

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

JUDICIARY VIS-À-VIS FEDERALISM: A COMPARATIVE ANALYSIS OF THE US AND INDIAN APPROACH

Authored By - Abhinav Viswanath

ABSTRACT

Federalism as a concept became prominent through the Declaration of Independence in the USA. The founding fathers adopted a federal approach for the constitutional governance when thirteen states declared independence from the colonial rule to form one united nation. The idea of federalism grew further through the genesis of the US Constitution, and is one of the most important features of the American constitutional governance. Federalism is an essential feature of the basic structure of Constitution of India as well. It plays a pivotal role in the Constitutional governance of the nation. The concept provides for a clear division and distribution of powers to ensure the smooth functioning of the State. A critical analysis of the meaning of federalism is done in the paper to interpret the nature of federalism, its impact on the nation, democracy and constitutional governance in the USA and India. The paper provides for an introduction to the concept of federalism its meaning in its traditional sense and the new era of federalism. The paper further explores the judicial approach of federalism in the USA and the interpretation of the same in accordance with the US Constitution. The centralising tendencies of the Constitution of India and the interpretation of the meaning of federalism through the lens of the judicial approaches, as well as the intention of the framers of the Constitution has been analysed as well. The paper draws its analysis by elucidating the various aspects of Centre- State relations and the effect of the same in the constitutional governance of India. The paper provides for the evolution of federalism as an essential feature to the basic structure of the Constitution of India by analysing the various judicial precedents set in order to safeguard the principle. The paper concludes by providing the author's take on the effect of the judicial approach in India, keeping in mind the principles of federalism, democracy and equality; the latter two of which, are the corner stones of an ideal nation.

INTRODUCTION

The concept of Federalism comprises of a compounded governmental mechanism for the efficient governance of a nation. The union of several individual, autonomous, unique, separate administrative units or states to form a single political entity can be termed as the simple meaning to that of federalism.¹ It is an attempt to distribute and divide sociological, economic, and political powers of governance by trying to balance the nature of concentration of power at the union and the nature of dispersing the power to the various units. Federalism tries to reunite the powers with municipality, centralisation with decentralisation and nationalism with localism.²

A federal system is one that has powers with the governments both concentrated as well as divided. There is a tendency to centralise certain powers and functions, while there is also a tendency to decentralise certain powers and functions. A federal form of government possesses a dual government or polity by comprising one union government at the centre and various regional or state governments. While the former type of government has jurisdiction over the entire political union or nation, the latter possess power to govern over only its own territory. In general, a citizen of a federal nation is possessing dual citizenship, one for the entire nation, and one for the region of domicile or birth.

It is evident that in a federal nation, that any invasion by one administrative unit over another unit is a breach of the Constitution of that nation; and that such an invasion is justiciable issue to be determined by the courts.³ It is however, crucial to note that the several units or regional governments are not mutually exclusive to different compartments, and may come in contact from time to time depending on the circumstance involved. Unlike the unitary form of government, where it is evident that the union or central government is the supreme government, the constitution is supreme in a federal form of government. Furthermore, unlike the unitary form of government, where the local units have no higher status than mere administrative agencies for the central government; the state or the regional government enjoys a varying degree of autonomy from constitution to constitution.

Thus, the units under a federation act under the ambit of the constitution of the nation wherein,

¹ M.P. JAIN, INDIAN CONSTITUTIONAL LAW, 690 (6th ed. 2010).

² AV DICEY, LAW OF THE CONSTITUTION, 138 (1952).

³ *Supra* Note 1, at 691.

the powers of governance and territory of sovereignty can only be changed only with an amendment to the constitution through a process presided by a constituent body. The same unlike a unitary form of government, cannot ordinarily be amended solely by the central or federal government. This ensures that each regional or state government retains its core identity.

The Government of USA evolved from dual federalism to associative federalism. The Constituent States and the National Government are agents and trustees of the people holding different powers.⁴ It is crucial to note that while there exists dual governments in the federal as well as state level, both the governments were constituted in order to act and exercise their powers in the general interest of the citizens involved therein, and if in case the rights of the citizens are either violated or encroached upon by any one government, the citizens can then take recourse from the other level of government.⁵

Due to the fact that the States of the USA were existing even prior to the amalgamation of the states to form one united nation, there is no specific provision in the Constitution of the USA that explains the concept of federalism. However, the functions and responsibilities of the state government and its staff is elucidated in relation to the federal government. The enumerated powers of the federal governments are those expressed powers it possesses, which are enunciated in the Constitution that includes the right to levy taxes, regulate interstate and foreign commerce, and to declare war among many others.⁶ Furthermore, the Necessary and Proper Clause provides implied power to the federal government to pass any law for the execution of the enumerated powers.⁷ The delegatory powers of the federal government has significantly been expanded by the Supreme Court that the States are legally bound to the final dictates of the federal government.⁸

The US Constitution enumerates several values of Federalism which are served by a system that distributes governmental authority such as efficiency, promoting individual choice, encouraging experimentation, promoting democracy, preventing tyranny and doctrinal

⁴ The Federalist Papers: No. 46, Yale Law School, https://avalon.yale.edu/18th_century/fed46.asp.

⁵ The Federalist Papers: No. 48, Yale Law School, https://avalon.yale.edu/18th_century/fed48.asp.

⁶ Article I: The Legislative Branch–The Enumerated Powers (Section 8), National Constitutional Center, <https://constitutioncenter.org/blog/article-1-the-legislative-branch-the-enumerated-powers-sections-8/>.

⁷ U.S. Const. art. I, § 8; Necessary and Proper Clause, Legal Information Institute, https://www.law.cornell.edu/wex/necessary_and_proper_clause#.

⁸ McCulloch v. Maryland, 17 US 316 (1819).

implications.⁹

The Constitution of India provides for a federal form of government by establishing a dual polity or dual government system comprising of one central government and several regional or state governments. Upon partition, the nation united to form a sovereign democratic republic on the 26th of November, 1949.¹⁰ Therefore, it ought to be noted that unlike the United States of America, wherein several states formed a confederation to form a united nation, the nation of India was already one entity prior to the partition before it disintegrated to form one union once more.¹¹

The Constitution of India provides for a strong central government, with several centralising tendencies and therefore, is a flexible federal form of government seeking to advance the concept of co-operative federalism to improve the Centre-State relations in the nation for good constitutional governance. The Constitution clearly provides that India is a union of states.¹² This can be seen to suggest a centralising tendency as the article clearly provides for a union of states and not a federation of states as rightly pointed by Dr. BR Ambedkar during the Constituent Assembly Debates.¹³ The centralising tendency can be observed under various provisions of the Constitution such as under the legislative¹⁴, administrative¹⁵, financial¹⁶ and emergency¹⁷ relations between the central government and the various state governments. This centralising tendency to curb the disadvantages of a rigid federation was adopted through the Constitution of Canada which follows a similar pattern of a strong central government at the core. The flexible federal system provides for efficient functioning of the dual governments to best protect the interests of the citizens of the nation.

There is a clear demarcation, distinction, division and distribution of legislative powers in the Indian Constitution wherein, there exists a union list¹⁸, which deals with those matters that only the central government is empowered to make laws; the state list¹⁹, wherein it contains those

⁹ GEOFFREY R. STONE, et. al., CONSTITUTIONAL LAW, 165-169, (5th ed. 2005).

¹⁰ CONST. INDIA, Preamble.

¹¹ Indian Independence Act, 1947 c. 30 (10 & 11 Geo. 6); CONST. INDIA, art. 395.

¹² CONST. INDIA, art. 1.

¹³ Constituent Assembly of India Debates, 15th November 1948.

¹⁴ CONST. INDIA, Pt. XI, Ch. I.

¹⁵ CONST. INDIA, Pt. XI, Ch. II.

¹⁶ CONST. INDIA, Pt. XII, Ch. I.

¹⁷ CONST. INDIA, Pt. XVIII.

¹⁸ INDIA CONST. VII Sch., List I.

¹⁹ INDIA CONST. VII Sch., List II.

matters that can only be dealt with by the state governments; and the concurrent list, wherein it contains those matters where both the central government as well as the state governments are empowered to enact laws on the matters mentioned.²⁰ However, if there is any inconsistency between those laws enacted by the central government and laws enacted by the state government, then those laws enacted by the former type of government shall prevail.²¹ This further crystalises and enhances the concept of centralising tendency wherein the Constitution of India is that of unitary in nature.

JUDICIARY VIS-À-VIS FEDERALISM

It is clear that the idea of federalism saw its genesis in the United States of America before it was adopted by India. The Constitution of USA envisages a federal government of both limited as well as enumerated powers. Each branch of government has to act within the limits of federal power. Among the three main organs of the State, it is the burden and duty of the judiciary to interpret and analyse the scope of extent of federalism in the nation to ensure that neither type of government encroaches or transgresses the constitutional boundaries to preserve the checks and balances of a federal nation.

The US Constitution provides for the Supreme Court at the apex followed by the constitution of lower courts as the Congress deems fit.²² Despite not expressly providing the scope of judicial review within the express mandate of the Constitution, the Supreme Court has expressed the bounded duty of the court to observe the same.²³ The US Constitution further provides for the powers of the Congress that includes additional powers such as the necessary and proper clause.²⁴ The Constitution further provides for a reasonable restriction of the powers of the Congress²⁵, as well as those powers not within the ambit of the States.²⁶

JUDICIAL APPROACH OF FEDERALISM IN THE USA

It is widely considered that there are predominantly four areas of conflict between the States and the Federal Government. They include the power of the Supreme Court to review and

²⁰ INDIA CONST. VII Sch., List III.

²¹ INDIA CONST. art. 254.

²² U.S. CONST. art. III.

²³ William Marbury v. James Madison, 5 U.S. 137 (1803).

²⁴ U.S. Const. art. I, § 8.

²⁵ U.S. Const. art. I, § 9.

²⁶ U.S. Const. art. I, § 10.

reverse decisions of the courts of the States²⁷, the supremacy of the contract clause of the Constitution²⁸, the effect of the necessary and proper clause on the activities of the States²⁹, and the scope of the application of the commerce clause.³⁰

Martin v. Hunter's Lessee³¹

In the first historic ruling involving a property dispute on a lease, the Supreme Court overturned a decision made by a lower court in the present case. A decision made by the apex court of the State of Virginia was appealed to the Supreme Court of the USA. The Supreme Court was ruled to lack jurisdiction to consider the case when the judgement was remanded to the apex court of Virginia because of the contentious issue on the subject matter. In an appeal, the US Supreme Court declared that it had jurisdiction over federal law issues and overturned the lower court's ruling. This suggested that there ought to be uniformity of application of laws among all courts, and that the objective of the Constitution is to serve the citizens equally, which the Court reiterated in the case of *Cohen v. Virginia*.³²

Trustees of Dartmouth College v. Woodward³³

In a situation where the government granted an individual to set up a private college, but due to certain scenarios, the legislature passed a law that ensured that the private college now became a public institution. When the former trustees of the Board approached the lower courts to ensure the institution was reverted back to a private entity, the court denied the same. On appeal, Justice Marshall overturned this decision and upheld the sacrosanctity of the original charter of the college. This judgement thus ensured the protection of the citizens by emphasizing on the government's duty to be bound by the viability of contracts entered into. Therefore, it is the duty of the courts as enriched by the Constitution to solve disputes of contractual obligations and state laws. The Constitution provides for the supremacy of the contract clause and the protection of the same and thus, prevents the states to pass such laws that make the fulfilment of contractual obligations impossible.

²⁷ *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816).

²⁸ *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518 (1819).

²⁹ *McCulloch v. Maryland*, 17 U.S. 316 (1819).

³⁰ *Gibbons v. Ogden*, 22 U.S. 9 (1824).

³¹ 14 U.S. 304 (1816).

³² 19 U.S. 254 (1821).

³³ 17 U.S. 518 (1819).

McCulloch v. Maryland³⁴

The State of Maryland sought to levy a hefty tax on a bank that was recently established by the federal government in the state. There existed a law that held that the taxation was not to be applied on the banks which were chartered in Maryland. The Court used the ambit of the 'Necessary and Proper Clause' which gives power to the federal government to enact and pass legislations for those matters not expressly provided in the Constitution. Justice Marshall of the US Supreme Court held that the Congress had the powers to establish such a national bank. This case helped in solidifying the scope of powers of the Congress and divided, demarcated the relationship between the federal and state governments. The case further provided that the Congress had implied powers from the Constitution to make laws to establish a functional federal system. The exact scope of the power of the federal government was unclear prior to the decision. Furthermore, state action ought not obstruct the legitimate exercise of federal power in accordance with the due process. The doctrine of implied powers thus came to be as result of the instant decision and that the state of Maryland had no authority to tax the national bank. This judgement further established the supremacy of federal laws when there is a conflict between federal and state laws.

Gibbons v. Ogden³⁵

Widely regarded as one of the pioneer judgements that ensured in the protection of federalism in the USA, the federal government provided license to Thomas Gibbons for a steamboat service on the route to New Jersey and New York. However, the state of New York had given a similar license to Ogden, and when the latter approached the court of New York for an injunction against Gibbons, the court granted the same. On appeal to the Supreme Court, the court found that the issue dealt directly with the test of trade clause. In order to avoid further confusion between the meaning of the term 'Commerce', the court included the ambit of navigation between states as well, and thus the Congress had the right to grant such license and regulate commerce that includes the steamboat services between states.

However, Justice Marshall overturned his previous judgement of Gibbons in *Wilson v. Blackbird Creek Marsh Co.*³⁶ This approach tends to differ from his usual stance of expanding the scope of central/ federal power in the interest of federalism. However, the judgement did

³⁴ 17 U.S. 316 (1819).

³⁵ 22 U.S. 9 (1824).

³⁶ 27 U.S. 245 (1829).

not significantly impact the nature of federalism in the USA as the state action would be upheld only if there is nothing provided by the federal government. The federal government would still reserve the right to regulate interstate trade and commerce for the benefit of the nation as a whole.

NEW FEDERALISM/ REHNQUIST ERA

Those powers that are neither delegated to the federal government by the Constitution, nor prohibited by it to the States, are reserved to the States.³⁷ Former Chief Justice of the US Supreme Court William Rehnquist was a new federalist, and an advocate of the original idea of federalism. It was in his period as a judge, did the court even dare to strike down a law laid down by the federal government for violating the principles of interstate trade and the tenth amendment. He further advocated for a devolution of powers on the states at the cost of the central government.³⁸ This was to ensure that the states regained some form of autonomy to preserve the ideals of what federalism ought to be, that is, a demarcation, division, distinction and distribution of powers between a dual polity of governments.

The Supreme Court held that certain provisions of the federal law of Low-Level Radio Active Waste Policy Amendments Act, 1985 as unconstitutional due to its infringement on the powers of the States.³⁹ This pattern of unconstitutionality of the powers of the States was further reiterated when provisions of the Gun-Free School Zones Act, 1990 was deemed unconstitutional.⁴⁰ Thus, the current scheme of federalism in the USA attempts to preserve the autonomy of the States and thus tries to ensure that the citizens are the beneficiaries of the same.

JUDICIAL APPROACH OF FEDERALISM IN INDIA: WATERED DOWN

The concept of federalism, even though having been recognised as part of the basic structure of the Indian Constitution, has not been followed in its true, traditional sense in the nation. To reiterate, Art. 1 of the Constitution provides that India is a union of states⁴¹, and not a federation

³⁷ U.S. Const. amend. X.

³⁸ Jeff Powell, The Compleat Jeffersonian: Justice Rehnquist and Federalism, The Yale Law Journal, Vol. 91, No. 7 (Jun., 1982), pp. 1317- 1370, <https://www.jstor.org/stable/795957>.

³⁹ New York v. United States, 505 U.S. 144 (1992).

⁴⁰ United States v. Lopez, 514 U.S. 549 (1995).

⁴¹ INDIA CONST. art. 1.

of states. This suggests that the concept of federalism has been watered down in the Indian context to suit a more flexible form of government. There are times wherein the central government can solely govern the entire nation and the state governments cease to function to a certain degree.⁴² The Constitution further provides for a provision in the event of a failure of constitutional machinery during the time of emergency situations in one or more States.⁴³ These provisions are mere but few examples to suggest that the drafters of the Constitution did not intend to consider India as a purely federal state. The United States of America is often credited to being the first federal state, and it follows the more traditional version of federalism. The Constitution of Canada provides for certain centralising tendencies from which the watered down, non-traditional and modern version of federalism has been implemented. The Supreme Court has time and again emphasised on this view that federalism in India is not implemented in its truest and traditional sense.

BASIC STRUCTURE OF THE CONSTITUTION

While the Constitution of India provides for a federal structure, through the interpretation of the various centralising tendencies, it can be said that the character or nature of the Indian Constitution is unitary in nature. However, this does not mean that the entire idea of federalism is watered down to such a degree and extent that it no longer matters to the Indian Constitution. The concept of the basic structure of the Constitution is one that has evolved through time from various cases that were dealt by the Hon'ble Supreme Court. Through *Shankari Prasad*⁴⁴ to *Sajjan Singh*⁴⁵, followed by *Golak Nath*⁴⁶ to *Kesavananda Bharati*⁴⁷, followed by *Indira Gandhi*⁴⁸ and finally solidified in *Minerva Mills*⁴⁹, it can be observed that there are certain character traits ingrained in the Indian Constitution that ought not be trifled with. These character traits can be considered as what makes the basic crux, or structure of the Constitution of India. Any amendment made to the Constitution; any law enacted by the parliament ought not violate this doctrine of the basic structure of the Constitution.

The court first considered the federal character of the Constitution as part of the basic structure

⁴² INDIA CONST. art. 353.

⁴³ INDIA CONST. art. 356.

⁴⁴ *Shankari Prasad v. Union of India*, AIR 1952 SC 458.

⁴⁵ *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

⁴⁶ *Golak Nath v. State of Punjab*, AIR 1967 SC 1643.

⁴⁷ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁴⁸ *Indira Gandhi v. Raj Narain*, AIR 1975 SC 2299.

⁴⁹ *Minerva Mills v. Union of India*, AIR 1980 SC 1789.

in the case of *Kesavananda Bharati v. State of Kerala*.⁵⁰ The same was further reiterated by the Supreme Court wherein it was observed that Federalism is a basic feature of the Constitution by Hon'ble Justices SAWANT, J., KULDIP SINGH, J., and RAMASWAMI, J.⁵¹ The Supreme Court further reiterated that the Constitution is federal in form and is marked by the traditional characteristics of a federal system, such as the supremacy of the Constitution, division of power between the Union and States and existence independent judiciary.⁵²

State of West Bengal v. Union of India⁵³

The instant case is often considered as the primary occurrence of the non-traditionalist approach to federalism in the country wherein the issue at hand dealt with the exercise of sovereign powers by the State Governments. Another issue that was dealt with focused on the legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the state and the sovereign authority of states as distinct entities.

It was observed that the Constitution did not emphasise on the traditional essence of federalism. It was further observed that the powers of the government were decentralized primarily to lessen the burden of governing a large territory such as India. The Court drew a distinction between the Indian Constitution and that of the United States of America. While the latter provides for a separate constitution to each of its respective States, the former does not. There exists only a single Constitution and therefore, a traditional version or doctrine of federalism ought not be considered.

It was observed that the supremacy of the Constitution ought to be maintained in its sanctity as the single living, dynamic document is applicable for the governance of the entire nation including the states. The power to amend the Constitution solely lies with the Central Government, and even though procedure mandates that the State Governments play a crucial role in the amendment process, they neither possess the power nor the authority to amend the Constitution to any extent or degree. The court further observed that the demarcation, distinction, division and distribution of powers was provided in the Constitution⁵⁴ to ensure

⁵⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

⁵¹ *SR Bommai v. Union of India*, AIR 1994 SC 1918.

⁵² **Ganga Ram Moolchandani v. State of Rajasthan**, AIR 2001 SC 2616; **ITC LTD v. Agricultural Produce Market Committee**, AIR 2002 SC 852.

⁵³ AIR 1963 SC 1241.

⁵⁴ INDIA CONST. VII Sch.

proper local constitutional governance by the States and the national policies and foreign affairs to be decided by the Central Government the distribution of powers is to facilitate local governance by the states and national policies to be decided by the Centre. The Court ultimately observed that the legislative and executive power of the States are subject to the laws enacted by the Centre.

The Court concluded that unlike the American federal system, India provides for a single citizenship⁵⁵, and thus while the Constitution provides that the nation is federal in structure, it is unitary and centralised in spirit and nature wherein the states occupy a secondary position in relation to the centre and thus, the Centre had the power to acquire properties belonging to the States as the latter do not possess absolute sovereignty.

However, a dissenting opinion by SUBBA RAO, J., paves way for considering the essence of federalism as intended by the framers of the Constitution in the Hon'ble Justice's opinion. He was of the view that the sovereign powers are divided, demarcated, distributed between the Centre and the States within their respective spheres. He suggested that the Central Government had a wider scope in the field of legislation in comparison to the State Governments as any state enacted law in conflict with the Central law shall be considered as void and repealed.⁵⁶ However, the same does not mean that the States lose the essence of sovereignty as the States also have a working legislature, executive and an independent judiciary and the same ought not to affect the principles of federalism. The minority view of the Hon'ble Justice stands the test of the division of powers and the traditional version of the meaning to federalism.

The central argument of the majority judgement in this case is that, despite the fact that both the Union and the States in India derive their authority from the same Constitution, the States would not have any legal protections against the Union's pre-eminent powers due to a general theory of the Union's paramountcy or superiority. He came to the conclusion that the Union Parliament has an implicit right to acquire or purchase property owned by the States when executing the legislative functions granted to the Union, despite the division of powers between the Union and the States as provided by the Constitution.⁵⁷

⁵⁵ INDIA CONST. art. 5.

⁵⁶ INDIA CONST. 254.

⁵⁷ INDIA CONST. VII Sch., List I, Entry 52, 54, 97.

The Central Government by exercising the powers enlisted in the various entries under Schedule VII could enact laws that violate the States' ownership rights to the property that has been vested in them. It would be difficult, if not impossible, for the Central Government to fulfil its obligations with regard to matters of national importance if it is assumed that those entries in the union list exclude State property from the scope of laws enacted by the centre.⁵⁸ No explicit prohibition on its practise can be found in the Constitution, and the inference of such a prohibition requires a level of autonomy in the States that exceeds the Union's declared legislative authority. Such a premise is not the basis for the Constitution's division of powers between the Union and the States, and the idea that the Union is superior to the States in many ways undermines it.

State of Rajasthan v. Union of India⁵⁹

In defiance of the Constitution's explicit restrictions, the educated justices started talking about the general principles of federalism. Even though it may be possible to discern a federal structure behind the creation of distinct executive, legislative, and judicial organs in the States, it was claimed that the provision exemplified in Article 356 makes it clear that the Union Government is permitted to impose its own views regarding the management and granting of power in the States.⁶⁰

The extent of federalism in India has been significantly reduced by the demands of development, integration, political and economic coordination, and social and spiritual upliftment. The Court then went on to enumerate a few constitutional clauses that indicate the Parliament's superiority over State legislatures to suggest the centralising tendencies. The Court concluded by declaring that the Union Parliament had the "prerogative" to issue directives if they were for the benefit of the people of the State and aimed at achieving the goals stated in the Preamble. As Hon'ble Chief Justice BEG, CJ., observed that in a sense, the Indian Constitution is federal, However, the extent of federalism has been largely watered down by the needs of progress and development of a country which has to be nationally integrated.

Similar views of watering down the traditional version of federalism have been observed by the Supreme Court in various other cases and circumstances. KRISHNA IYER, J., watered

⁵⁸ INDIA CONST. VII Sch., List II, Entry 23, 24.

⁵⁹ AIR 1977 SC 1361.

⁶⁰ INDIA CONST. 356.

down the concept of federalism by describing it as an Indo-Anglian version of the West-Minister model with quasi-federal adaptations.⁶¹ PN BHAGWATI, J., in then further described the Constitution as a quasi-federal Constitutional system.⁶² The Supreme Court further expressed a non-traditionalistic, yet pragmatic opinion while explaining the federal concept in the context of the unified legal system in India by stating that the nation does not follow the concept of federalism in the traditional sense as it is not a true essence of a union of autonomous states which have come together to form a federation by ceding undoubtedly federal features.⁶³

CONCLUSION

Unlike the Constitution of the USA which supports the pure theory of federalism, the Constitution of India puts forth a more centralised idea towards the same. Despite being considered as an essential feature to the basic structure of the Constitution⁶⁴, the true essence of federalism has been diluted to varying degrees over the period of time. It is crucial to note that even though the intention of the drafters of the Constitution was clear as day to suggest and highlight the centralising tendencies of the Constitution, and the fact that India is a union of States and not a federation of states⁶⁵, the current non-traditionalist stance of federalism has the probability of having a severe, adverse and chilling effect on the principles of democracy and equality in the future. On the one hand, it is widely known that the fundamental rights are provided only to the people against the State action/ inaction⁶⁶, it also ought to be noted that the State Governments have been created by the Constitution to ensure a smooth functioning of governance. There is sufficient demarcation, division, distinction and distribution of powers between the central and the state governments. However, upon analysing the judgement of *State of West Bengal v. Union of India*⁶⁷, it is evident that the Central Government used its powers under the union list to acquire property from the State of West Bengal. However, if the powers of the Central Government are not clearly outlined, and if the same is left unchecked, then there arises a significantly high chance or probability that the central government uses this absolute discretion to acquire any property that belongs to the territory of the State Governments in the name or guise of public interest. This is in clear violation of Art. 14 which

⁶¹ **Shamser v. State of Punjab**, AIR 1974 SC 2192.

⁶² *Union of India v. Sankalchand*, AIR 1977 SC 2328.

⁶³ **Pradeep Jain v. Union of India**, AIR 1984 SC 1420.

⁶⁴ *SR Bommai v. Union of India*, AIR 1994 SC 1918.

⁶⁵ INDIA CONST. 1.

⁶⁶ INDIA CONST. 13.

⁶⁷ AIR 1963 SC 1241.

provides for the right to equality⁶⁸ and strikes against arbitrariness.⁶⁹

Similarly in the case of *State of Rajasthan v. Union of India*⁷⁰, the judgement held that federalism has been watered down in order to improve the development, integration, political and economic coordination, and social and spiritual upliftment. This however is in direct conflict with the purpose of those constitutional provisions that primarily exist to ensure centralising tendencies in extraordinary situations and circumstances. The case in itself dealt with that of failure of constitutional machinery in the State of Rajasthan, and thus the judgement ought not have provided the watered-down view of federalism in a normal state of affairs. The actual conclusion of the case is based on the idea that Art. 356 is a non-justiciable clause that deals with a political issue. There are clauses that are not subject to judicial review even in the American Constitution. It should be noted that the Judges in the instant case have pointed out numerous times that a Proclamation under Art. 356(1) may now be challenged in court on the basis of mala fide. Therefore, the fact that Art. 356 is not justiciable does not imply that the rules relating to distribution between the Union and the States are not justiciable or that they should be understood in a way that favours Union predominance.

The US Supreme Court has interpreted the scope of federalism as per accordance of the Constitution of US through various judgements and the same substantiates the necessity of a federal government, its powers, as well as its limitations. The judgements passed by the US Supreme Court also provide sufficient substance to suggest that the powers and functions of the States ought not be trifled with by the federal government in the guise of national interest and the autonomy of the States ought to be preserved. The US Supreme Court has provided with adequate rationale as to the reason for protecting federalism in the nation.

Thus, it is of grave significance the approach taken by the Supreme Court of India in certain cases while watering down the meaning of federalism that they have not provided guidelines, or tests to suggest the true nature of acts done so by the Central Government. These guidelines, if laid down, can play a significant role in ensuring that the Central Government does not misuse its discretionary powers empowered by the Constitution in an absolute and arbitrary manner.

⁶⁸ INDIA CONST. 14.

⁶⁹ EP Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

⁷⁰ AIR 1977 SC 1361.

REFERENCES

CONSTITUTION

1. The Constitution of India
2. The Constitution of the United States

STATUTES CITED

1. Indian Independence Act, 1947 c. 30 (10 & 11 Geo. 6)

BOOKS CITED

1. GEOFFREY R. STONE, et. al., CONSTITUTIONAL LAW, (5th ed. 2005).
2. AV DICEY, LAW OF THE CONSTITUTION, (1952).
3. M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (6th ed. 2010).

BOOKS REFERRED

1. Bryan Garner, Black's Law Dictionary, (14th ed., 2012).
2. H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA, (4th ed., Universal Law Publishing, 2010).
3. M.P. JAIN, INDIAN CONSTITUTIONAL LAW, (8th ed. 2019).
4. V.N. SHUKLA, CONSTITUTION OF INDIA, (Mahendra Pal Singh, 13th ed. 2019).

CASE LAWS

1. Cohen v. Virginia, 19 U.S. 254 (1821).
2. EP Royappa v. State of Tamil Nadu, AIR 1974 SC 555.
3. **Ganga Ram Moolchandani v. State of Rajasthan**, AIR 2001 SC 2616.
4. Gibbons v. Ogden, 22 U.S. 9 (1824).
5. Golak Nath v. State of Punjab, AIR 1967 SC 1643.
6. Indira Gandhi v. Raj Narain, AIR 1975 SC 2299.
7. **ITC LTD v. Agricultural Produce Market Committee**, AIR 2002 SC 852.
8. Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.
9. Martin v. Hunter's Lessee, 14 U.S. 304 (1816).
10. McCulloch v. Maryland, 17 US 316 (1819).
11. Minerva Mills v. Union of India, AIR 1980 SC 1789.
12. New York v. United States, 505 U.S. 144 (1992).
13. **Pradeep Jain v. Union of India**, AIR 1984 SC 1420.
14. Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

15. **Shamser v. State of Punjab**, AIR 1974 SC 2192.
16. Shankari Prasad v. Union of India, AIR 1952 SC 458.
17. SR Bommai v. Union of India, AIR 1994 SC 1918.
18. State of Rajasthan v. Union of India, AIR 1977 SC 1361.
19. State of West Bengal v. Union of India, AIR 1963 SC 1241.
20. Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).
21. Union of India v. Sankalchand, AIR 1977 SC 2328.
22. United States v. Lopez, 514 U.S. 549 (1995).
23. William Marbury v. James Madison, 5 U.S. 137 (1803).
24. Wilson v. Blackbird Creek Marsh Co ,27 U.S. 245 (1829).

REPORTS, JOURNALS AND ARTICLES

1. The Federalist Papers: No. 46, Yale Law School, https://avalon.yale.edu/18th_century/fed46.asp.
2. The Federalist Papers: No. 48, Yale Law School, https://avalon.yale.edu/18th_century/fed48.asp.
3. Article I: The Legislative Branch–The Enumerated Powers (Section 8), National Constitutional Center, <https://constitutioncenter.org/blog/article-1-the-legislative-branch-the-enumerated-powers-sections-8/>.
4. U.S. Const. art. I, § 8; Necessary and Proper Clause, Legal Information Institute, https://www.law.cornell.edu/wex/necessary_and_proper_clause#.
5. Constituent Assembly of India Debates, 15th November 1948.
6. Jeff Powell, The Compleat Jeffersonian: Justice Rehnquist and Federalism, The Yale Law Journal, Vol. 91, No. 7 (Jun., 1982), pp. 1317- 1370, <https://www.jstor.org/stable/795957>.