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“FEDERALISM IN INDIA AND USA: A COMPARITIVE STUDY”

AUTHORED BY - PRANALI SUNIL GAWADE - LL.M, 1 ST YEAR

ABSTRACT:

The purpose of the research article is to study and analyse the comparison between federalism in India and USA. Federalism, as a political system, divides power between the central government and the subnational units. In both countries, federalism has evolved over time and has been shaped by historical, political, and cultural factors. The analysis describes the evolution of federalism in India as well as in USA. It also talks about the basic features and elaborations of federalism in India and USA with relevant judicial pronouncements. Being the largest democratic countries in the world, both United States and India are based on federalism in their political structure. US became a Federal Republic State by promulgating its constitution in the year 1789; whereas India became a Socialist, Sovereign, Secular, Democratic republic by formally launching its constitution only in the year 1950. The analysis further compares the federal structures of India and the United States, including the distribution of powers, the roles and responsibilities of the central and state governments, rulemaking, amendments, jurisdiction, judicial authority and the mechanisms for intergovernmental relations. The paper also examines the similarities and differences between the two federal systems, highlighting the strengths and weaknesses of each. The US federalism is very strong and more rigid as envisaged in their constitution by its leaders. It is more federal than unitary in character. Whereas, India is more unitary than federal and we can even say that it is a quasi-federal state.

Keywords: Federalism, India, USA, Quasi-federal, distribution of power.

INTRODUCTION

“Federalism should be a meeting point of all groups.” – Khil Raj Regmi¹.

1 Across the world, federal regimes are full of inconsistencies. They are both individually unique and yet respond in a constantly changing world to similar goals and expectations. This dynamic

is demonstrated by changes in two major federal structures, India and the USA, which have attempted to deal with drastic disparities within their population as they look for ways to bring democratic ideals to life.² Federalism is a form of government which has been progressively becoming more powerful throughout the globe. The concept of Federalism is a form of government in which the national government's regional, state, or local counterparts cooperate with the national government on a national level. More broadly, we can say Federalism means a division of power and decision-making control between the central and state governments, with the central and state governments assigned power and authority with respective spheres. A federal government is stated as a system of divided Sovereignty. In order to ensure that excessive power does not come to the hands of one government, the federation should focus on a system where there exists mutual interdependence between the two Governments. In contrast to a unitary system, where a single central government serves as the fundamental and supreme power, a federal system of government has two levels of government (national and state).

Being the largest democratic countries in the world, both United States and India are based on federalism in their political structure. US became a Federal Republic State by promulgating its

¹ www.brainyquote.com

² Livingstone, federation and constitutional change (1956), PP. 6-7

constitution in the year 1789; whereas India became a Socialist, Sovereign, Secular, Democratic republic by formally launching its constitution only in the year 1950. Thereby both countries had attained dominion status in which a number of smaller states had got affiliated forming a union with a strong central government that came to be called as Federal Government in the US and Central Government in India. Thus both states became Federal Republics. Despite many similarities between India and U.S.A, there are a lot of differences as both the countries owe to different social, economic and political situations. Let's understand both the federal structures through different elaborations and key features.

CONCPT OF FEDERALISM

Federalism is compound mode of two governments. It is a constitutional structure that typically establishes two levels of government with delegated powers and roles resulting from several social, economic, cultural, and political factors. It is part of the power dispersion in establishing political order, among other things, that is built-in line with the principles of constitutional government. In basic terms, federalism refers to "a division of jurisdiction and authority between at least two levels of government". This division usually occurs between two or more constitutionally recognized levels of government; that is, levels of government separated under the nation's constitution and with their own autonomous or semi-autonomous constitutional powers. Subscribing to the "coming together" view of federalism, it is pointed out and elaborated that the word "federalism has its roots in the Latin Oedus, meaning "league," "treaty," or "compact."³ Moreover, each level of government usually has its own particular jurisdiction: that is, areas of public policy in which it, and only it, may exercise authority or have the final authority. For example, typically the national government will have final authority over "national issues, such as national defence, foreign policy, and treaty-making, just to name a few. By contrast, theregional governments will have power over more "regional" issues, though this can vary widely from one federation to another.

Federalism is a dynamic government structure for the governance of a nation. It links many independent, distinct, and disparate bodies or administrative units to a single political union. It attempts to strike a balance between the forces fighting for the concentration of power at the central point and the forces supporting the dispersal of power in a variety of units. Federalism thus tries to reconcile unity with multiplicity, centralization with decentralization, and

nationalism with localism. The originality of the federal form of control is both centralized and fragmented at the same time. Administration and regulation are centralized in some regions along with decentralization in other regions. The main features of federalism are the constitutional government, the allocation of powers, and the supremacy of the state, the independence of the judiciary, the written constitution, decentralization, and the actual separation of power, while these concepts are not comprehensive, they do include core elements of federalism

The federal constitution creates a dual structure, consisting of two levels of government —

1. A Central Government with jurisdiction over the entire country in certain regions, and state governments;
2. Each of which exercises jurisdiction within specified regional boundaries.

The majority of the powers and duties of the government are split between the Centre and the states. Thus, each level of government functions within its assigned sector. However, most governments do

³ Daniel J Elazer, *Althusius and Federalism as Grand Design*, Jerusalem: Centre for public affair. 1992, available on <https://www.cambridge.org/core/product/identifier//type/BOOK>

not live in watertight compartments. They come into contact with each other at a variety of points and, as a result, a host of inter-governmental ties emerge in a federal country. The structure of these relationships is not static. It is dynamic, and in response to the centripetal and centrifugal forces that operate in the country, the equilibrium is constantly new and thus, the topic of intergovernmental relations is of great importance.⁴

FEDERALISM IN INDIA

1) Historical background of federalism in India:

Federalism has been part of the public discourse in India for many decades, before and after independence in 1947, but it has gained greater importance since the 1990s when the country's national polity saw the advent of the coalition era.⁵ Prior to the formation of the Constituent Assembly, Genesis of idea of federalism in India was first traced in Simon Commission. "Indian Statutory Commission" appointed in 1927. The Commission was meant for revision of the Constitution for India. In its report in 1930, the Commission recommended the evolution of India into a 'federation of self-governing units.' The representatives of Princely States declared during the First Round Table Conference (1930-32) that they would join an "All India Federation with a self-governing British India".⁶ The White Paper embodying the report of Round Table Conference, in March 1933 was submitted to Joint Select Committee of Parliament, which preferred creation of "By Government of India Act, 1935, the background was ready for making India to become a federation with 11 Governor's provinces and 650 Native states, who supposed to have fifty per cent seats in Council of States. However, execution of the instrument of accession was the prerequisite to form the Federation, which could not become a reality⁷.

In **Keshavananda Bharti vs State of Kerela**,⁸ the Supreme Court held that the federal character of the Constitution was its basic feature. In **State of Rajasthan vs. Union of India**⁹ the Supreme Court stated that, The Constitution is amphibian in sense that it can move either on the federal or the unitary plane. When action is taken under Article 356, the movement is on the unitary plane.

2) Indian Quasi-Federal Structure:

India is a federal system but with more tilt towards a unitary system of government. Therefore it is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, 'India, that is Bharat, shall be a union of states'¹⁰

⁴ <https://blog.ipleaders.in/difference-us-indian-federalism>

⁵ Surendra Singh and Satish Misra "Federalism in India: Time for a Relook?"

⁶ Modern Indian History- B L Grover

⁷ Introduction to the Constitution of India by Durga Das Basu, 19th edition

⁸ AIR 1973 SC 1461

⁹ AIR 1977 SC 1361

¹⁰ The Constitution of India, Art.1 , 1949



Following are some federal features of India:

1. **Supremacy of the Constitution:** Constitution is the supreme law of land in India. A federal state derives its existence from the Constitution.
2. **Bicameral Legislature:** The main feature of federalism is a bicameral legislature. The Constitution of India also provides for a bicameral legislature i.e. Parliament with two houses of the Lok Sabha and the Rajya Sabha.
3. **Dual Government Polity:** The Constitution of India has divided powers between the Central government and the state governments through the 7th schedule. It contains three legislative lists which enumerate subjects of administration:
 - a. Union List
 - b. State List
 - c. Concurrent List¹¹

Both the governments have their separate powers and responsibilities.

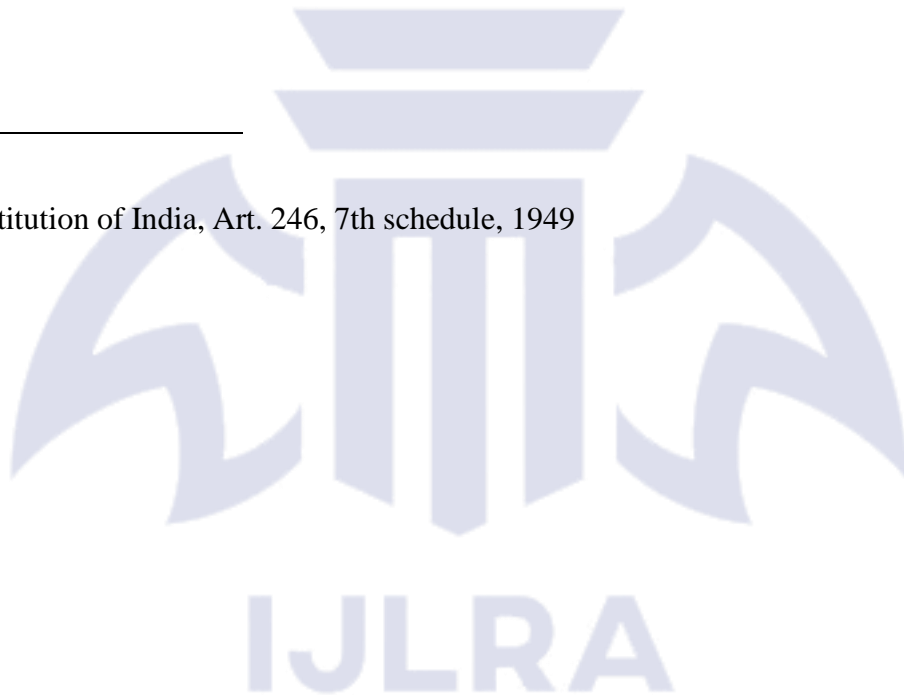
4. **Written Constitution:** The Indian Constitution is a written document containing 395 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. The Indian Constitution is the most elaborate Constitution of the world.
5. **Rigid Constitution:** The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament.
6. **Independent Judiciary:** In India, the Constitution has provided for a Supreme Court. The Supreme Court of India can declare a law as unconstitutional, if it contravenes any provisions of the Constitution.

Following are some unitary features of India

1. **Single Constitution:** In India, there is only one Constitution. It is applicable to both the Union as a whole and the States. In a true federation, there are separate constitutions for the union and the States
2. **Rajya Sabha does not represent the States equality:** In a true federation, the upper house of the legislature has equal representation from the constituting units or the States. But in Rajya Sabha, the States do not have equal representation. The populous States have more representatives in the Rajya Sabha than the less populous States.

3. **Division of power is not equal**: In a federation, power is divided equally between the two governments. But in India, the Central government has been given more powers and made stronger than the State governments.
4. **Existence of States depends on the Centre**: In India, the existence of a State or a federal unit depends upon the authority of the Centre. The boundary of a State can be changed by created out of the existing States.
5. **Constitution is not strictly rigid**: The Constitution of India can be amended by the Indian Parliament easily. On many subjects, the Parliament does not need the approval of the State legislatures to amend the Constitution. In a true federation, both the Union and the State legislatures take part in the amendment of the Constitution with respect to all matters.

¹¹ The Constitution of India, Art. 246, 7th schedule, 1949



6. **Proclamation of emergency**: The Constitution of India has given emergency powers to the President. When an emergency is declared, the Union or Central governments become all powerful and the State governments come under the total control of it. The State governments lose their autonomy.¹²

Former Chief Justice Beg, in **State of Rajasthan v UOI, 1977** called the Constitution of India as 'amphibian'. He said that "...If then our Constitution creates a Central Government which is 'amphibian', in the sense that it can move either on the federal or on the unitary plane, according to the needs of the situation and circumstances of a case...".¹³

Similarly in **S.R. Bommai v Union of India**,¹⁴ "pragmatic federalism" was used. Quoting Justice Ahmadi, "...It would thus seem that the Indian Constitution has, in it, not only features of a pragmatic federalism which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central Governments, is overlaid by strong unitary features...

The phrase 'semi-federal' was used for India in **State of Haryana v. State of Punjab**,¹⁵ whereas in

Shamsher Singh v. State of Punjab,¹⁶ the constitution was called 'more unitary than federal.'

Thus, India is federal in nature but not as in very strict sense. As mentioned above, India possesses both federal as well as unitary features therefore India is considered to be a Quasi Federal nation.

FEDRALISM IN USA

A "Federation", from which federalism gets its name, is when authority is divided between a central government and local governments. Thus, an easier definition for Federalism is, the sharing or mixing of power between a national government and the state governments. The United States of America is a Federation where power is shared between the 50 state governments and the national government in Washington, D.C. but it was not always that way.

The Evolution of U.S. Federalism: From its beginning in 1787 to the present day, two major political theories have developed around the concept of Federalism. One theory is called "Dual Federalism." The other theory is known as "Cooperative Federalism."

Dual Federalism: The beginning of the United States marks the beginning of Dual Federalism.

Under Dual Federalism, the Federal government and the state governments occupied “separate spheres of influence.” The federal government had areas that it controlled and the state governments had areas that they control. The federal government and state governments were co-equal entities. Article I, Section 8 of the United States Constitution listed a number of things that the federal government was empowered to do. The federal government could: tax, declare war, establish foreign policy, regulate interstate commerce, make copyright and patent laws, establish post offices, and coin money. More of this will be discussed below. Under this theory of Dual Federalism, it was believed that the federal government could only operate based on those items listed in the U.S. Constitution. As a result of this the states possessed a large amount of “reserved” powers. The

¹²[Free UPSC IAS Preparation For Aspirants - \(forumias.com\)](http://forumias.com)

¹³ (1977) 3 SCC 592

¹⁴ AIR 1994 SC 191

¹⁵ [State Of Haryana vs State Of Punjab And Anr on 4 June, 2004 \(indiankanoon.org\)](http://indiankanoon.org)

¹⁶ (1974) AIR 2192

United States operated under a Dual Federalism model from 1787 until about 1937 when the federal and state governments began to intersect, and sometimes conflict with one another.¹⁷

Cooperative Federalism: From about 1937 to the present, the United States has operated under a Cooperative Federalism model. Cooperative Federalism came about during the Great Depression, beginning in the late 1920 and lasting through the 1930's and early 1940's, when so many Americans were struggling to make ends meet. "In Principle" under Cooperative Federalism the federal government and the state governments work collectively with one another to address common problems. During the Presidency of Franklin D. Roosevelt (1933- 1945), the federal government began to get more involved in the day-to-day lives of U.S. citizens. During the FDR Administration a federal jobs program was established to get Americans back to work; as was an expansive social safety net to provide for people who fell on hard times, because many Americans had fallen on hard times. With a more expansive role for the federal government, there became a need for states and national authorities to work more in tandem with one another. However, with the post-WWII phase of the Civil Rights movement on the horizon, the shift to Cooperative Federalism set the stage for conflict as black activists pressured the federal government to enforce racial justice initiatives in states, both North and South that sought to maintain the structures of segregation and white supremacy.

How Federalism Works: Let's briefly define "Delegated Powers," "Reserved Powers," "Concurrent Powers" and "Implied Powers" which explain where authority derives in a federalist system of government.

Delegated Powers are those powers specifically assigned to the Federal Government by the United States Constitution. The U.S. Constitution lists very specific powers that the Federal Government enjoys. The Federal Government can declare war, maintain armed forces, regulate interstate commerce, admit new states, establish post offices, coin money, establish foreign policy, and make all laws necessary and proper carry out its delegated powers.

Reserved Powers are powers not specifically delegated to the Federal Government by the U.S. Constitution, but which are "reserved" for the State governments. Powers reserved to the states include the power to: establish schools, establish local governments, regulate businesses within the state, make marriage laws, and provide for public safety. States can assume all powers not delegated to the national government or prohibited to the states. States also have "police powers." Police powers have nothing to do with law-enforcement or a specific police department. Police Powers means the states can regulate for the health, safety and welfare of its

citizens.

Concurrent Powers are powers that the Federal Government and the state governments have in common or share simultaneously. These are things that both the Federal Government and the state governments can do. Both the Federal Government and the state governments can: maintain law and order, tax, borrow money, charter banks, establish courts, and provide for the public welfare.

Implied Powers are powers that are not specifically delegated in the U.S. Constitution, but are understood to be necessary and allowed. The “Necessary and Proper clause” also known as the “Elastic Clause,” from Article I, Section 8 of the U.S. Constitution gives Congress the power to make all laws it deems necessary to make the government work well. This clause constitutionally authorizes the vast majority of U.S. laws created by the U.S. Congress.

There are six ways in which Federalism is specifically identified in the U.S. Constitution and they are:

¹⁷ [Chapter Five: U.S. Federalism – U.S. Government and Politics in Principle and Practice \(cuny.edu\)](#)

- The Commerce Clause, Article I, Section 8¹⁸
- The Elastic Clause, also known as, the Necessary and Proper Clause, Article 1, Section 8¹⁹
- The Supremacy Clause, Article VI²⁰
- The Admission of New States, Article IV, Section 3²¹
- A guarantee of a “Republican form of government”, Article IV, Section 4²²
- The Tenth Amendment²³

Making a Federal Case

There are a few United States Supreme Court cases that reveal and strengthen the authority of the federal government over the state governments. In the cases listed below the individual state legislatures had passed laws that would affect the “citizens” and “residents” of their states. Sometimes these laws intruded on the civil rights or civil liberties of their citizens. Alternatively, these laws attempted to overlap into an area that the Constitution specified as federal and not state jurisdiction. When this happened the U.S. Supreme Court decided that those laws were unconstitutional. In these cases, the Supreme Court asserts that the state had overstepped its authority and thus had entered into a sphere that is designated to the federal government. Although there are dozens of such cases, below are a few to help you get started in understanding the distinct and sometimes conflicting spheres of influence that the federal government and state governments occupy.

One early case was **McCulloch v Maryland (1819)**²⁴. In this case the U.S. Supreme Court said that the Elastic Clause gave the Federal Government the implicit authority to create banks. Moreover, the court also stated in this case that the “Supremacy Clause” implicitly exempted the Federal Government from state taxes.

In **Griswold v Connecticut (1965)**²⁵ the Supreme Court said that states cannot prohibit the use of contraception which violates its residents’ rights to privacy protected under the U.S. Constitution.

In **Roe v Wade (1973)** the United States Supreme Court found that states cannot impose strict limits on abortion. The Supreme Court of the United States (SCOTUS) declared a Texas state law that imposed such strict limits to be unconstitutional. The Court stated that the Due Process Clause of the Fourteenth Amendment provided for a right to privacy. Roe allowed a woman the

right to have a safe abortion without excessive government restrictions.

Thus, from all the above mentioned information we can say that, USA is federal state in strict sense.

¹⁸ PRENTICE & J. EGAN, THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION 14 (1898).

¹⁹ [Overview of Necessary and Proper Clause | Constitution Annotated | Congress.gov | Library of Congress](#)

²⁰ Article VI, Paragraph 2, The US constitution

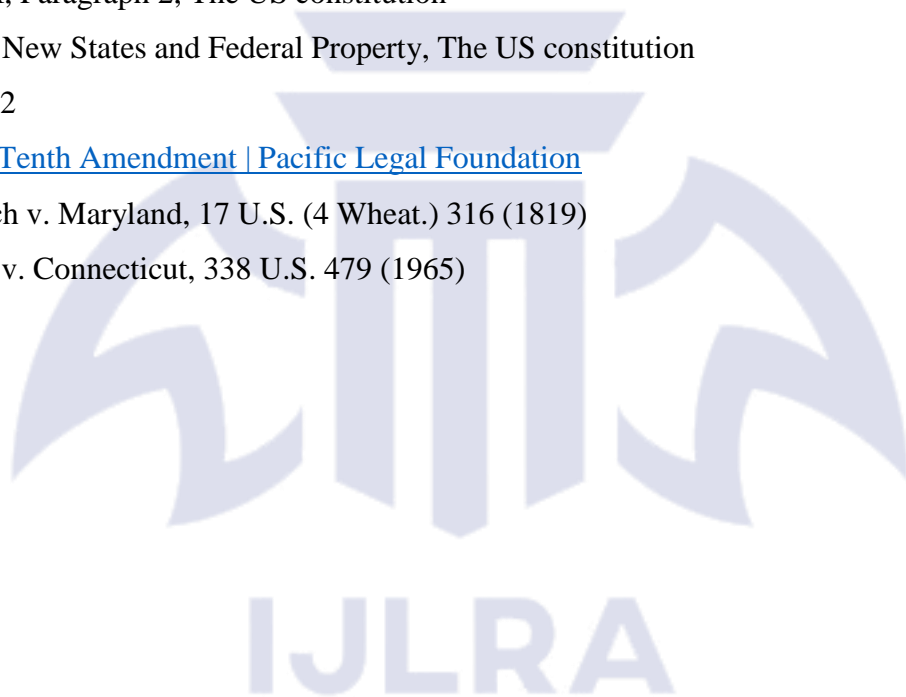
²¹ Section 3 New States and Federal Property, The US constitution

²² ArtIV.S4.2

²³ [The U.S. Tenth Amendment | Pacific Legal Foundation](#)

²⁴ McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)

²⁵ Griswold v. Connecticut, 338 U.S. 479 (1965)



A COMPARITIVE ANALYSIS OF FEDERALISM IN INDIA AND USA

Across the world, federal regimes are full of inconsistencies. They both i.e. USA and India are individually unique and yet respond in a constantly changing world to similar goals and expectations. This dynamic is demonstrated by changes in two major federal structures, India and the USA, which have attempted to deal with drastic disparities within their population as they look for ways to bring democratic ideals to life. US became a Federal Republic State by promulgating its constitution in the year 1789; whereas India became a Socialist, Sovereign, Secular, Democratic republic by formally launching its constitution only in the year 1950. Thereby both countries had attained dominion status in which a number of smaller states had got affiliated forming a union with a strong central government that came to be called as Federal Government in the US and Central Government in India. Thus both states became Federal Republics. Despite many similarities between India and U.S.A, there are a lot of differences as both the countries owe to different social, economic and political situations. The following is a comparative study of the workings of federalism in both nations.²⁶

1) Central Government:

General regulation of major foreign policy issues and the operation of pacific or aggressive international relations in a federation is supreme. In the US Constitution, for example, the ultimate power of defence and diplomacy is enforced by the central government under Article 1, Section 10 Clause 3 of the US Constitution.²⁷ While the Indian Constitution in its Seventh Schedule contains entries in the list of powers bestowed on the Federal Government concerning diplomacy and security, war and peace and the Treaty, pilgrimages from outside the world, piracies, and crimes perpetrated by air or by high sea and violations of international law. Section 1 of Schedule VII²⁸ confers powers on the Union Government which are unique to the Union and the States cannot interfere with the exercise of those powers. Besides, Article 53(2)²⁹ refers to the President with the Supreme Command of the Union Defence Forces. Article 352, 353, and 355 also discuss the strength of the Union in times of national emergency. Article 51, which applies to the promotion of international peace and security, is also laid down in the Concept of State Policy of the Directive. The nature of these powers under the Indian Constitution is more nuanced than under the American Constitution.

2) Amendments:

This is the firmest and most accurate criterion for defining the federal structure of the state by

dissecting the text of every constitution. In the United States Article 5³⁰ of the United States Constitution, it can be achieved by Congress by asking 2/3 of both chambers to introduce amendments. The implementation of the legislature of 2/3 of many states can also recommend it. At least 3/4 of certain states must be accepted to be ratified. There is also a certain provision, however, to the effect that no amendment shall affect the first and fourth clauses of the ninth

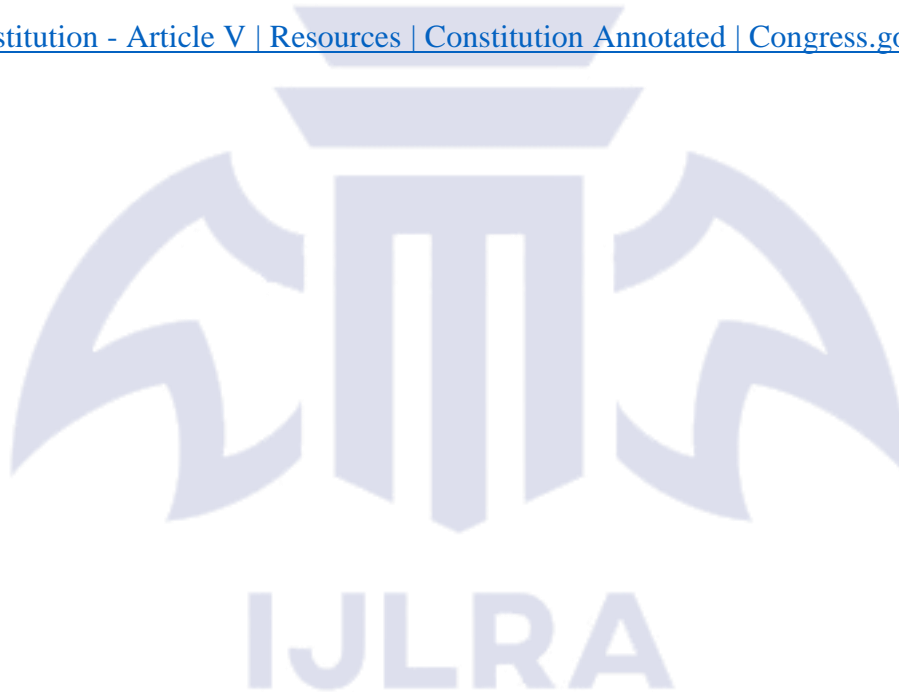
²⁶ Dr. Durga Das Basu – Comparative Constitutional law, 2nd edition Revised 2008

²⁷ Article 1, Section 10(3), US Constitution

²⁸ The Constitution of India, 7th schedule, 1949

²⁹ The Constitution of India, Art.53(2) , 1949

³⁰ [U.S. Constitution - Article V | Resources | Constitution Annotated | Congress.gov | Library of Congress](#)



section of the first article and that no State shall be deprived of the same suffrage in the Senate. The Indian Constitution provides for the power and process to amend Article 4, Schedule VI and, in particular, Article 368 of the Constitution. In all instances, the right to enact amendments is bestowed on the Union. For all amendments, there is no need for ratification by the States. However, Article 368(2) distinguishes certain types of amendments which, in essence, require ratification by at least half of the States. The amendments requiring such ratification by at least half of the States shall be made according to points (a) to (e) of Article 368(2). It is also clear that approval by not less than half of the States is needed if reforms have a certain effect on the federal structure.

3) **Centre and state working:**

Article 1 Section 8³¹ of the U.S. Constitution provides for 18 subjects to be legislated and limited by the middle. The majority of the authority is with the Nations. And the residual power is with the states. In India, exhaustive lists are drawn up which cover the different areas of the Centre and the states. No question of residual power ever arose. But then, if there is no entry in any of the three lists, the Centre shall have the authority to do so. Thus, the residual power is with the Centre.

4) **Union and Secessions:**

As per Article 4 of Section 3 of the U.S Constitution³², it is clear that, without agreement between the legislatures of the States concerned and the Congress, no new State shall be created or established beyond the competence of any other State. Thus, it can be inferred that no State will withdraw from the U.S. Constitution from the union.

5) **Rule Making:**

The Connecticut compromise, where the American founders agreed to proportionate representation in the lower house of unequal states and equal representation of unequal states (2 senators per state) in the upper house was also regarded by Americans as an integral measure of federalism. The United States is bicameral, as the two houses are similar in law matters: no legislation can be passed without the agreement of the two houses on the same text.

In India, mutual participation in federal rulemaking is assured by an equitable representation of equitable units in the bicameral structure. Under Schedule IV of the Constitution, seats are to be

assigned to the States in the Council of States in the Parliament. Other than that, the President of the Council of States has nominated twelve members. This brings Rajya Sabha's total strength to 250.³³

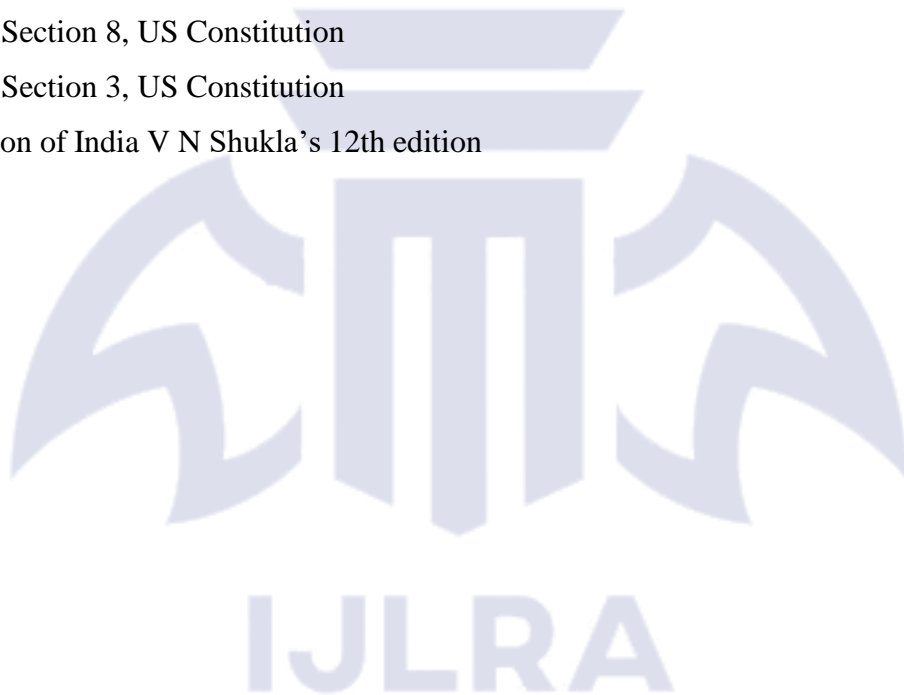
6) Jurisdiction:

The Supreme Court of the United States has authority over the country as a whole but only through federal law. The States have their constitutions and their own rules and their own Supreme Court. In India, there is only one system of courts with the Supreme Court at the top

³¹ Article 1, Section 8, US Constitution

³² Article 4, Section 3, US Constitution

³³ Constitution of India V N Shukla's 12th edition



and the High courts of the different states at the lower level. Both have the right to adjudicate federal as well as state legislation.³⁴

7) **Judicial Authority:**

In the U.S., there is this principle of judicial review where the Supreme Court has the authority to resolve a central-state dispute. *McCulloch v. Maryland*³⁵ is the classic example of a central state dispute where judicial review has been used. According to Article 131, the Supreme Court of India has the initial authority to address a central state dispute. Moreover, judicial review is a fundamental function of the Indian Constitution, as laid down in Article 13(2), read at 14, 32, and 226.

SIMILARITIES BETWEEN FEDERALISM OF INDIA AND USA

1) **Written constitution:**

Both US and India have a written constitution based on which the federal political structure has been set up and both federal governments are functioning. Both constitutions have provisions for amending the constitution to meet the growing socio, political and economic needs and demands of their respective countries.

2) **Bill of Rights and Fundamental Rights:**

The US constitution has ensured the fundamental rights of its citizens like right to equality, freedom, right against exploitation, freedom of religion, cultural and educational rights, right to property, and right to constitutional remedies etc. through "The Bill of Rights". They became part and parcel of the US constitution through first ten amendments that were carried out and adopted into the US constitution.³⁶ The Indian constitution has guaranteed the fundamental rights of the people through articles 14 to 34 in Part III.

3) **Supremacy of the Federal or Union Government:**

Both countries have federal governments at the centre in which various states have acceded to. In the US as many as 50 states have joined the federal government and in the Indian Union as many as 29 states and 8 Union territories have acceded to. Both in US and India, states which have acceded to the Federal set up have no unilateral power to secede from the Federal

Government or the Union Government. While Federal Government or the Union Government as well as the states are empowered to enact laws on a particular subject,(known as concurrent powers), the law enacted by the Federal or Union Government will have overriding effect over the law enacted by the states on the same subject. Thus Federal or Union Government is supreme in the present federal structure.

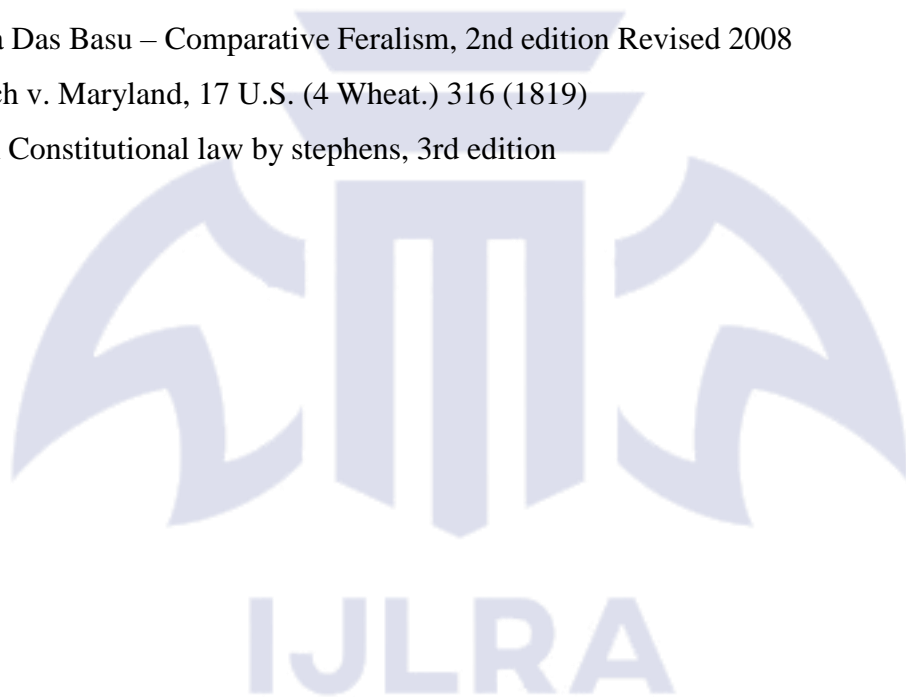
4) Division of Labour and Separation of Powers:

Adhering to Montesquieu's theory of division of labour and separation of powers, both US and Indian constitutions have three basic divisions with regard to division of labour and power in

³⁴ Dr. Durga Das Basu – Comparative Feralism, 2nd edition Revised 2008

³⁵ McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819)

³⁶ American Constitutional law by stephens, 3rd edition



their federal set up known as executive, legislature and judiciary with clear cut Separation of Powers' Each division has been entrusted with a separate power. The executive governs the country, the legislature enacts laws and the judiciary administers justice. President of US is the chief executive head of US, whereas the Union cabinet headed by the Prime Minister is the real chief executive body in India. Both US and India have a bicameral legislature. US legislature has an upper and lower house known as the House of Senate and the House of Representatives respectively and the Indian Parliament has Lok Sabha and Rajya Sabha as its Lower and Upper house respectively. Both US and India have a well-organized judiciary, having the Supreme Court or the Federal Court as the apex court and a number of other courts in various states to administer original and appellate jurisdictions.³⁷

5) **Powers of Checks and Balances:**

Though there exists a clear cut division of labour known as separation of powers into executive, legislature and judiciary in both countries, still there is a threat to democracy. A strong and dynamic leadership at the helm of powers as the executive and acting with unlimited powers may lead to arbitrariness. After all power corrupts power; absolute power corrupts absolutely; in the result democracy may become a laughing stock and virtually unworkable. Hence, in order to prevent unwieldy growth of any one of these three divisions. A fantastic mechanism known as powers of 'checks and balances' has been maintained in both countries. In other words, each division of power is somehow or other checked and controlled by other divisions of power.

In the US, the President as the chief executive power appoints his members of 'Kitchen Cabinet' and he is the Supreme Commander-in-Chief of Army, Navy and the Air Force. He appoints the Chief Justice of the Supreme Court of the US. He enters into treaties with other countries. Laws enacted by both houses may be subjected to the power of Judicial Review and can be declared null and void by the judiciary. The President can be impeached and removed from power on the motion moved by the House of Senate in the presence of the Chief Justice of the Supreme Court of the US.³⁸

Similarly in India, the Prime Minister and his cabinet can be removed from power by a successful no confidence motion passed by both houses of parliament. The important policy decisions taken by the cabinet headed by the Prime Minister, if necessary has to be enacted into laws only with the requisite majority of the parliament. The laws enacted by the parliament are subject to the judicial review of the Supreme Court of India. The Chief Justice and other Judges

of the Supreme Court are appointed by the President as recommended by the cabinet and the Prime Minister.³⁹

Thus the powers of checks and balances have been the effective mechanism both in the US and in India in safeguarding the democracy in both countries.

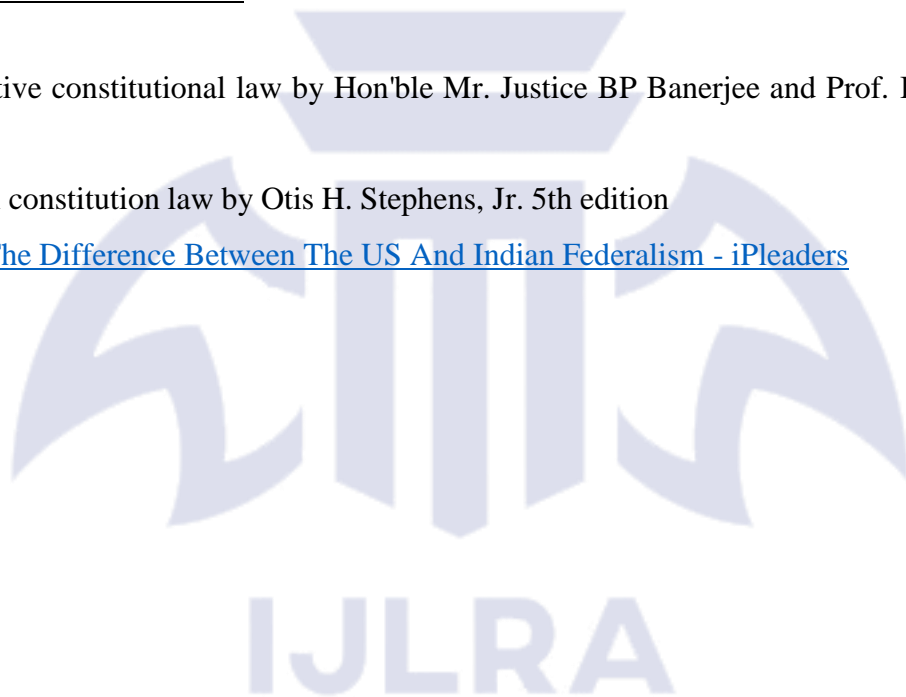
DIFFERENCE BETWEEN FEDERALISM OF INDIA AND USA:

The differences that exist between the federalisms of US and India are unique. These differences have been wantonly created by the architects of the Indian constitution. The US federalism is very strong and

³⁷ Comparative constitutional law by Hon'ble Mr. Justice BP Banerjee and Prof. BM Gandhi 2 edition

³⁸ American constitution law by Otis H. Stephens, Jr. 5th edition

³⁹ [What Is The Difference Between The US And Indian Federalism - iPleaders](#)



more rigid as envisaged in their constitution by its leaders. It is more federal than unitary in character. Whereas, India is more unitary than federal and we can even say that it is a quasi-federal state.

1) The Constitution of US is very rigid than the Indian Constitution:

The constitution of US is very brief and rigid running into only a few pages, whereas the constitution of India is very voluminous containing as many as XXII parts, 395 articles and ten schedules. since the US constitution is very rigid, the provisions meant for amending the constitution are also very rigid and more formal. the Indian constitution which came into force in the year 1950, has so far been amended 94 times. Therefore, it is easy to amend the Indian constitution, since it involves four different types of procedures which are comparatively easy than the amending procedure of the US constitution. For example, recently, the salaries and allowances of the Indian MPs have been hiked through a voice vote of the members of the Indian Parliament.

In the US, though there is a Federal Constitution, all the states affiliated with the Federal Government, owing their allegiance to the Federal Constitution, have their own constitutions to regulate their own governance. In India, all the states affiliated with the Indian Union owe their allegiance only to the Indian constitution and do not have their own constitution; however, each state is empowered to enact its own laws included in the state as well as in the concurrent list of the constitution.⁴⁰

2) While US has the Presidential form of Government, India has the Parliamentary form of Government:

In the US, the President is the head of the state and so his government is invariably mentioned as the Presidential form of government or democracy; In India, the President is only a nominal head or titular sovereign power;(de jure sovereign), whereas the Prime Minister and his cabinet is the de facto or popular sovereign in whom the real power exists. In the US, the President is popularly elected, besides chosen through an electoral college.

However, nominating a candidate for contesting the Presidential election by a political party in the US is a cumbersome process. This process is comparatively simpler than the Indian system of forming the cabinet and electing the Prime Minister from a party which enjoys a majority of elected members of the Lok Sabha. While the US follows the bi-party system, India has a multiparty system and a complicated process of election. While the US President Holds power

for a period of 4 years, while the Indian Prime Minister holds power for five years as long as his political party enjoys majority in the Lok Sabha. However, the US President irrespective of his affiliation with a political party, Republican or Democrat and irrespective of his party's success or failure in the elections for the House of Representatives or the House of Senate, holds power for his full tenure.

A person in the US can hold the post of President only for two terms, whereas, in India there is no such restriction to hold the post of a Prime Minister or President. For example, Nehru was the Prime Minister of India between 1947 and 1964 for a period of 17 years.

The Indian cabinet and the Prime Minister are collectively and directly responsible and answerable to the parliament and indirectly to the people, whereas, the US President has constitutional obligations and duties and of course answerable to the people. For the dereliction of duty and blunder committed by a cabinet minister in India, the Prime Minister and his entire

⁴⁰ [\(DOC\) COMPARATIVE STUDY OF FEDERALISM IN INDIA AND U.S. : A CONSTITUTIONAL PERSPECTIVE | Karthik Rajagopal - Academia.edu](#)

cabinet colleagues are liable, responsible and answerable, because they have collective responsibilities.⁴¹

3) **Differences between the legislatures of US and India:**

In India, the lower house or the Lok Sabha is more powerful and its members are directly elected by the people and the members of the Upper house or Rajya Sabha are indirectly elected every two years. In the US, the House of Representatives are elected on the basis of the population strength of a state, but irrespective of the size of the state or its population, each state in the US has only two senate members, totalling 100 members in all in the US. While the Lok Sabha or the lower house is more powerful in India, the House of Senate or the upper house is more powerful in the US.

4) **Differences in the judicial system between US and India:**

While the US has an advanced judicial system, India has a rapidly developing judicial system. An accused or a witness in the US can depose from the place where he is imprisoned. Thereby avoiding unnecessary travel all the way from Chicago or Los Angeles to New York using the advanced technology. Such facilities are yet to develop in India. While a Judge in the US can hold his post for life as long as he enjoys his good health, in India it is slightly different. A District judge unless elevated retires at the age of 58, a High Court and a Supreme court Judge retires at the age of 65.

5) **Citizenship:**

The Indian Constitution recognizes single citizenship. On the other hand, the United States Constitution allows for double citizenship that can be a US resident of two countries, the United States and another.⁴²

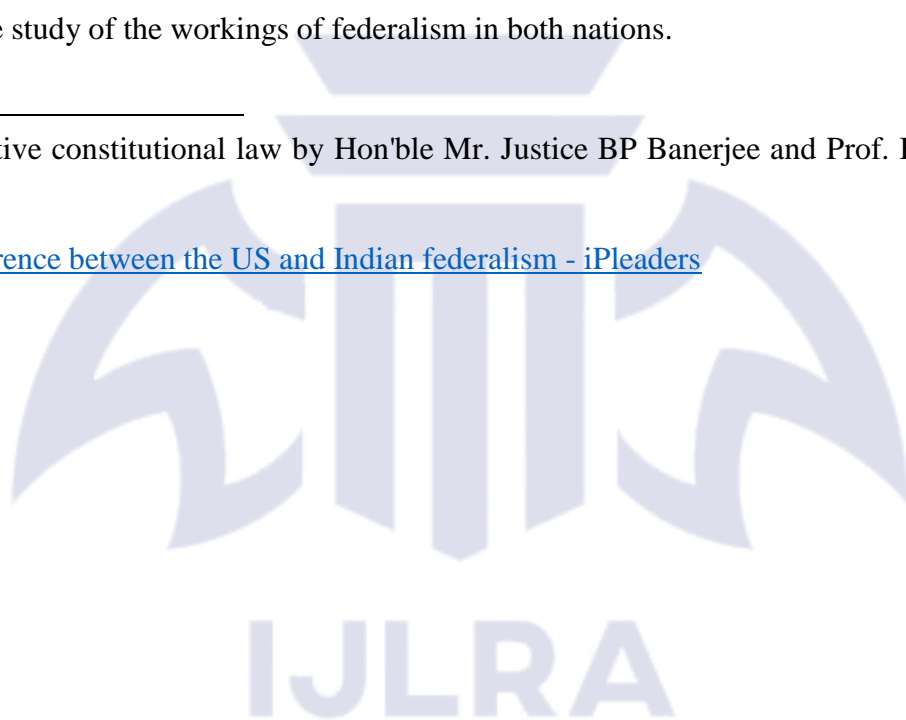
CONCLUSION

Federalism is compound mode of two governments. It is a constitutional structure that typically establishes two levels of government with delegated powers and roles resulting from several social, economic, cultural, and political factors. It is part of the power dispersion in establishing political order, among other things, that is built-in line with the principles of constitutional government. Across the world, federal regimes are full of inconsistencies. They both i.e. USA and India are individually unique and yet respond in a constantly changing world to similar goals

and expectations. This dynamic is demonstrated by changes in two major federal structures, India and the USA, which have attempted to deal with drastic disparities within their population as they look for ways to bring democratic ideals to life. US became a Federal Republic State by promulgating its constitution in the year 1789; whereas India became a Socialist, Sovereign, Secular, Democratic republic by formally launching its constitution only in the year 1950. Thereby both countries had attained dominion status in which a number of smaller states had got affiliated forming a union with a strong central government that came to be called as Federal Government in the US and Central Government in India. Thus both states became Federal Republics. Despite many similarities between India and U.S.A, there are a lot of differences as both the countries owe to different social, economic and political situations. The following is a comparative study of the workings of federalism in both nations.

⁴¹ Comparative constitutional law by Hon'ble Mr. Justice BP Banerjee and Prof. BM Gandhi 2 edition

⁴² [The difference between the US and Indian federalism - iPleaders](#)



The federalism structure of the United States and India is somewhat different, but both structures have performed effectively and preserved national independence with a different history and challenges both the United States and the Indian federalism are very popular despite their limitations.

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