Assignment topic
Concept of Federalism:
A comparative study of the Indian and American constitutional systems

Concept of Federalism

Federalism as unity in diversity. 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. Federalism is a system of government that establishes a constitutionally specified division of powers between different levels of government. In simple words, Federalism is at its core a system where the dual machinery of government functions. Federalism is a type of government in which the power is divided between the national government and other governmental units. In in other words, Federalism is a constitutional mechanism for dividing power between different levels of government.

Comprehensively, Federal systems are usually associated with culturally diverse or territorially large countries. Notable examples of federal countries (or countries with federal-like characteristics, sometimes referred to as ‘quasi-federations’) include Argentina, Belgium, Brazil, Canada, Germany, India, Malaysia, Nigeria, Pakistan, Spain, South Africa and the United States. Mainly, Federalism helps explain why each state has its own constitution and powers such as being able to choose what kind of ballots it uses, even in national elections.

There are three ways in which power can be divided between a central authority and various constituent units of the country:

- Federal
- Unitary
- Confederation Federalism: a system of government in which the same territory is controlled by two levels of government. In this system, the Central Government usually oversees the issues that are of importance for the entire country, whereas the government at the lower level looks after issues of local concern.

**Characteristics of federalism**

There should be different levels of governments, with each having its own independent sphere of administrative and legislative competence. Each level of the government should have an independent tax base. A Written Constitution from which respective governments derive power. An independent judiciary to adjudicate if conflict arises between the two tiers of government.

**Central government**

In federation system, The Central government has control over the states through different agencies and varied techniques:

- Governor
- Directions to the State Government
- Delegation of Union functions
- All-India services
- Grants-in-aid
- Inter-State Councils
- Inter-State Commerce Commission
- Immunity from mutual taxation

**Features of Federalism**

The best way to understand the federal system is to learn about its features. These characteristics combined to reflect the true essence of federalism.
1. The essential feature, which is the definition of federalism is that there are two levels of governance in the country at least. There can even be more. But the entire power is not concentrated with one government.

2. All levels of governance will govern the same citizens, but their jurisdiction will be different. This means that each level of government will have a specific power to form laws, legislate and execute these laws. Both of the governments will have clearly marked jurisdiction. It will not be that one of the government is just a figurehead government.

3. Another important feature is that the constitution must guarantee this federal system of government. Which means the powers and duties of both or all governments must be listed down in the constitution of that country hence guaranteeing a federal system of governance.

4. As stated above the federalism of a country must be prescribed by the constitution. But it is also important that just one level of government cannot make unilateral changes or amendments to the important and essential provisions of the constitution. Such changes must be approved by all the levels of the government to be carried through.

5. Now there are two levels of government with separate jurisdictions and separate duties. Yet there is still a possibility that a conflict may arise between the two. In a federal state, it will fall upon the courts or rather the judiciary to resolve this conflict. The courts must have the power to interfere in such a situation and reach a resolution.

6. While there is power sharing between the two levels of government, there should also be a system in place for revenue sharing. Both levels of government should have their own autonomous revenue streams. Because if one such government depends on the other for funds to carry out its functions, it really is not autonomous in its true nature.
The purpose of this Division of Power between the tiers of government is twofold:

• Preventing concentration of power in the hand of one tier of government
• Generating strength of the nation through the Union.

Degree of Federalism in India and USA

In the US, every state has its own constitution unlike in India. The state constitutions are much more voluble than the federal Constitution. The Indian Constitution does not incorporate such specific state-level legislations. So its extraordinary length cannot be explained away by citing the absence of State Constitutions as a reason. But it is a fact that much of the bulk in the Indian Constitution is on account of discussions of centre-state relations.

Indian and American constitutional system at a glance;

A significant difference between Indian and American constitutional system is India is a Parliament type of government and in America is a Presidential type of government. The American Constitution is just 4,543 words long. Even if one includes the 27 amendments since 1789, we get to 7,591 words. In contrast, the Indian Constitution has 145,000 words and contains 395 articles in 22 parts and also contains 12 schedules. The American Constitution has just seven articles and has been amended a mere 27 times since its ratification in 1789.

Indian Constitution;

India is a federal country. It means it is a federal state with some features of a unitary government. The constitution of India has essentially prescribed a federal state of government. The Government at the centre, which is the Lok Sabha and the Rajya Sabha. Then the various state governments, the Vidhan Sabhas, and the Vidhan Parishad. And finally, we have the Municipal Corporations and the Panchayats, which are forms of local governance. Our constitution makes a clear demarcation about legislative powers and jurisdictions. It is done through the three lists as below;
A. **Union List:** This includes subjects that carry national importance, like defense, finance, railways, banking etc. So such subjects only the Central Government is allowed to make laws.

B. **State List:** Includes all matters important to the functioning of a particular trade like transport, Trade, Commerce, agriculture etc. The state government is the deciding authority for framing laws on these subjects.

C. **Concurrent List:** This list includes topics on which both the Union and the state government can make laws. These are related to education, forests, trade unions etc. One point to be noted is if the two governments are in conflict with these laws, the decision of the Union Government will prevail, It is the final authority.

India is a Sovereign Socialist Secular Democratic Republic with a parliamentary system of government. The Republic is governed in terms of the Constitution of India which was adopted by the Constituent Assembly on 26th November, 1949 and came into force on 26th January, 1950. The Constitution provides for a Parliamentary form of government which is federal in structure with certain unitary features. The constitutional head of the Executive of the Union is the President. As per Article 79 of the Constitution of India, the council of the Parliament of the Union consists of the President and two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 74(1) of the Constitution provides that there shall be a Council of Ministers with the Prime Minister as its head to aid and advise the President, who shall exercise his/her functions in accordance to the advice. The real executive power is thus vested in the Council of Ministers with the Prime Minister as its head.

Article 1 of the Constitution says that India is a Union of States. The overriding concern at the time of drafting the Constitution was the “unity and integrity of India”. This led to a number of factors that gave the Indian Constitution a decidedly unitary tilt, with several provisions in favour of the Union. Some of them have been mentioned below:
• Residuary powers are with the Union Government
• States can be created or diminished without their consent
• Concept of single citizenship, unlike that of USA
• All India Services officers head important positions in States
• The role of Governor in States is very important and he is appointed by the Central Government
• The system of audit is headed by the CAG, who is appointed by the Central Government
• The judges of High Courts are appointed by the President

**American constitutional system**

The Constitution of the United States of America is the supreme law of the United States. Empowered with the sovereign authority of the people by the framers and the consent of the legislatures of the states, it is the source of all government powers, and also provides important limitations on the government that protect the fundamental rights of United States citizens. The Constitution of the United States is the supreme law of the United States of America. The Constitution, originally comprising seven articles, delineates the national frame of government. Its first three articles embody the doctrine of the separation of powers, whereby the federal government is divided into three branches: the legislative, consisting of the bicameral Congress (Article I); the executive, consisting of the president and subordinate officers (Article II); and the judicial, consisting of the Supreme Court and other federal courts (Article III). Article IV, Article V and Article VI embody concepts of federalism, describing the rights and responsibilities of state governments, the states in relationship to the federal government, and the shared process of constitutional amendment. Article VII establishes the procedure subsequently used by the thirteen States to ratify it. It is regarded as the oldest written and codified national constitution in force.
A comparison between the Indian and American constitutional system

The Indian Constitution differs from the American document in one very important way. It contains within it sections of text that are mildly condescending towards both the citizenry and future lawmakers. Although the two documents are similarly progressive in spirit, there’s a vast gulf of history and context that separates them. India and the United States (US) are the two largest democracies in the world. In addition to being democracies, the two nations are also constitutional republics, bound by a written constitution. However, the attitudes of the general public and the political establishment towards the constitutions are vastly different in the US and India. In America, it is the political right and the leaders of the Republican Party who often lace their rhetoric with references to “constitutionalism” and emphasise the need to have an “originalist” interpretation of the document. While in India, many sections of the political right are often sceptical of the constitution, believing that the document is insufficiently suited to Indian realities and Indian culture.

The American Constitution, for the most part, limits itself to describing the structure of the federal government and makes no attempt to influence the political agenda in the distant future. It is left to the political parties and working politicians in posterity to figure that out.

Scope of the two documents

The scope of the American Constitution is primarily the description of the structure and powers of the federal government. Unlike the minimalist style of the American document, the Indian Constitution goes above and beyond describing the constitution of each arm of government.

The Indian document has eleven articles (343-350, 350A/B, 351) dedicated to discussing "Languages". The Indian Constitution's discussion on Languages alone comprises of more articles than the number of articles in the US Constitution as a whole. In contrast, the American Constitution does not discuss Language at all. The United States has no “official” or “national” language.
While the Indian document caters to the heterogeneity of the land, the American document desists from it notwithstanding the increase in lingual and ethnic heterogeneity in the US over the past 200 years.

**Ratifying the Constitutions**

1. The most important and fundamental of all the differences between the Indian and American Constitutions is the vastly different approaches taken to ratify the documents. The American document was ratified through a relatively democratic process wherein each of the 13 states in the Union voted on it through their ratifying conventions.

2. The ratification of the Indian Constitution was radically different. There is no Indian equivalent of the Federalist Papers. To get the Indian Constitution into force, all that was required was the assent of the Constituent Assembly, which was partly comprised of indirectly elected representatives (elected by provincial assemblies), and partly comprised of nominated members (for the princely states). So, this was not a popularly elected body.

3. An even more important point to note is that the Constituent Assembly was deeply involved in the drafting the Constitution itself. It met over 11 sessions and 166 days between 1947 and 1950 to discuss the Constitution.

4. In contrast, in the US, there was a very clear separation between the drafting of the Constitution (done by the Philadelphia convention - a central body with representation from each state), and the state-level ratification conventions, which voted on it later.

Objective here is to explain that what is Federalism and a comparative study of the Indian and American constitutional systems. A constitution is a set of rules that govern a country.

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