may serve as a model of multilevel government. They argue for the importance of casting a broad institutional net, emphasizing the role of political parties as integrating agents in particular. At least two different types of contrast are used in these analyses. One is to comprehend the EU's essence and uniqueness in federal terms. The other makes use of analogy to comprehend different facets of the European Union's and other federations' operations. The emphasis is on politics and policy; and analogy is much more often used to comprehend politics than it is to comprehend polity issues. According to them, there is no overt federal imprint in the vast body of study on Europeanization of member states and territories, which is fraught with similarities. The authors argue that federalism analysis currently "appears to lack the state of development achieved in other areas of comparative politics in recent decades" (2013: 1, 1) They come to the conclusion that further federalist studies are required in the study of European federalism and the evolution of federal structures within the EU.

They argue that the EU shares structural characteristics with the United States, making both structures subject to the "joint-decision trap." In contrast to other fields and subfields, the federal component in EU studies is clearly underdeveloped. While systematic similarities of the EU with federal states exist, they have yet to blossom into a vibrant research program. A well-defined and well-defined research policy is essential for effect. According to Benz and Broschek, the overall absence of federalism in EU studies is exacerbated by comparative federalism's relative underdevelopment. Since there is a small and dispersed body of EU federalism research, it has a minimal effect on the policy agendas of EU studies.

1.3. Scope and Objective

In order to find out and understand the meaning and types of Federalism. and .This paper aims to prepare a well analysed study to compare and contrast the Federations of two different countries- India and USA.

1.4. Methodology

Throughout the report the researchers have adopted a doctrinal approach. Owing to the lack and impossibility of the compilation of the first hand data, a secondary source of information was used. The content is descriptive and analytical. An in dept. study was carried out by the researchers on the subject of Federalism, along with the planning to understand its different forms in different countries.

2. INDIAN FEDERALISM

2.1. Introduction & Case Laws
The constitutional law consists of both legal in the strict sense and usages, generally referred to as conventions, which are recognised as binding by all those involved in government even though they are not enacted. Many rules and practices are really not part of the law in the sense that breaking them will result in legal action.

The Indian Constitution is said to be a federal system because it has strict demarcation of borders between the central and state governments, equivalent to that of the United States. India's legislative and executive powers are shared between the center and the states. The below are the most important requirements for a federal constitution:

1. Powers are distributed between the center and the unit states, creating a federation with a variety of co-ordinate bodies governed by a constitution.
2. Rigidity – Neither the center nor the states have the authority to change the constitution's clause on separation of powers.
3. A written constitution
4. Domination of the constitution - Neither the center nor the states have the authority to overturn the constitution.
5. An independent body and unprejudiced authority (Eg. Judiciary)

In certain circumstances, the Center will infringe on places earmarked only for the states, which is also believed to be non-federal in India. As a result, it violates the concept of federalism by making the state synonymous with the centre. As a result, it is also said to have a unitary government. Only during times of war or emergency does such a unitary system of government become apparent.

A federal constitution creates a two-tiered polity, with the Union at the centre and the States on the periphery, each endowed with independent powers to be exercised in the fields delegated to them by the constitution. Both are in several ways complementary to each other's abilities. In reality, the fundamental concept of federalism is that the legislative, executive, and financial power is split between the center and the states by the Constitution itself, not by a statute enacted by the center.

The Indian Constitution also establishes a balance of powers between the Executive, Legislative, and Judicial branches. If courts are stripped of their authority, the country's citizens' fundamental rights will be reduced to a decoration, and citizens will be treated as puppets in the custody of the sovereign. As a result, it will lead to a regime that is incompatible with democracy and will destroy its spirit. The freedom to splice the Constitution's name is paired with a clause that no Court of Law shall rule on the legality of any splicing and that the amending rights are unrestricted. If a constitutional amendment cannot be declared unconstitutional, even if it destroys the fundamental framework of the Constitution, a statute enacted in response to it will be immune from legal scrutiny because it will be protected by the constitutional amendment created, and no organ will be able to overrule it.
State of West Bengal V. Union of India was the first major case in which the Supreme Court addressed this issue in depth. The exercising of sovereign powers by Indian states was the central issue in this situation. The Parliament's legal ability to pass a law requiring the Union to acquire land and other assets vested in or controlled by the state, as well as the sovereign power of states as separate bodies, were also investigated. The Supreme Court of India ruled that the Indian Constitution did not have a total federalism principle.

Article 13 of the Indian Constitution will thus become a non-issue, and it can be overlooked because even ordinary laws will be exempt from judicial review because they were enacted on the basis of a constitutional amendment that is not subject to appeal. It was mentioned in [Minerva Mills Ltd. & others V/s Union of India; AIR 1980 SC 17894], a landmark case decided by the Supreme Court. The Supreme Court stated in Pradeep Jain V. Union of India that India is not a federal state in the traditional sense of the term. It is not a treaty between independent states that have come together to form a federation in exchange for unmistakably federal characteristics. The Supreme Court reiterated in Ganga Ram Moolchandani v. State of Rajasthan that the Indian Constitution is fundamentally democratic in nature and is characterized by the conventional features of a federal republic, namely the sovereignty of the Constitution, the separation of powers between the Union and the States, and the presence of an independent judiciary. In ITC LTD v Agricultural Produce Market Committee, the Supreme Court reached a similar conclusion. The Supreme Court ruled in the case of Kesavananda Bharati vs. State of Kerala (1976) that all provisions of the constitution, including Fundamental Rights, can be amended. The basic structure of the constitution, such as secularism, democracy, federalism, and separation of powers, cannot be changed by Parliament. This decision, known as the "Basic Structure Doctrine," is generally considered as a pivotal part in Indian history.

The Supreme Court expanded the doctrine’s value as equivalent to any parliamentary law in the 1978 Maneka Gandhi v. Union of India case. According to the ruling, no act of parliament can be declared a statute if it violates the constitution's fundamental framework. This landmark guarantee of fundamental rights was hailed as a rare case of judicial independence in upholding fundamental rights' sanctity. Fundamental Rights can only be amended by a constitutional amendment, so their presence serves as a check on the executive branch as well as the Parliament and state legislatures. To maintain national security and public order, the implementation of a state of emergency can result in a temporary suspension of the rights granted by Article

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3 State of West Bengal V. Union of India [1962] AIR 1241, SCR(1) 371
4 Minerva Mills Ltd. & others V/s Union of India; AIR 1980 SC 1789
5 Pradeep Jain V. Union of India [1984] AIR 1420, 1984 SCR(3) 942
6 Moolchandani v. State of Rajasthan[1965] I SCR 933
7 ITC LTD v Agricultural Produce Market Committee [2002] INSC34
19 (including freedoms of expression, assembly, and movement, among other things).

The Supreme Court is an independent authority to declare the Acts of the Union and States ultra-vires if either of them entrenches the defined powers of each other. Thus while in normal times our Constitution is federal, in emergency period it becomes unitary. Therefore, we can even call our Indian Constitution as semi-federal.

2.2. Issues and Challenges faced by Indian Federalism

1. Regionalism
   • Federalism works better as a federal mechanism where power distribution between the center and the states is decentralized.
   □ India's pluralistic nature gives rise to a variety of influences, including regionalism. People in the far northeast often feel cut off from New Delhi, while people in the southern part of the country with larger states feel forgotten after having lived in larger states.
   □ Despite India's successful federal rule over the years of independence, regionalism or love for one's home state still exists in various parts of the country.
   □ The demand for more states has gained traction in recent years, especially after the foundation of Telangana in 2014. Recent demands, such as the four-fold division of Uttar Pradesh and the creation of Gorkhaland from West Bengal, are examples of aggressive regionalism that threaten India's federal structure.
   • Gorkhaland, Bodoland, and KarbiAnglong agitations have resurfaced. This is in addition to new calls in Maharashtra for a separate Vidarbha State, as well as Harit Pradesh and Poorvanchal in Uttar Pradesh. The further states there are, the more the center can be taken captive by state parties on national issues.
   • West Bengal, for example, has threatened to withdraw from India's Teesta River Waters Treaty with Bangladesh due to the potential cost to West Bengal. Also increasing regional powers may have an impact on successful foreign policy, as the federal government may be forced to bend to the will of a single state. In order to avoid a reaction from Tamil Nadu, India had to vote in favour of a UNHRC resolution for Sri Lanka in 2012.

2. Division of Powers
   • Unlike the United States and Australia, India’s strength is distributed by the Constitution’s Seventh Schedule's Three Lists. Both the Central and State governments have distinct powers enumerated in the Union and State lists, respectively, while the Concurrent list includes powers shared by both sets of governments. The central government is in charge of the residuary powers.
   • All matters of national significance, such as defence, foreign affairs, railways, and currency, are allocated to the central government, while matters largely of local or regional importance, such as education, public health, police, and local administration, are assigned to regional governments. The Concurrent List is devoted to issues that include the participation of both the center and the states, such as criminal law, forest management, and economic and social planning. In the event of a dispute over laws on any of the subjects included in the
Concurrent List, though, the Centre takes precedence over the States.

- Article 200 (reservation of State Bills by the Governor for President's consideration), emergency provisions under Articles 352, 356 and 360, and compulsory compliance by the States with the executive authority of the Centre under Articles 256 and 257 all contribute to centralization of power, which has become a major source of concern among the states. As a result, centralization poses a challenge to Indian federalism.

3. Absence of Fiscal Federalism
   - The Indian Constitution, while expressly vesting the Centre with greater powers of taxation, also provides for an institutional mechanism — the Finance Commission — to determine the share of the States in the Central tax revenues by way of correcting this imbalance.
   - When deciding on tax devolution and grant arrangements, the Finance Commission must take into account both the vertical and horizontal imbalances between states.
   - Currently, the States receive approximately 40% of all Central taxes (tax and non-tax), which includes grants from the Planning Commission and other Central Ministries.
   - Despite the 80th Amendment's expansion of the shareable pool to cover all central revenues, the Centre's and States' income accruals have remained relatively unchanged.
   - Asymmetric revenue distribution and resource scarcity in the periphery lead to unequal growth throughout the region. Many states worry that the new Goods and Services Tax will undermine India's fiscal federalism. It has merged the different taxes into a single levy, the proceeds of which would be distributed among the states in a predetermined ratio. Many Indian states are calling for greater financial sovereignty.

4. Unequal Representation of Units
   - Most federations around the world have turned to constitutional mechanisms such as proportional representation of units or states in the Second Chamber and state approval of all constitutional changes to avoid the evil of larger units having disproportionate control over smaller units in a union.
   - In India, there is no provision for proportional representation of states in the Rajya Sabha, the Second Chamber, and the states have no significant voice in the Constitution's periodic amendments.

5. Centralized Amendment Power.
   The authority to change the Federal Constitution is exercised by the federation and its constituent units in a traditional federation. Under Article 368 and other provisions of the Indian Constitution, the Centre has the authority to amend the Constitution. About the fact that approval by half of the states is sought in certain small areas, the Indian Union's states have practically no influence in this crucial field of governance.

6. The Indestructible Union with Destructible Units
   - Unlike successful federations, India's Constitution doesn’t have the provision for the secession of states from the Union of India. The Union has been made indestructible with a view to protecting unity and integrity in a country like India.
   - This traditional Indian agreement, on the other hand, restrains the growing desire for independence from the Indian Union. The
simmering desire for a "Dravida Nadu" comprising southern states, as well as separatist voices in India's east and west, pose a serious danger to the country's independence and sovereignty.

- Even if it seems to be anti-federal in nature, it has proven to be a blessing in disguise because if states had been granted complete autonomy in determining their geographical territories, there would have been a lot of anarchy and impasses, resulting in severe law and order issues in the region.
- A clause of the Constitutions of all major federal democracies states that a state cannot be dissolved or combined with another state without its approval. The meaning of federalism is this. The Union Parliament, on the other hand, has the authority to create and restructure governments.
- Our forefathers were prudent in tailoring the Constitution to meet our needs. While the Constitution did not require the state's prior approval, every state has been created with it, in most cases after a thorough, unbiased review by an independent commission.
- However, in some circumstances, the Union Government overlooks the states in question when it comes to the partition of their territorial territories. The latest establishment of the Telangana state is an example of this.
- The Union government's tenacious efforts, as well as its repeated assertions that Andhra Pradesh will be split regardless of the legislature's views, pose a serious threat to Indian federalism and unification.
- The Centre should give due weight to the views of concerned states in sensitive matters such as redrawing the territory of a state in India. Any unconstitutional decision by the Centre made without the approval of the states and without a negotiated resolution would essentially transform states into municipalities, and India into a unitary state. Neither the framers of the Constitution nor the architects of the nation-state expected such a result. If such an attempt is made to render India essentially unitary at this time, India's future will be jeopardized.

7. Office of the governor
- The office of the Governor of each state in India has long been a contentious issue, as it can jeopardize the Indian Union's federal character. The Centre's apparent arbitrariness in violating such constitutional authority has sparked acrimonious debates and polarized views in the nation.
- The imposition of President's Rule in Arunachal Pradesh in January 2016, when the state was already governed by an elected government, was an unusual occurrence in Indian constitutional history. On July 13, the Supreme Court ruled that the Governor's decision was unconstitutional and demanded that the Congress government in Arunachal Pradesh be restored.
- The Central Government's tacit support for the Governor in this crucial matter speaks volumes about India's quasi-federal structure's inherent flaws. The Central Government's misuse of authority under Article 356 is well documented in the country's constitutional past. This has culminated in the consolidation of centralized powers and the disaffection of constituent states with the Indian Polity's federal character.

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10 Dravida Nadu- It is the name of a hypothetical “sovereign state” demanded by Justice Party
8. Single Constitution and Citizenship
- Unlike the United States Constitution, the Indian Constitution establishes a constitution for the states as well, and no territory, with the exception of Jammu and Kashmir, has the authority to determine its own constitution.
- Unlike other territorial constitutions around the world, the Indian Constitution establishes a single citizenship. It is founded on the principle of "one nation, one citizenship." Regardless of which state they reside in, they are both Indian people. The states do not grant a special identity as a state resident.

9. Integrated Services
The Indian federation is known for its integrated judiciary. Unlike other federations, India's Supreme Court is the apex court, with all other courts serving as its subordinates. There are no separate independent courts in the states that deal only with state affairs. In addition, India's voting, accounting, and auditing machinery are all connected. Many states and opponents regard the All Indian Services and central services as anti-federal. However, given the existence and depth of administration in India, such services are essential because they give governance an all-India flavour. These facilities are for the management of the Union Government's affairs.

10. Centralised Planning
Despite the fact that economic and social planning are included in the Concurrent List of the Constitution's Seventh Schedule, the Union Government has complete control over national and regional planning in India. Centralised preparation through the Planning Commission, now NITI Aayog11, a significant preponderance of legislative authority for the Union, the states' financial reliance on the Centre's mercy, and the states' administrative inferiority making them meek and feeble. The states are only responsible for filling in the vacant spaces in the document for planning purposes. In India, there is no state-specific planning board. It also contributes to state suffering and jeopardizes the smooth operation of the federal government throughout the region.

11. Language Conflicts
In India, linguistic diversity may often jeopardize the federal spirit of the Constitution. In India, the Constitution recognizes 22 languages. Aside from that, there are hundreds of dialects spoken in the country. When the federation's strongest unit tries to impose a single vocabulary on others, trouble ensues. The fight for India's official language is still raging. The resistance of the southern states to Hindi as India's official language has resulted in a deepening language crisis in the country.

12. Issue of Religion
India is a great example of religious diversity, which can lead to strife and disrupt the federation. However, the faith process should not have to be divisive all of the time. Religion may not trigger federation imbalances as long as there is fair tolerance on the part of the people and a sincere secular policy on the part of the government.

13. Physical Environment

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11 NITI Aayog- It is a policy think tank of the Government of India, established with the aim to achieve sustainable development goals with cooperative federalism
The physical world will also make it difficult for a federation to communicate. A federation with long and difficult contact lines would find it difficult to stay in touch with all of its units. It is possible to trigger confusion and tension, and this may have been one of the major reasons for the east wing's separation from Pakistan. Furthermore, in the absence of effective coordination, the poorest units are more likely to develop a sense of deprivation and believe that they are getting less than their equal share of growth support. Similar feelings exist in India's North-Eastern nations, which are causing trouble for the federation.

14. External forces
External forces can even obstruct a federation's progress. Interference from neighbouring countries is causing friction in India's North Eastern states. China's claim to a part of Arunachal Pradesh's territories on the Line of Actual Control jeopardizes India's territorial integrity. The Tamil problem in Sri Lanka is causing havoc in India. In the past, the suspected Pak hand in the Khalistan movement has played a role in undermining the Indian federation.

AMERICAN FEDERALISM

3.1. Introduction & Case Laws
In general, the Constitution sketches a federal system that seeks to balance the powers of decentralized and centralized governance; it does not, however, lay out basic operating procedures that specify how the states and federal governments can manage all policy contingencies. As a result, authorities at the state and federal levels have had some leeway in operating under the federal design of the Constitution. This has resulted in shifts in federalism's structure over time, changes that correlate to various historical phases and capture different balances between state and federal authority.

From 1789 to 1795, Alexander Hamilton served as George Washington's secretary of the Treasury, championing legislative attempts to establish a publicly chartered bank. The founding of the Bank of the United States, according to Hamilton, was entirely under Congress's jurisdiction, and he hoped that the bank would promote economic development, print and distribute paper currency, and provide government loans. About the fact that Washington's secretary of state, Thomas Jefferson, was adamantly opposed to Hamilton's proposal, claiming that the national government lacked the legislative authority to establish such an instrument, Hamilton was able to persuade the hesitant president to sign the bill.

When the bank's charter died in 1811, Jeffersonian Democratic-Republicans won the fight to save it from being renewed. However, the government's financial problems after the War of 1812, along with the country's financial system's fragility, persuaded Congress and then-President James Madison to establish the Second Bank of the United States in 1816. Many states voted against the Second Bank, claiming that the federal government was infringing on their civil rights.

When James McCulloch, an agent for the Baltimore branch of the Second Bank, declined to pay a tax levied by Maryland on all out-of-state chartered banks, a political showdown between Maryland and the federal government erupted. Two constitutional issues arose as a result of the
standoff: Is it legal for Congress to establish a national bank? Were states permitted to levy taxes on federal property? Chief Justice John Marshall argued in **McCulloch v. Maryland**\(^{12}\) that Congress could establish a national bank even if the Constitution did not specifically allow it.

The Supreme Court ruled that Congress must establish "all means which are appropriate" to fulfil "the legitimate ends" of the Constitution under the required and proper clause of Article I, Section 8. In other words, the bank was a useful tool for the national government to exercise some of its enumerated powers, such as regulating interstate commerce, collecting taxes, and borrowing money.

This decision defined the theory of implicit powers, giving Congress an enormous amount of discretionary authority in carrying out its constitutional obligations. On the question of whether states could tax federal property, the Supreme Court ruled in favour of the federal government. Legitimate national laws outweigh contradictory state laws under Article VI's supremacy clause. “The government of the Union, though limited in its powers, is supreme within its sphere of action, and its laws, when made in pursuance of the constitution, form the supreme law of the land,” the court said. Since “the ability to tax is the power to destroy,” Maryland's intervention was a violation of national sovereignty. The theory of national sovereignty was founded in this second decision, which forbids states from interfering with the national government's lawful activities. Another pivotal Supreme Court ruling in 1824 dealt with defining the extent of national authority. In **Gibbons v. Ogden**\(^{13}\), the court had to decide whether the federal government had exclusive power to control the licensing of steamboats traveling between New York and New Jersey under the commerce clause of Article I, Section 8.

Various states protested the power nationalization that had been underway since the late 1700s. When President John Adams signed the Sedition Act in 1798, making it illegal to publicly criticize the government, the Kentucky and Virginia legislatures passed resolutions calling the act invalid, claiming they had the authority to obey national laws. In effect, these resolutions expressed the legal rationale for the doctrine of nullification, which holds that states have the freedom to reject unjust national legislation.

President Andrew Jackson's tariff acts of 1828 and 1832 sparked a nullification crisis in the 1830s. Nullifiers, led by President Andrew Jackson's vice president, John Calhoun, argued that high tariffs on manufactured commodities favoured northern industrial interests while harming southern economies. South Carolina threatened to quit the Union after passing an Ordinance of Nullification calling all tariff acts null and void. The Force Bill, enacted in 1833 by the federal government, authorized President Andrew Jackson to use military force against states that opposed federal tariff laws.

During the Civil War, the ultimate showdown between national and state authorities occurred. Prior to the war, the Supreme Court held in **Dred Scott v.**
Sandford\textsuperscript{14} that the national government lacks the power to prohibit slavery in the territories. However, eleven southern states seceded from the United States after President Abraham Lincoln was elected in 1860, believing that the new president would oppose the practice of slavery. When Lincoln signed the Emancipation Proclamation in 1863, freeing all slaves in the rebellious states, what was once a struggle to protect the Union became a conflict to abolish slavery. The South's defeat had a major effect on the political balance between the states and the national government in two ways. First, the triumph of the Union put an end to states' rights to secede and contest legitimate national laws. Second, Congress placed many requirements for former Confederate states to be readmitted to the Union, including ratification of the Fourteenth and Fifteenth Amendments. In summary, after the Civil War, the political balance moved toward the central government, a trend that began many decades earlier with McCulloch v. Maryland (1819) and Gibbons v. Ogden (1829). (1824)

Between 1819 and the 1860s, the national government attempted to assert a position within the recently formed federal design, which frequently prompted states to protest in order to defend their own interests. The Supreme Court, with the exception of the Civil War, resolved power struggles between the states and the federal government. From a historical standpoint, the national sovereignty concept established during this time span limited the states' legislative authority rather than restricting their encroachment on national powers.

\textsuperscript{14} Dred Scott v. Sandford, 60 U.S. 393

### 2.2. Nature of US Federalism

#### Dual Federalism

The late 1870s marked the beginning of a new period in the evolution of federalism in the United States. Dual federalism gives the states and the national government exclusive power over clearly defined areas of jurisdiction. The levels of government, like the layers of a cake, are well defined and do not mix together. This idea of federalism arose as a result of two influences. For starters, many Supreme Court decisions have barred all state and federal governments from going outside their jurisdictional limits. Second, the dominant economic philosophy at the time despised government intervention in the industrial growth process.

The social landscape of the United States transformed as a result of industrialization. The accumulation of consumer influence was one of its negative consequences. Collusive behaviour by influential companies arose in many sectors as a result of the lack of national regulatory oversight to ensure equity in trading practices.

In 1887, Congress passed the Interstate Commerce Act, which established the Interstate Commerce Commission, to combat pervasive anticompetitive activities in the railroad industry. The Sherman Antitrust Act of 1890, which made it illegal to monopolize, attempt to monopolize, and conspire in restraining commerce, expanded national legislative power three years later. Federal laws in the early stages of industrial capitalism were mostly based on encouraging market competition rather than
solving the societal dislocations caused by market activities, which the government started to solve in the 1930s.

Early in its history, the current federal regulatory system was dealt a legal setback. The Supreme Court held in United States v. E. C. Knight in 1895 that the central government lacked the authority to regulate manufacturing. The case arose after the government threatened to overturn American Sugar's acquisition of four sugar refineries, which would grant the firm a dominant position in the market, leveraging its legislative authority under the Sherman Act. The court argued that the national government's regulatory authority only extended to commercial activities, not to the manufacture of products, by distinguishing between the two. The court argued that if industrial practices were covered by the Constitution's commerce clause, "comparatively little of business operations would be left for state control."

Some states sought to control working conditions in the late 1800s. For example, in 1897, New York State passed the Bakeshop Act, which made it illegal for bakery workers to work more than sixty hours a week. The Supreme Court held in Lochner v. New York that a state statute that limited work hours was unconstitutional because it breached the Fourteenth Amendment's due process clause. In other words, the court said that the freedom to sell and buy labour is a "liberty of the individual" protected by the Constitution. The federal government even looked at working practices, but it came to the same conclusion as the Lochner case.

Cooperative Federalism

The Great Depression of the 1930s took the country to its knees in ways it had never seen before. Between 1929 and 1933, the national unemployment rate hit 25%, industrial output fell by half, stock exchange reserves fell by more than half, thousands of banks failed, and the gross domestic product shrank by a fourth. Given the severity of the economic depression, the federal government was under pressure to formulate a strong national response with the states. Cooperative federalism arose out of necessity and continued well into the twentieth century, when both the federal and state governments benefited from it. In this model, all branches of government organized their efforts to address national issues like the Great Depression and the subsequent civil rights movement. In comparison to dual federalism, which erodes the jurisdictional borders between the states and the national government, resulting in the layers of a marble cake blending together. The period of cooperative federalism aided the eventual incursion of national authority into state jurisdictions, as well as the extension of the national government's control in parallel policy areas.

The services of the New Deal President Franklin D. Roosevelt's proposal to combat the Great Depression ran afoul of the Supreme Court justices' dual-federalism mind-set in the 1930s. The National Industrial Recovery Act and the Agricultural Adjustment Act, for example, were struck down by the court on the basis that the

15 United States v. E. C. Knight; 156 U.S. 1 (1895)
16 Lochner v. New York, 198 U.S. 45 (1905)
federal government was intervening in matters that should have been left to the states. Roosevelt was enraged by the court's obstructionist stance, prompting him to propose a court-packing scheme in 1937 that would add one new justice for any one above the age of seventy, enabling the president to nominate a limit of six new justices. The Supreme Court continued to lean in favour of the New Deal before Congress took action on the initiative, when Chief Justice Charles Evans Hughes and Justice Owen Roberts changed their minds on federalism.

In *National Labour Relations Board (NLRB) v. Jones and Laughlin Steel* 17 for example, the Supreme Court upheld the National Labour Relations Act of 1935, stating that Congress had the power to control all manufacturing activities and labour-management relations under the commerce clause. The New Deal altered Americans' perceptions of the federal government. Prior to the Great Depression, the government had no financial assistance, social benefits, or economic rights. It included old-age benefits (Social Security), unemployment insurance, agricultural incentives, job mobilization protections, and a host of other public programs established under Roosevelt's administration after the New Deal ended.

**New Federalism**

Attempts were made to undo the trend of nationalization under the administrations of Presidents Richard Nixon (1969–1974) and Ronald Reagan (1981–1989), in order to regain states' prominence in policy areas where the federal government had previously moved. The theory behind new federalism is that decentralizing policies increases governmental performance, lowers total government expenditures, and improves policy outcomes. General revenue share arrangements were established under Nixon's presidency, which allocated funds to state and local governments with little limits on how they were spent. Ronald Reagan's presidency signalled the start of a "devolution revolution" in US federalism, with the president promising to restore power to the states in accordance with the Constitution. In the Omnibus Budget Reconciliation Act of 1981, congressional leaders and President Ronald Reagan streamlined and reformulated a number of federal grant programs relating to social welfare in order to allow state and local officials more flexibility in how they spend federal funds.

Reagan, on the other hand, had a shaky track record when it came to supporting new federalism. This was partially due to resistance to the president's devolution plan from Democrats in Congress, moderate Republicans, and advocacy groups, which prevented him from making further progress. Members of Congress, concerned that states would underfund all services, and members of the National Governors' Association, concerned that the plan would be too expensive for states, opposed his attempts to entirely devolve Aid to Families With Dependent Children (a New Deal-era program) and food stamps (a Great Society-era program) to the states. In 1986, Ronald Reagan ended general tax sharing.

17 *National Labour Relations Board (NLRB) v. Jones and Laughlin Steel*, 301 U.S. 1 (1937)
Several Supreme Court decisions, particularly under the commerce clause, encouraged new federalism by limiting the extent of the national government's authority. In United States v. Lopez\(^{18}\), for example, the court overturned the Gun-Free School Zones Act of 1990, which prohibited gun ownership in school zones. It said that the law at issue did not “significantly affect interstate commerce.” The decision brought to an end a nearly sixty-year stretch in which the court had used a vague reading of the commerce clause to restrict a wide range of local business practices by the 1960s.

Some argue, though, that the years after the 9/11 attacks have turned the pendulum back in favour of central federal authority. The Department of Homeland Security was established to centralize emergency relief control in Washington, and the Transportation Security Administration was established to centralize airport security. The Faith-Based Initiative and No Child Left Behind (during the George W. Bush administration) and the Affordable Care Act (during Barack Obama's administration) all implemented broad new federal policies and mandates.

### 3. Comparison between India and U.S. Federalisms

Has the Central Authority exclusive power over diplomacy and defence, as a nation-state should in its dealings with nation-nations?

**U.S.A:** The United States Constitution, for example, stipulates that the sole power over defence and diplomacy rests with the central government (Article 1, Section 10, Clause 3).

**India:** In the Union list, which provides authority to the federal government, the Indian Constitution contains entries relating to diplomacy and defence, war and peace, treaties, the United Nations, pilgrimages beyond India, piracies and crimes committed on the high seas or in the air, and offences against international law. List I of Schedule VII grants the union government exclusive rights, and states are prohibited from interfering with the exercise of these powers. Aside from that, Article 53(2) gives the President Supreme Command of the Union’s Defence Forces. Articles 352, 353 and 355 also discuss the Union's authority in cases of national emergency. The Directive Principle of State Policy also includes Article 51, which deals with the promotion of international peace and security. The nature of these powers is more complicated in the Indian Constitution than it is in the American Constitution.

As a result, the Indian Constitution outperforms the American Constitution on the first of the ten yardsticks of federalism.

1. **Is the Federal Union legally protected from secession?**

**U.S.A:** Article 4, Section 3 of the United States Constitution states unequivocally that no new states can be created or erected within the jurisdiction of another state without the approval of both the state legislatures and the Congress. Further, based on Texas v. White, it was determined that constitutional limitations are needed to prohibit power accumulation at the national

\(^{18}\) United States v. Lopez 514 U.S. 549
or state levels. According to Chief Justice Salmon P. Chase, the federal Constitution “in all its provisions looks to an indestructible Union, composed of indestructible States.” As a result, the United States Constitution prohibits any territory from seceding from the union.

India: The Indian constitution declares that India, or Bharat, will be a Union of states. It gives Parliament the authority to admit or establish new states into the Union under whatever terms and conditions it sees fit. Furthermore, Parliament can create a new state by statute by separating territories from an existing state, or by joining two or more states or parts of states, or by joining any territory to a part of a state; increasing or decreasing the size of any state; changing the borders of any state; or changing the name of any state. When these Articles are read together, it becomes apparent that Parliament has the authority to create new states, change the boundaries of existing states, and change the name of every existing state. As a result, the Constitution allows for modifications in the states' territorial integrity.

Also titles are subject to alteration. Article 2 delegated to Parliament the authority to decide the terms and conditions on which any territory may be admitted to the Union or new States created. It is not necessary to obtain the approval of the State whose territory, border, or name is likely to be impacted by the proposal in order to do so. The proviso to Article 3 simply states that in those cases, the President shall refer the Bill to the legislatures of the affected States to "express their views." It is up to Parliament to vote on the constitutional amendments until the States' opinions are understood. As a result, the Parliament may change the state's borders, increase or decrease its territory, or change its name without the consent of the concerned state or states. These clauses demonstrate that Parliament has supremacy over the states' constitutions.

2. Is the Central Authority's exercise, as it affects all residents, directly independent of the component units' individual consent and resources?

The two main questions here are:

1. Can union directly tax people without state’s permission?

2. Can union directly reach people and provide welfare without state’s permission?

U.S.A: The Congress shall have the authority to levy and raise taxes, duties, imposts, and excises in order to fund the nation's debts and provide for the national defense and general welfare. The Sixteenth Amendment, passed in 1913, granted Congress the power to levy income taxes “without apportionment among the several States, or without regard to any census or enumeration.”

India: The Union Government of India is separate from the constituent units and has the authority to impose direct taxes and enact federal laws. The tax heads or bases, which are split between the Union and the States, are expressly stated in the Constitution. Articles 268 to 281 discuss the tax sharing between them in addition to the tax bases listed in Schedule.
VII. Furthermore, property owned by the Union is exempt from state taxes and vice versa. As a result, the Central Authority is largely independent of the component units' individual consent and resources in terms of financial and other resources.

4. Who has the ultimate control over amendments to the Federal Constitution?

**U.S.A:** Under Article 5 of the U.S. Constitution,

To propose amendments:

By Congress: 2/3rd of both the houses

By application of legislature: 2/3rd of several states

For ratification: 3/4th of several states

**Exception:**

1. No amendment shall affect the first and fourth clause in ninth section of the first article;

2. No state shall be deprived of its equal suffrage in the Senate

**India:** Article 4, Schedule VI, and, in particular, Article 368 of the Indian Constitution, have the power and procedure for amending the Constitution. In both circumstances, the right to initiate amendments is vested in the union. All amendments are not need to be ratified by the legislatures. Article 368(2), on the other hand, recognizes those forms of Amendments that must be ratified by at least half of the states. Article 368 (2) (a) to (d) provides for amendments that require approval by at least half of the states (e). As a result, it is clear that where Amendments are going to have a significant impact on the federal constitution, approval by at least half of the states is needed.

5. Is it possible for the component units to lose their identification and authority?

**U.S.A:** Article 4, section 3 read with case of Texas v. White, the states cannot be destroyed, their boundaries cannot be altered and not even their names.

**India:** India had nine fully autonomous states, eight less autonomous states, ten minor states (known as Part A, B, and C States), and federally controlled territories (known as Union territories) before it became an independent state. This was made possible in 1965 by the Reorganization of States, which was based mostly on linguistic considerations. Thus, under the Indian Constitution, the Union Parliament has certain "real powers" in all matters mentioned in List II, as well as the right to amend the names of existing states. While Parliament has the right to completely erase a state's identity under Article 3(a) of the Indian Constitution, this has not happened so far.

5. Have the component units retained all of the powers that the central government would not have under the constitution? Are the powers that have been preserved significant or marginal?

**U.S.A:** The United States Constitution's Article 1, Section 8 limits the center's legislative authority to 18 subjects. The States hold the remaining power. As a result, states have residuary control.

**India:** Extensive lists are prepared in India
that outline the different areas of the Centre and States. There was never any discussion about residuary control. However, if an entry is not listed in any of the three lists, it is subject to the Centre's jurisdiction. As a result, the Centre has residuary control.

6. Is the collective sharing in federal rule making adequately secured by equal representation of unequal units in a bicameral system? What are the constitutional provisions for collective sharing in the executive and judiciary rule implementation?

**U.S.A:** Often viewed by Americans as an essential yardstick of federalism is the Connecticut compromise, by which the American founders agreed on a proportional representation of unequal states in the lower house and an equal representation of unequal states (two senators per state) in the upper house. The United States bicameralism is a true and full one because both houses are equal in matters of legislation: no law can be enacted unless both houses agree on the same text.

**India:** In India, unequal representation of unequal units in the bicameral system ensures collective sharing in federal rulemaking. Schedule IV of the constitution provides for the allocation of seats to the States in the Council of States in the Parliament. Aside from that, the President appoints twelve members of the Council of States. The Rajya Sabha now has a cumulative membership of 250 members.

7. Are there two separate sets of courts, one for interpreting and adjudicating federal laws and the other for interpreting and adjudicating state laws?

**U.S.A:** The Supreme Court of the United States has authority over the entire country, but only where it comes to Federal Laws. States each have their own Constitutions and Supreme Courts to determine their own laws.

**India:** There is only one judicial hierarchy, with the Supreme Court at the top and individual State High Courts at the bottom. Both have the authority to rule on all federal and state laws.

5. Is there a judicial jurisdiction within the central authority that is independent of the central authority and the component units in determining their rights?

**U.S.A:** Yes, appellate oversight exists, and the Supreme Court retains authority over center-state disputes. Mculloh v. Maryland is a classic example of judicial review of a center-state dispute.

**India:** The Supreme Court of India has initial authority over center-state disputes, according to Article 131. Furthermore, judicial review is a fundamental function of the Indian Constitution, as mentioned in Article 13(2) read with Articles 14, 32, and 226.

6. Is the territorial division of authority clear and unambiguous?

**U.S.A:** Both the center and the state's operating areas have been explicitly identified. And if there is any ambiguity, the final jurisdiction rests with the center.

**India:** Article 246 contains three exhaustive lists. As a result, authority is well defined. Though the question of whether a state may enact legislation that affects the union arises,
the answer is yes, but there must be a territorial nexus, that is, the subject must be real, not illusory, and the subject must be concerned with the object. However, there are only a few cases in which a court has heard a case involving a clash of lists, demonstrating that there is no uncertainty in India.

5. CONCLUSION

Three big loyalties are imprinted on the Indian Constitution. They all point to the system being Federal or Quasi-Federal in nature. The Indian Constitution owes its first allegiance to the Government of India Act, 1935, which provides its flesh, blood, and a significant portion of its spirit. The second allegiance is to the United States Constitution, which grants it broad judicial review of laws and government actions, as well as fundamental rights provided by the Constitution. The British Constitution is owed the third level of allegiance. The Indian Parliament and State Legislatures was modeled after the British system. Regardless in the many shades, federalism entails the devolution of power and the sharing of decision-making authority. The United States' format can be classified as a "bottom up" model, in which sovereign pre-existing units cede authority to form a union, while India's format can be classified as a "top down" model, with a heavy unitary emphasis and regional units serving as "confederations" within a loose union. Federalism is a tool for dealing with a wide range of differences, multiplicities, and pluralities. As a result, no fully federal state will exist. It all depends on the circumstances of the moment and the various national environments. Because, since each country's society is so different, it's impossible to decipher it using federalism's unique yardsticks. To put it another way, Justice P. B. Mukerjee articulated it in 1967 in his book 'The Critical Problems of the Indian Constitution': The future of India and her Constitution can be determined by how the nation evolves the principles and practice of federalism suited to India, whose indispensable requisite must be unity in diversity, integrity with variety, marked by the wisdom and experience of the people.

5. SUGGESTIONS

In our opinion, although the United States and India have different federalism structures, both have performed admirably and preserved national independence despite having different histories and challenges. Federalism is like a rainbow; each color is distinct, but together they form a unified pattern. Federalism must constantly maintain a fluid balance between the center and the states. Citizens and the political process must, in the end, establish a community and a collection of principles and virtues such as honesty, compassion, and a spirit of cooperation. It's also possible to deduce that India and the United States share some federalist characteristics. In many areas, however, the federal character of India and the United States differs. Despite their flaws, however, both US and Indian federalism are extremely popular.

6. APPENDIX


2. https://blog.ipleaders.in/difference-us-indian-federalism/
3. https://www.patnauniversity.ac.in/econtent/social_sciences/geography/Indian%20Federalism.pdf

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