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# **INDIAN AND CANADIAN FEDERALISM : A COMPARATIVE STUDY**

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## **Abstract:-**

This paper presents a comparative analysis of federalism in India and Canada, two diverse nations with unique socio-political contexts. Federalism, as a system of governance, distributes power between central and regional governments. In India, federalism operates within a highly diverse and populous society, while Canada navigates federalist principles within a geographically vast and culturally varied landscape. This study examines the historical evolution, constitutional frameworks, distribution of powers, intergovernmental relations, and challenges faced by federalism in both countries. By exploring similarities and differences, this comparative analysis aims to provide insights into the functioning, strengths, and weaknesses of federal systems in India and Canada, contributing to a deeper understanding of comparative federalism globally. Federalism is a system of government in which power is divided between a central authority (the federal government) and constituent political units (such as states or provinces). It allows for a sharing of powers and responsibilities between the national government and subnational entities, often providing a degree of autonomy to the latter while maintaining a unified political system.

## **Introduction:-**

The division or absence of division of powers between the national and provincial administrations determines whether a state is federal or unitary. In a federal system, the formal separation of powers is established by the constitution. In a unitary system, there is no distinction between the national government and the states or provinces. It is possible for power to be devolved from the central/national government, but this is rare granting local governments specific authority. Federalism is a crucial concept for comparative politics. Some scholars have also utilized federalism to examine regionalization and regionalism in international politics and

area studies. The usefulness of federalism has been the subject of debate. In the first half of the twentieth century, Harold J. Laski declared that the federalist era had ended. In contrast, eminent federalism scholar William H. Riker asserted to the second half of the 20th century that the age of federalism had arrived. Recent research has determined that, despite contending claims, twenty-five states are federal states. Australia, Argentina, Austria, Belgium, Germany, Russia, Switzerland, the United States, India, Brazil, Mexico, Canada, Nigeria, Pakistan, Malaysia, and the United Arab Emirates are among these countries. Nevertheless, approximately forty percent of the world's population lives in federal republics.<sup>1</sup>

Federalism is a political system. In it, the powers of government are split between federal and state or provincial levels. The federal (central) government has jurisdiction over the whole country. Each provincial government has jurisdiction over its population and region. In a true federation, the smaller states are not sovereign. They cannot legally secede. Canadian federalism has swung between centralizing control and decentralizing it. Both levels of government get their powers from Canada's constitution. But it includes features that do not fit with a strict approach to federalism.<sup>2</sup> In contrast, eminent federalism scholar William H. Riker asserted to the second half of the 20th century that the age of federalism had arrived. Recent research has determined that, despite contending claims, twenty-five states are federal states. Australia, Argentina, Austria, Belgium, Germany, Russia, Switzerland, the United States, India, Brazil, Mexico, Canada, Nigeria, Pakistan, Malaysia, and the United Arab Emirates are among these countries. Nevertheless, approximately forty percent of the world's population lives in federal republics. Federalism requires the sharing of constitutional and political power, i.e., the ability to administer at two levels; however, a state may also contain local governments. Every federal system necessitates a separation of powers between the federal and state governments, each of which is autonomous and not subordinate to the other.<sup>3</sup>

### Overview of the Indian Federal System

India has had a written constitution since 1950. This document was officially adopted on January 26, stating that India is a union of states. The Indian Constitution is silent on using the term

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<sup>1</sup> Mohd. Saleem Hussain, *Comparative Study Of Federalism Between Canada And Changing Values Of Federalism In India*, 11 International Journal of Creative Research Thoughts 138,139 (2023), available at <https://ijcrt.org/papers/IJCRT2305022.pdf>, last seen at 09/03/2024

<sup>2</sup> Garth Stevenson, *federalism in Canada*, The Canadian Encyclopedia, (07/02/2006), available at <https://www.thecanadianencyclopedia.ca/en/article/federalism>, last seen on 09/03/2024

<sup>3</sup> Supra 1.

federation; however, as a unitary document, it is also federal. This precedent is set according to the requirements of time and circumstances. The framework of their political structure mainly works as a national system. It reverts to a unitary system when the country faces the threat of war. This method concentrates power at the Centre to execute strategic war decisions.

### **Overview of the Canadian Federal System**

Canada functions similar to the U.K. in that it is a constitutional monarchy. The nation has a constitution founded on the rule of law and respect for rights and freedoms. The heads of State in this country mainly handle ceremonial tasks whilst governing is done through representative democracy in Parliament. All decisions taken by Parliament in Canada are said to be in the name of the Crown. Regardless of this gesture, the proper governing authority derives its legitimacy from the Canadian people. in Canada's Parliament.

### **Concept of Federalism:-**

*In its simplest form, federalism refers to "a division of jurisdiction and authority between at least two levels of government" This division typically occurs between two or more constitutionally recognized levels of government, i.e., levels of government with their own autonomous or semi-autonomous constitutional powers. According to the "gathering together" theory of federalism, the word "federalism" is derived from the Latin word Oedus, which means "league," "treaty," or "compact." Moreover, each level of government typically has its own distinct jurisdiction, i.e., areas of public policy over which it alone can exercise authority or has the ultimate say. Typically, the national government has the ultimate say on "national" issues such as national defense, foreign policy, and treaty-making, to name a few. In contrast, regional administrations will have authority over more "regional" issues, although this can vary significantly between federations. The term federation' is derived from the Latin phrase foedus, which means an agreement, contract, or compact. Consequently, a federal state is viewed as a compact or association of states/provinces as a result of a deal or treaty. It is a configuration whereby a number of comparatively separate elements join together to form a whole. It refers to a governing body that is divided both functionally and structurally into national administrations and their constituent sections, called provinces or states. The political institutions, compositions, and operations of federal states must reflect this associational relationship. Robert Garan describes federalism as a "form of government in which sovereignty or political power is divided between the Central and Provincial*

*Governments so that each is independent of the other within its sphere." Most frequently, federalism emerges through either the centripetal or centrifugal processes. The constituent elements initiate the construction of the federation in the centripetal process. The reasons for forming a federation can vary from case to case. However, the main draw and push factors in the centripetal origin of federalism are the security concerns of constituent units and the desire for economic prosperity.<sup>4</sup>*

#### *Establishing a Federal Union:-*

The Constitution of the United States (1787) is the first example of a modern federal constitution. A federal union of the British north American colonies was first conceived in the early 19th century. It was pursued more seriously from 1857 onwards. Negotiations among the province of Canada new brunswick and nova scotia took place at the Charlottetow conference and the Quebec conference in 1864. These discussions led the British Parliament to pass the British North America Act (now called the constitution act 1867). It united those three colonies into a federal state as of 1 July 1867. Canada's first prime minister Sir John a Macdonald, was not keen on federalism. He preferred a unitary state. In this model, provinces would get their authority from — and would be subordinate to — the central government. Another key factor was the American civil war. It saw the Southern States secede from the federal union. This led to the fear that giving the provinces too much power would make the country unstable. For these reasons, the Canadian constitution includes features that do not fit with a strict approach to federalism.<sup>5</sup>

#### **Written and Rigid Constitution of Canada:**

The Constitution Act, 1867, also known as British North America Act, 1867, passed by the British Parliament, introduced a parliamentary form of government with a federal system in Canada. The amendment process of the Canadian constitution has evolved over a period. The 1867 Act had no formula to amend the constitution. The Canadian Parliament used to request the British Parliament to decide whether the amendment was to be done.: 258-259). First, provisions affecting the federal government can be amended by the federal Parliament. Second, provinces have exclusive power to amend the constitution of the province. Third, few amendments also

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<sup>4</sup> Mohd. Saleem Hussain, *Comparative Study Of Federalism Between Canada And Changing Values Of Federalism In India*, 11 International Journal of Creative Research Thoughts 139,140 (2023), available at <https://ijcrt.org/papers/IJCRT2305022.pdf> last seen at 09/03/2024

<sup>5</sup> Supra 2

require the approval of two-thirds.<sup>6</sup>

### **Fiscal Federalism In Canada :-**

Fiscal federalism is an area of study in which the principles of economics are applied to the functioning of the public sector in a multi-level government. Fiscal federation is concerned with two basic issues, (1) Efficiency and (2) Equity, Efficiency determines the assignment of tax powers and expenditure responsibilities among different levels of government. The federation of Canada is comprised of 10 provinces and 3 territories which derive their basic powers and responsibilities from the constitution of 1867. Both levels rely on many of the same types of taxes, most importantly personal and corporate income taxes and consumption taxes. Though the provinces have virtually complete freedom to define their tax bases and rate, most provincial income taxes are collected by the federal government. In Canada tax collection agreement between the federal and provincial government provides for joint use of the same income tax base. The provinces with the exception of Quebec and Ontario set their own personal and corporate income tax rates charged by the centre. The taxes are collected by the federal government and then remitted directly to the provinces. In Canada, there is a federal VAT that is levied throughout the country.<sup>7</sup>

### **Fiscal Federalism in India:-**

In India Federalism in India is characterized by constitutional demarcation of revenue and expenditure powers among the three levels of government. More than 1.20 billion people in the country are spread over twenty-nine (including Telangana) states and seven union territories. The constitution of the Indian Republic, like the 1935 Act, provided the three fold distribution of powers (Article 246). It transferred a few minor items from the Central list to the State list and allotted greater powers to the central government such as national highways, inter-state trade and commerce. The matters of national importance were assigned to the Union list (list-I) and those of regional importance were assigned to State list (list-II). With the passing of the 73 and 74\* constitutional amendments, two separate schedules were inserted into the constitution listing the functions to be assigned to rural and urban local bodies. The State governments are also supposed to appoint a State Finance Commission (SFC) for every five years to assess the requirements of

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<sup>6</sup> *Federalism: Canada, Australia And India*, egyankosh, available at [Unit-14.pdf\(egyankosh.ac.in\)](http://Unit-14.pdf(egyankosh.ac.in)), last seen on 09/03/2024

<sup>7</sup> *Fiscal Federalism in Canada*, Harisha B.N., available at [https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/85272/11/11\\_chapter%204.pdf](https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/85272/11/11_chapter%204.pdf) ,last seen on 09/03/2024

the rural and urban local bodies and recommend transfers to them.<sup>8</sup>

### **Historical development of federalism in India**

The historical development of federalism in India can be traced back to the country's colonial past and the process of independence and nation-building that followed. Here is an overview of the key developments in the evolution of federalism in India.<sup>9</sup>

#### **Government of India Act, 1935:**

The Government of India Act, 1935, was a significant milestone in the development of federalism in India. The Act introduced the concept of a federal system of government, with a clear division of powers between the Centre and the provinces. However, the Act also maintained a degree of central control, with the Governor-General having the power to override decisions made by the provincial governments.<sup>10</sup>

#### **Independence and the Constitution:**

With India's independence in 1947, the process of nation-building began in earnest. The Constituent Assembly was tasked with drafting a Constitution that would reflect the country's diverse needs and interests, and federalism was a key component of this process. The Constitution provided for a federal system of government, with a clear division of powers between the Centre and the states. However, it also maintained a degree of central control, particularly in areas such as defence and foreign policies.

In summary, federalism in India is an important feature of the country's political system that ensures a balance of power between the central government and the state governments. The Constitution provides for a clear division of powers, and the judiciary acts as a watchdog to prevent any overreach by either the central or state governments.<sup>11</sup>

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<sup>8</sup> Supra 7, at 3.

<sup>9</sup> *Changing Dimensions of Federalism in Indian Constitution with Special Reference to Legislative Relations: A Critical Study*, Jaiswal, Komal, [https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/509768/6/06\\_chapter%202.pdf](https://shodhganga.inflibnet.ac.in:8443/jspui/bitstream/10603/509768/6/06_chapter%202.pdf), last seen on 09/03/2024

<sup>10</sup> Supra 9

<sup>11</sup> Supra 9 at 11

**Functioning Of Federalism In Canada And India :-**

In more than 150 years of Canadian federalism's operation, three dominant patterns have emerged: colonial, classical, and interdependence federalism. During the period of colonial federalism, the federal authority ruled the provinces. The map of Canada's government was redrawn, and additional provinces were added. In addition, there is a preference for shared rule over self-rule, unity over diversity, and autonomy.<sup>12</sup>

The federal government received the right to regulate commerce, impose taxes, and nullify provincial laws that were likely to conflict with federal law. Linguistic tension between English and French, the economic crisis caused by declining imports from colonies, the judicial role of the Crown Court, and the prospect of an attack from the south gave rise to a tendency towards centralization.<sup>13</sup>

John Macdonald, Canada's first prime minister (1867- 1873 and 1878-1891), utilized the reservation and disallowance powers to enhance the federal government. The federal government abandoned policies such as disallowance, thereby strengthening the federal government, and provinces stepped into new areas such as income tax, minimum wage, transportation construction, and education<sup>14</sup>. The phase of interdependence federalism was characterized by increased coherence and interdependence between the federal and provincial administrations. Federalism's interdependence has been managed by increasing federal expenditures and fostering intergovernmental relations. The federal government provided provinces with conditional grants to expand social programs such as hospital insurance, mothers allowance, and financial assistance for disadvantaged groups. As interventionists, provinces such as Quebec contested the conditional grant initiative. The legalization of cannabis and international trade are two interdependent spheres. Although international trade decisions fall under federal jurisdiction, federal and provincial negotiators made trade agreements with the European Union side-by-side. Provinces were also consulted during the United States-Mexico-Canada Trade Agreement negotiations. In more than seven decades of its journey, Indian federalism has also been marked by cooperation and competition between Union and States. Various factors such as the role of the Supreme Courts, functioning of political parties.

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<sup>12</sup> Supra 1 at 10

<sup>13</sup> Supra 1 at 9

<sup>14</sup> Ibid at 137

regional and national leadership, emergence of new issues, and emergencies like wars and pandemics have significantly affected the functioning of federalism. Indian federalism has passed through many phases, which is presented in models like cooperative federalism, bargaining federalism, and competitive federalism. The initial phase of Indian federalism is called cooperative federalism by Granville Austin. In this phase, given the single-party dominance at the center and states called Congress System by Rajni Kothari and charismatic leaders like Nehru and Shastri, center and states worked cooperatively.

### **Division of Powers:**

The scheme of division of powers in the Indian federation is present in the Seventh Schedule of the Constitution of India. The constitution has three lists, Union, State, and Concurrent, for dividing the powers between the center and the states. There are 100 subjects on the Union list over which the central government has exclusive authority. The State list contains 61 topics. Initially, the Concurrent list included 47 subjects over which both the federal and state governments can enact laws. The Concurrent list has been enlarged to 52 subjects, with the 42nd Amendment of 1976 transferring five subjects from the State List to the Concurrent List. As in most constitutions, when there is a conflict between the laws of the central and state governments, the laws of the central government take precedence. The residual powers are exercised by the Center.<sup>15</sup>

### **Dispute Settlement Mechanism:**

In the Indian federation, the judiciary and intergovernmental entities are two mechanisms for managing and resolving disputes between the center and state or between the two states amicably. The Supreme Court is the ultimate arbiter in center versus state and state versus state disputes. The matters related to (i) the center and one or more states (ii) center and state or states vs a state or states (iii) one or more state vs one or more states fall under the primary jurisdiction of the Supreme Court. These issues can be promptly brought to the Supreme Court. Additionally, the Supreme Court has the authority to interpret the Constitution. Its power of judicial review serves as a safeguard against the possibility of central government encroachment on state powers and authorities. The intergovernmental bodies prevent the escalation of conflicts and attempt to manage them prior to their exploration or escalation into disputes. Inter-State Council (Article

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<sup>15</sup> Supra 1 at 7

263) and National Development Council introduce central and state administrations to a single platform to discuss their problems and issues.<sup>16</sup>

### **Dual Government:**

There is both a central government and state governments, and each has its own governmental structures and ways of doing things. They have their own lawmakers, government, and court system. The President is the leader of India as a whole, and the Governor is the legal leader of each state. If India's top court is the Supreme Court, then a state's greatest court is its High Court. Indian Federation has two levels of government. This is because the national government and state governments each have their own set of political organizations. But unlike the US and Switzerland, India only has one citizenship, and that is Indian citizenship.<sup>17</sup>

### **Bicameral Legislature:**

The Indian government, which is called Parliament, has two chambers. The Rajya Sabha is the top house, and the Legislative Assembly, or Lok Sabha, is the lower house. In a two-chamber government, the Lok Sabha (also called the "People's Council") speaks for all the people in the country. On the other hand, the Rajya Sabha (Council of States) is the part of the national government that serves the states. Members of the Rajya Sabha are chosen by the state governments, while members of the Lok Sabha are chosen directly by the people. President chooses twelve people for Rajya Sabha based on their achievements to the arts, literature, sciences, and society states of the Indian Union (Uttar Pradesh) has thirty-one seats in Rajya Sabha, while the seven small states only have one seat each. In the US, all areas get the same number of Senate seats, no matter how big or small they are.<sup>18</sup>

Canadian fiscal federalism – and Canadian politics more generally – is the tension between economic interests in the energy sector and the need to address climate change. Dinning argued that the federal government's current spending policies can only have a negative effect on fiscal federalism in the long run, by further indebting the federal government. He believes that there

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<sup>16</sup> Supra at 6

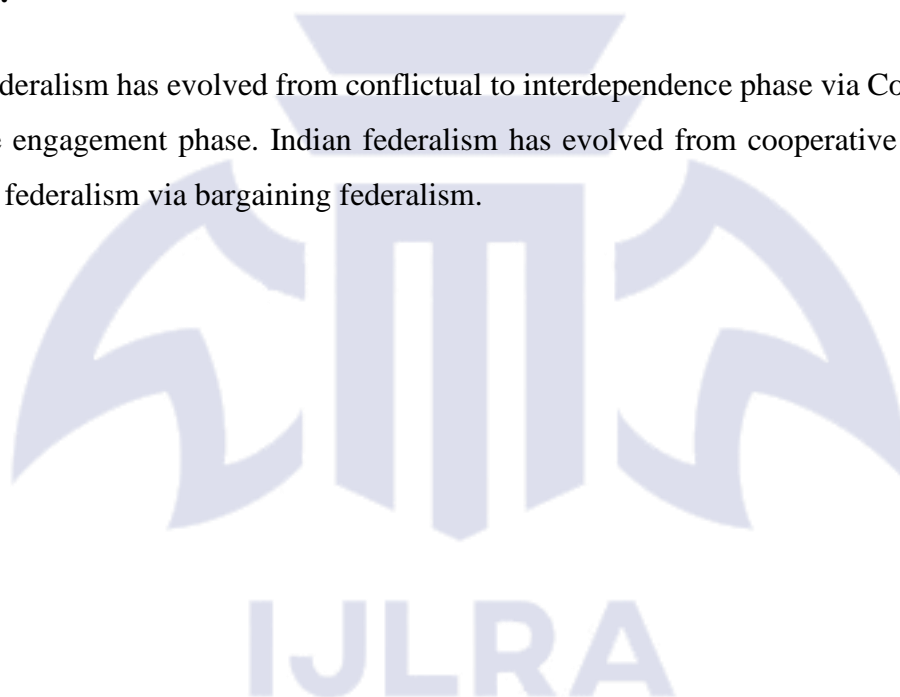
<sup>17</sup> Ibid 167

<sup>18</sup> Arushi Sharma and Shivanshi Gupta, *Federalism: comparative study between India and Canada*, 10 human rights and constitutional studies 145,146(2023), available at [Federalism: comparative study between India and Canada | International Journal of Human Rights and Constitutional Studies \(inderscienceonline.com\)](https://www.inderscienceonline.com) last seen at 09/03/2024

should be an emphasis on spending on innovation and on energy, which must include all forms of energy – including fossil fuels – and that Alberta must be an integral part of discussions in this area. Dinning emphasized that current environmental issues will not be solved by an ‘either or’ mentality, but by pairing various measures and resources. Lévesque underlined the importance of using oil revenues to fund ‘green’ innovations. Bird questioned the lack of effective methods in interprovincial transportation of energy. Dinning lamented that Alberta and Canada have not better managed oil revenues. He also emphasized the need for a better pan-Canadian energy corridor, to which Lévesque agreed. On the topic of energy and the environment, the panellists generally agreed that a more intergovernmental and collaborative framework is required.<sup>19</sup>

**Conclusion:**

Canadian federalism has evolved from conflictual to interdependence phase via Cooperation and constructive engagement phase. Indian federalism has evolved from cooperative federalism to competitive federalism via bargaining federalism.



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<sup>19</sup> Swapnil S. Kumare, *Comparative Study of Federalism in Two Democracies: India & Canada*,9(5) IJARIE- ISSN(O) 192,200 (2023).