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COMPARATIVE FEDERALISM: PRINCIPLES, CHALLENGES AND SOLUTIONS

AUTHORED BY - PARTHEESWARAN PARAMESWARAN & NISHANTH.J

Abstract:

This research paper provides a concise overview of the key principles underlying federalism, examines the challenges faced by federations globally, and proposes innovative solutions to address these issues. Through a comparative lens, the study delves into the intricate dynamics of power-sharing, intergovernmental relations, and the intricate balance between centralization and decentralization. The analysis not only sheds light on the inherent strengths and weaknesses of various federal models but also offers strategic insights into fostering effective governance and promoting sustainable solutions for the complex challenges faced by federal structures worldwide.

1. INTRODUCTION

“Federalism isn’t about states’ rights. It’s about dividing power to better protect personal liberty”

-Elizabeth Price Foley (American legal theorist)

Federalism is the vital element of many countries; it holds a nation together as an entity. The concept of federalism is rooted in political, cultural, historical, social and legal of the nation. It is the product of the society and not constitution. Federalism as being the essential trait of many countries, it is so important to acquire in-depth knowledge of the mechanism to foresee the challenges and its solutions. The study of federalism is complex because researchers at different time, different place, and different circumstances have interpreted differently. Federalism started in 18th century by American government it was a new emerging concept but it had a synergy to hold a large part of state and still drives it as a nation to reach the goal. The core idea of federalism are three factors A) independence of the state B) having large territorial and political access and C) retaining the individuality of the state.

The primary function of federalism is to maximize the power in democratic system and also strengthen the participation of public in policy making as well as to decentralize the powers, so that the sanctity of the regional states interest than a unitary state. It helps to protect the interest of minorities and work as check for any despotism. A federal union will form into a one solid nation but retain the local administration and it will be of different levels like local self-government so it could manage the nation and also self-rule plus shared rule principle will be established.

All the above said are the ideal federalism structure but in reality it isn't a cake walk, there will always challenges for federalism whether it maybe a regionalism, ethnic strife, lack of social unity and lacks a common goal these are few example which act as hurdle for a federal structure, so it is essential to anticipate the challenges for federal structure by doing a comparative study with different nations for example like USA, India & Nigeria and also looking at the past of Yugoslavia and Czechoslovakia so we can navigate the problem and come up with the solution.

A] Legitimacy and the complication of national recognition:

The concept of federalism is found even before 1000 years in Greek and Maurya political history but it wasn't a defined structure of federal but it had components of local government and controlling authority from central, so this isn't something new. The question is what holds the people of diverse culture and linguistics together and form that as nation and keep it going. Nation is a ultimate form of social contract for protecting each other and their property but when people of different tribe comes to a place to form a state what influence them to form a state without losing their identity.

In a nation when people coexist there is always adhesive and aversion forces which exist as part and parcel. Even when there are lots of differences people from multiregional/multiracial background have a common sympathy to run a federation so studying deeply about the federalism of different nation we can understand the desirability and viability of the spirit of constitution. From the sociological point of view the people of different society come together and formed a nation which federalism element to maintain their individuality and also need a higher degree of protection at the time of war and disturbance which mostly drives into federalism.

The final political power will lie in the hands of central government for common good. There

might be people of different regional, linguistic, cultural, religious come together with the notion of self-interest and common attachment to the nation which is fueled by deeper sense of oneness and tolerance and acknowledgement of diversity among each other as Nehru¹ said but this is ideal concept but in reality, there will be so many hurdles so we will look through the concept of federalism of different states like US, Canada, India and Nigeria etc

AIMS AND OBJECTIVE:

Federalism could be a work not of constitutions but of social orders. It lays the establishment to the powers to act and powers to choose. The central government and state government distribution powers and distributes them to isolated circles of government, though the making and administration of open arrangement in complex zones frequently so the league has been effective in protecting, ensuring and advancing as common regard, acknowledgment, toleration, respect, assent, believe and correspondence. When we examine factor-goal components in league motivation' it'll tell us approximately victory and the roots and arrangement of alliances in 'the nonappearance of an adequate political-ideological commitment there emerges strife to the essential concept or esteem of league itself. So, the extreme point of this investigate is to do comparative investigation in defining, testing, or reexamining hypothetical suggestions to create the compelling federation.

RESEARCH QUESTION:

2. The primary work of this study is to look into the aspect of driving potential of the federalism and federation like what causes it and the holding cohesive force. So, locating the factor like political, economic, cultural or intellectual cause it will help us to find the origin of social conscience.
3. The second aim of this study is to research the mechanism of self-rule plus shared rule principle. It is helpful to know the sphere of central and regional government boundaries like the legislation and power sharing process to run the nation from this we can understand the threshold of it.
4. What is the reason for disintegration or secession of the nation and its remedy?

DATA AND METHODS

The study is based on the history, international affairs and world politics where it is and

¹ Jawaharlal Nehru, The unity of India

consolidates effort to extract the significance of federalism of different nations and also it is a time to look back the path what our nation took to form the federalism. So, this paper is a qualitative analysis of different works and books of different authors and the report of various commissions on federalism in India to study the concept, its challenges and solutions for it. It is a comparative study of different federal structure and its significance and the difficulty in cohesion of the state, so by following this method it is useful to anticipate the upcoming issue in future that might arise with respect to the path that presently our nation is walking on. The comparative analysis gives a whole picture of different types of federalism in different part of world at different time period.

LIMITATIONS OF THE STUDY:

The primary limitation of this study is, since it is a qualitative study the perspective of the person will differ from that of a researcher and the materials used for the study are the books written by different authors so the reliability of the facts may differ. one of the important problem is that since this research was carried out during pandemic period so the materials used is so limited, so we can't come to an proper conclusion only with the available materials.

DISPOSITION:

The remainder of this paper is organized as follows: Chapter 1 deals with Legitimacy and the complication of national recognition, the conceptual peculiarity between federalism and federation in order to primarily locate the nationalism in the former category while situating the national state in the latter one. Chapter 2 lays the comparative study of federal political systems and federalism in this part it mainly focuses on ideology, political parties and party systems, constitutional reform and judicial review. Chapter 3 Problems straighten up in federalism gives an insight about the complication is in federalism like ethnic and secessionist movements, lack of social unity among the people and the political leadership threatens their nation's existence. Chapter 4 deals with Lessons of experience. It primarily focuses on endurance and longevity which drives the nation to success or failure. Chapter 5 finally concludes.

2. THE COMPARATIVE STUDY OF FEDERAL POLITICAL MECHANISM AND FEDERALISM

In the theoretical world of federalism is more of a deep institutional structure it is more than the just power sharing structure between state and protecting each other. It is a larger framework of

socio-political financial structure when either the representation or the majority voice of different people is reflected in the choice they make and the people they vote to represent them. They carry forward the social contract of the people, federalism is more than a pluralism because in pluralism is just acceptance of each other and providing the liberty but it has the ingredient of political structure, financial policy and socio-political problems. So, this part we will try to look into the concept of institutional framework of different nations to understand the nation's exemplar.

When comes to federation it is largely classified into 2 types Westminster model²(parliamentary), the republican-presidential model but there is also hybrid of both the types in few countries. In a federalism system where when there is a huge voice of majority people then the power will be concentrated in the central but if there is diverse of ethnicity of people then there will be representation of different political parties at the center so as to maintain the sanctity of federalism by representing ideas of different people for different policy. So the political system and their ideologies help us to navigate the spirit of federalism in the nation, to some extent the concept of judicial review also help us to understand the role of judiciary in safe guarding their rights. To some extent even religion plays a major role in federalism like for example Nunavut in Canada got separate identity because to safeguard the identity of native people in Canada³. The sociological aspect where the territorial aspect of the country whether it may be territory of the state and the society's determination. This chapter mainly deals with the comparative study of political, sociological, fiscal policy, religion ideologies and party system of different nations like US, Canada, India, Nigeria and Malaysia.

A] Political system analysis:

In the view political ideologies of nations it is so important to study because it gives a deep understanding of federation and their mechanism, political system hoe they operate in different levels founded upon the principle of difference and diversity. Mostly in political system where there will be a debate for the welfare policy and power mechanism. In US it follows the Presidential form of government where it follows dual government where there is US federal government and other state government, the Act of confederation which gives more power to state government like even to declare a war but not to levy tax so the total concept

² Westminster model is a form of parliamentary system of government that incorporates a concatenation of procedures for operating a legislature that was first developed in England.

³ Dobbins, Holly Ann, "Nunavut, A Creation Story. The Inuit Movement in Canada's Newest Territory" (2019). Dissertations - ALL. 1097.

of sharing powers is different because of dual federalism the states even have their own constitution but the levy tax, immigration is under national government. In Canada it is one of the oldest federalist countries where it follows Westminster form of government which it inherited from British Canada though it follows federalism it wasn't the same type of sharing of powers as it started due to many amendments like Constitution Act, 1982 where it equalized the power sharing especially in the economic and socio development between 2 government so now it is state government and central government plays on equal ground. When it comes India's federal structure is adopted from Canada with strong central government and weak state government and it also follows parliamentary form of government. India adopted quasi federal system so to manage and hold the country together progress in socio-economic and political development still it continues in that quasi federal manner. Nigeria is the epitome of struggling of federalism where plenty of times the constitution of Nigeria changed because of the diversity in the nation and difficult to cohesive as a state that's its why it follows three tier governments.

Sociological aspect study:

It is one of the interesting fields of study because in a country it will be usually lots of people and culture will be diverse so also their ideas, it is inherent that the clashes are part and parcel of it. The social cleavage is the important factor which the disintegrates the nation. In US where it is the cosmopolitan hub of the world, it is one of the primary country which has so many immigrants compared to other nations. The majority of the people is Caucasian population and next is African American and also Asian forms a significant population. It is a conglomerate structure since there is a huge divide between the left wing and right wing there is always a tug of war between the conventional and modern school of thoughts. In Canada it is also very similar to America in terms of cosmopolitan surrounding but it is more progressive in thoughts, the tolerance factors the intake of immigrants and etc. so the social conscience is very much broad in that society. When it comes to India it is the great-great grandmother of tradition as Mark Twain⁴said. Since history always taught that there will be intense clashed when there is less power concentrated in center then the nation will be highly unstable when the people are from different tribe, so the concept of quasi federal structure is followed in India. In Nigeria the society of various native tribes there is always a chaos when it comes to social integration, it has been long clash in between different set of people that is why the notion as a country is in question and the constitution has been drafted

⁴ Dasym. 2017. India as a civilization culture. [ONLINE] Available at: <https://www.dasym.com/india-civilization-culture/#:~:text=Mark%20Twain%20famously%20said%20that,spiritual%20characteristics%20of%20India's%20civilization..> [Accessed 26 February 2021].

myriads of times to adapt to the changing circumstance of the nation. So from this we can understand the importance of study of sociological ideology of the nation.

Party system:

Examining the political party system is very crucial in a comparative study of federalism because political party shapes up the nation's identity; it is the vehicle of people's will. The ideologies of the political party channelize the belief of the society into the life of the nation. When the voice of majority is loud then there will be accumulation of power will be in central and that will overpower other community of people. Double party system and multiparty system tells about different need of different people at different times. In US it is a duo-poly political party system⁵ there are some other small parties but it has no significant only Democratic Party and the Republican Party system win in every presidential election where the former belongs to left school of thoughts and latter represent the right wing school of thoughts, these two parties come into power on alternate basis according to the present mind set and needs of people. Even in recent US election held in 2019 when the democratic party won it showed the people's high demand of equality, fairness and civil rights for minorities it overthrown the old school republican party it showed the need of change in economical growth. When we look Canada it has 5 party systems namely Liberal Party currently ruling government, the Conservative Party (Official Opposition), New Democratic Party, Bloc Québécois, and Green Party of Canada⁶. But the party which always comes to power is liberal party and conservative party. The common attribute of all the parties is that neither of them extreme right winged they place in middle right so from this we can understand the social conscience of the people is of liberalization of nation. So it is evident to capture the need of people from this political system. In India it started with congress as a federal party at centre it was actually a nationalist party fought for the freedom of India but it continued to be dominant party for many years but after few decades the right winged party BJP came into power and started to root into the society but now it is the tug of war between the 2 political parties because the right winged party is favored by the conservative and majority people of the nation but this is just in centre but when in the state government in most of the states the regional parties always comes into the power and they represent the minority in the parliament so it reveals the fact that minority community don't support the right wing party or the

⁵ The Economic Times. 2020. Are there only two parties in American politics?. [ONLINE] Available at: <https://economictimes.indiatimes.com/news/international/world-news/are-there-only-two-parties-in-american-politics/articleshow/77961258.cms>. [Accessed 26 February 2021].

⁶ Canadian Encyclopedia. 2006. Canadian Party System. [ONLINE] Available at: <https://www.thecanadianencyclopedia.ca/en/article/party-system>. [Accessed 26 February 2021].

authoritarianism. In Nigeria it is very complex equation where the nation's political system is highly unstable government because it is a complex state where with 3 autonomous states and one federal government where the major parties are All Progressives Congress, People's Democratic Party, Labor Party, All Progressives Grand Alliance and Social Democratic Party⁷. All progressive congress came into power in 2015 where its idea is of socialism which is shown to suppress all kind oppression. Therefore from this we can able to deduce the desperate for equality from the minds of people.

Judicial review:

The constitutional text can say how the society was formed and their common goal but to know the real mind set of the people then the place which is to be examined is the judiciary, judiciary place the major role in federalism because the judiciary is the guardian of law and it validates the act of the government, so when we analysis the landmark judgment with respect to distribution of power, we can understand the power abode in the 2 level government. In US where it is a perfect dual federalism it is also reflected in the cases for example in United states v lopes where there was a issue on free zone but this totally invaded the power of the state government so the act is unconstitutional, so here the court make the distribution of power clearly. In Canada in the infamous Reference re secession of Quebec⁸ where it laid the fact that "there can be little doubt that the principle of federalism remains a central organizational theme of our Constitution." So the primary aim is to establish the principle of the federalism and when the state can't manage then it is a work for central or unitary government because of the federalism structure and this similar principle is established in Nigeria also in resource control on Nigeria where it said that the resources belong to the federal government so from this we can understand that as long there is a clear separation of powers then there isn't a problem arises between the state.

Fiscal Federalism:

The tax is the backbone of the nation and in the federalism, it is the essential lifeline of relationship between economic growth and political sovereignty of the government. Only as this as a framework the regional resources, economical flow of states will be distributed among other states in a federal system. When it comes to US it is more evolved concept when it comes to fiscal federalism because both the expenditure and revenue is decentralized compared to other countries

⁷ Nordeatrade. 2017. The political framework of Nigeria. [ONLINE] Available at: <https://www.nordeatrade.com/en/explore-new-market/nigeria/political-context>. [Accessed 26 February 2021].

⁸ Reference Re Secession of Quebec, [1998] 2 SCR 217

because the states are given more liberty in framing the fiscal policy with respect to the needs and the local government is also falls under the state government so each has its own legislation but when it comes to fiscal legislation in warfare and social security then federal government comes into the picture. In Canada the structure of levying tax is quite complex because of the overlapping of powers in federal and provincial level because most of the tax falls under both the government like personal and corporate tax both falls under the both government but the intensity of influence changes like the basic rates will be fixed by the federal government but the separate room for tax and it will levy their own tax but the scale is more decentralized. The Indian scenario is different from where it started it was suppose to a cooperative federalism, the union government has power to legislate in direct income tax and states too have power to levy tax in and alcohol etc. But there is sudden change from planning commission to NITI Aayog , so it collapsed the structure because it created horizontal and vertical imbalance like the state has to be fully relied on the NITI for all financial needs so the regional parts get affected and also the one size fits all mechanism curbs many states so the economic growth will be curtailed. So the stability of fiscal federalism is been collapsed. The Fiscal federalism in Nigeria is totally from all the above mentioned countries because it has 3 tier government ⁹namely Federal, state and local government from the time of its independence it has seen worse there is always unstable in government because of vast communities of native people and lack of cooperation. It is a decentralized form of government where there is a decline of federal levying tax from 1960 to present but whereas in local tier it got increased from 0 % to 20%¹⁰ and state remain the same but for protection of state in terms of military the expenditure is high on federal government. So it legislation is changing to adapt the changing circumstance.

3. PROBLEMS STRAIGHTEN UP IN FEDERALISM:

As saw in before sections, the notion of federalism isn't a easy structure , it always a complex structure and it is just more than a social contract ,it is a social conscience which is the core of the idea of federalism where the people of same mind come together and form a state so when it is a federal state where the people might come from different background and etc but the society's

⁹ Ayeni, V., 1994. The Illusion of Three-tier Federalism: Rethinking the Nigerian Local Government System. *International Journal of Public Sector Management*, [Online]. 7, 52. Available at: <https://www.emerald.com/insight/content/doi/10.1108/09513559410067528/full/html?skipTracking=true> [Accessed 26 February 2021].

¹⁰ Salami, A., 2011. Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, Challenges and Policy Options. *ECONOMIC ANNALS*, [Online]. LVI, 27. Available at: <https://core.ac.uk/download/pdf/27238465.pdf> [Accessed 26 February 2021].

common goal will to protect each and even when they aren't from same origin this kind of behavior is called as Ubuntu. Where people protect and value each other in the society but there will be problem as regular in any society. It can be very apparent or it lies in the layers of structure which causes a problem afterwards. So this part help us to critical analysis the problems in various federal countries around the world namely US, Canada, India and Nigeria

The problems in US federal structure is in recent days the people became more like conscious about their own land and there is lots of chauvinistic behavior happening throughout the nation where the society is against to the concept of immigration and unemployment. In recent case also the there was landmark judgment Arizona vs. US¹¹, where it is the famous case law where the Arizona state enacted many legislation against the immigration people who don't have a valid documents then they are subjected to arrest and it was against the federal legislation. So now even there was an attack on senate because of fall of Donald Trump, it shows that people are deviating from the standard intolerance so this will be a bigger issue between states of US. The condition of Canada is much in better place but still it isn't flawless because the major language spoken is English and French, the Quebec region consist of minority French speaking region so they always consider them as different from the rest of the nation there was no integration of the minority to the nation so recently they have unilaterally secession from the state, since it was declared unilaterally there was a case which went in the apex court of Canada regarding self-determination of the people, it has decided that the people of Quebec has right of determination but can do unilaterally without the consent of central government which affect the foundation of federal structure. So this shows how the clash of linguistic can cleave the nation all together this is also seen in when Bangladesh formed after being disintegrate from Pakistan. In India as we have mentioned it already that it is of diverse culture so there is always a eruption of protest among the people in nation so the central government always tried to change the laws to the need of regional society the very example for the disturbance is Jallikattu protest held in Tamil Nadu where it was a leaderless protest it showed the self determination of the people and it also held in Karnataka for kambala so this is an epitome of problems that gets arises in federalism when the voice of the people especially from the minority isn't heard well enough. Likewise in Nigeria the problem is much worse because it isn't only about ethnicity or linguistic problem but it is more like a power and resources sharing among the citizens equally but due to the heterogeneous nature the majority people suppressed the minority this nation id(psychology) in verge of disintegration

¹¹ Arizona v. United States, 567 U.S. 387

so close studying this will help us to know the pinnacle of unstable federalism.

4. LESSONS OF EXPERIENCE:

The concept of federalism isn't something same, it differs from nation to nation by studying all these countries we can understand the power distribution among nation is different, the fathom is relative it depends upon the particular country's need. From the examples we saw, it is apparent that federalism requires both intellectual necessity and political demand, that isn't common to all society. Federation is social phenomena where there are so many factors are taken into consideration during the time power sharing because in federalist country like India where it is a multi-dimensional framework and the resources also not equal, so this is the issue in our country that's why India has applied Asymmetrical approach where it is somewhere common in between a centralist and cooperative federalism as we can see in many provisions of constitution like

Now it is more important to give importance to all the people in the cosmopolitan society because unlike Nigeria showing a great affection to one particular society will disintegrate the society and we choose to be like US that will cause a cleavage in the society and it will lead to regionalism, Now in this present globalization many things got changed now the transnational advocacy got popular and it is even seen during farmer's bill protest, people from the other countries have started supporting the protest so if we don't give enough attention then that will lead into secession as happened in Yugoslavia where there was heavy economic and political crisis and where the Croats & Slovenes who argued for greater power and the autonomy that led to internal wars, so it is high time the India keep balance between unitary and state. The same lesson is taught by the Czechoslovakia case where the country got dissolved when one part of the country was doing well economically and refused to share with Slovakia and in return Slovakia demanded autonomy so that led into dissolution. This is the lesson should be learned by all the countries that follow federalism, so they won't get disintegrated.

5. CONCLUSION:

The concept of federalism is a way to combat the inefficacious position of the states, the union is the leviathan formed by the people from the union of the state to accomplish a common good. It also even scores the imbalances of various part of the federalist country, but it should be driven by the factor goal component and the main driving force is the separation of the powers and the demarcation should be strictly followed because the social conscience won't be the same

throughout the country. There should be a negative duty on the union government to not to hold the vein of the state government because it usurps the freedom of the people and that leads to secession and regional revolution which affects the unity, the history always taught us that absolute power corrupts absolutely, it is high time India should follow the principle to keep Bharat going.

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