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COMPARISON OF FEDERALISM IN INDIA, UNITED STATE OF AMERICA AND UNITED KINGDOM

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Abstract

This paper constitutes meaning of federalism, history, types, the mode of operations, distinction from the [confederalism](#), theoretical explanations in federal system adoption, modern federalism, federalism in Europe, USA and India, delegations of powers under federalism etc. which have been discussed briefly. The idea behind concept of separation of powers is to have transparency in the mechanism of Central government and to ensure liberty of citizens with effective implementation of all the laws formulated by State. Federalism is attractive institutional model for the countries that want an effective national government and want to grant substantial powers to the regions. It is good solution for diverse countries having, economically, politically, ethnical problems and with strong regional identities.

Key words: Federalism, Devolution, Constitution, Central government, State government

Preamble

Federalism in the world shows that there is no fixed asset pattern for division of powers between center and state governments. It is an institutional model for the countries that want an effective national government and to grant substantial powers to regions. It is ideal solution for diverse countries having economical, political, ethnical problems with strong regional identities.

Chapter I:

Introduction

Federalism may be defined as form of government where there is interdependence of central government at national level with its constituent units at regional, state, or local levels. Etymologically, 'Foedus' is the root Latin term from which the term Federalism is derived, that means formal agreement / covenant / treaty. It means sharing of decision making authority and

devolution of power between national and local governmental units, such that each unit is delegated sphere of power and authority only it can exercise, while other powers must be shared. In the context of USA, Federalism meant proper respect for State functions, recognition of the fact that the entire country is made up of Union of separate State governments and a continuance of the belief that the national government will fare best if States and their institutions are left free to perform their separate functions in their separate ways (Purswani, 2024).

The root-line of federal constitution is separation of powers and functions between Center and States. It constitutes division of powers among three forms of government *i.e.* legislature, executive and judiciary in order to maintain effective functioning of the government system and to keep check on them. The powers and responsibilities of all the three organs should be clearly defined and kept separate, which is mandatory for ensuring the liberty of people. Main idea behind this concept of separation of powers is to have transparency in mechanism of the government and to ensure liberty of citizens with effective implementation of all the laws formulated by the State. Studies of federations now extant in the world shows that there is no fixed asset pattern for the division of powers between Center and State governments. Usually certain powers are allotted exclusively to Center; certain powers are allotted exclusively to States and there may be common or concurrent area for both to operate simultaneously (Jain, 2018).

1.1 Brief history of federalism

The first forms of federalism took place in ancient times, in the form of alliances between the States. An early ancestor of the federalism was the Ancient [Greece](#), which was composed of small polities (city-states). It was united by common culture and language but divided politically. The city-states formed unions to accomplish common goals. The subsequent forms of federalism included the [Swiss Confederations](#): 1291–1798, [United Provinces of Netherlands](#): 1579–1795, [German Bund](#) (1815–66), American Union ([confederation of USA](#)): 1781–89 and [United States of America](#): 1789–1865. [Johannes Althusius](#) is considered to be the father of modern federalism. The United States was the first country with modern federal constitution, adopted in 1789. The US constitution served as an inspiration for the constitutions of other European federal countries like Mexico, Switzerland, Brazil and Germany. Many countries have implemented federal systems of government with varying degree of central and regional sovereignty. Nowadays, there are twenty-five federal countries.

US and India are the world's largest democratic countries which are focused on their constitutional system of federalism. The US became federal republic state by upholding its [constitution \(1789\)](#) while India became secular, socialist, sovereign and democratic republic by formally launching its [constitution \(1950\)](#). Both the countries had acquired status of dominion as federal republic wherein, many smaller states had become aligned to form union with strong central government. Indian constitution was conceived with many outstanding features from UK and US but was adopted in the Indian sense. Therefore, have many similarities and distinctions between these federal republics (Durga Das, 2022).

1.2 Features of federalism

Federalism is the system in which the power is constitutionally divided between national government and provinces / states / constituent units. Under federalism, it is necessary to amend the constitution to change constituents units' / states' powers. In order to operate properly, federalism needs to clearly define national and constituent units' powers, empower courts to solve disputes between federal and state governments and introduce supremacy of federal law over state law. Nearly all the countries are divided into smaller territorial units for administrative purposes. Each country has to decide how much power to give to these units and how much power the national government should retain. Under federalism, the power and sovereignty are constitutionally divided between the federal government and territorial units wherein, the constitution specifies powers shared by [federal and](#) territorial units. [Thereby](#), it is becomes necessary to [amend constitution](#) to change states' powers and the national government cannot do so unilaterally (Jain, 2018).

Federalism differs from [confederalism](#), in which general level of government is subordinate to regional level and from [devolution](#) within [unitary state](#), in which regional level of government is subordinate to general level. It represents central form in the pathway of regional integration / separation, bounded on the less integrated side by confederalism and on the more integrated side by decentralization within unitary state. Federal province include [Argentina](#), [Australia](#), [Brazil](#), Bosnia, [Belgium](#), [Canada](#), [Herzegovina](#), [Malaysia](#), [Germany](#), [Mexico](#), [Switzerland](#), [Nepal](#), [Russia](#), [Nigeria](#), [Pakistan](#), [UAE](#), US and [India](#). Two extremes of federalism can be distinguished viz., Strong federal state (completely unitary, with few powers reserved for local governments and National government with federal states (only for name sake) being

[confederation](#) in actuality. Governments of Argentina, [Australia](#), [Brazil](#), [Mexico](#) and [India](#) are organized along the federalist principles (Durga Das, 2022).

Chapter II:

Discussion

The proponents for the federal systems have historically argued that the power-sharing inherent in federal systems reduces both domestic security threats and foreign threats. Federalism allows states to be large and diverse, mitigating the risk of tyrannical government through centralization of powers.

2.1 Modern federalism

It is the political system based upon [democratic](#) rules and institutions in which power to govern is shared between national and provincial / state governments. Term [federalist](#) describes several political beliefs around the world depending on the context. Federalization describes distinctive political processes, its use Two main types of federalization are recognized viz., 1) Integrative / aggregative federalization (integrate non-federated political subjects and accession of non-federated subjects into the existing federation) and 2) Devolutive / dis-aggregative federalization (transformation of [unitary state](#) into a federation).

Four competing theoretical explanations in the adoption of federal systems have described by Deudney (2007) as given below:

- 1) Ideational theories which hold that a greater ideological commitment to [decentralist](#) ideas in society makes federalism more likely to be adopted.
- 2) Cultural-historical theories, which hold that federal institutions are more likely to be adopted in societies with [culturally](#) or ethnically fragmented populations.
- 3) [Social contract](#) theories, which hold that federalism emerges as a bargain between center and periphery where the center is not powerful enough to dominate periphery and periphery is not powerful enough to secede from the center.
- 4) Infrastructural power theories, which hold that federalism is likely to emerge when subunits of potential federation have highly developed infrastructures (constitutional, parliamentary and administratively modernized states).

[Immanuel Kant \(Philosopher of 18th Century\)](#) noted that the problem of setting up a state can be solved even by a nation of devils so long as they possess an appropriate constitution which pits opposing factions against each other with system of [checks and balances](#); in particular individual states required the federation as a safeguard against the possibility of war (Jain, 2018).

2.2 Federalism in context of United Kingdom

It is a general perception that the concept of separation of power has been derived from the British constitution. However, the England has adopted the theory of Integration of Power. It is true that the three powers as mentioned earlier are vested in three organs and each has its own peculiar features, but it cannot be said that there is no sharing out of powers of the government, thus the King is the executive head as well as an integral part of the legislature. Similarly, all the ministers are also members of one or the other houses of the parliament. The Lord Chancellor is head of the judiciary, chairman of the houses of commons (legislature), a member of the executive and often a member of the cabinet. The house of commons ultimately controls the legislature. The judiciary is independent but the judges of the Supreme Court can be removed on the address from both houses of parliament.

UK is having parliamentary form of government consisting of the Queen, House of Lords and House of Commons. The parliament of Britain is a Sovereign body- uncontrolled and with unlimited powers as it is not having a written constitution. The legislative process in UK is more or less same as in India. Parliament make laws and the legislative proposals are in the form of three types of Bills. Public Bill is introduced by Minister in the House of Commons. Private Member's Bill is introduced by any member of the parliament in the House of Commons and it is proposal of law that would apply to a particular individual or group of individuals or corporate entity. The local authorities introduce Private Bill through a petition. Hybrid Bill is a mixture of Public and Private Bill; usually introduced by government that specifically affect particular individual or group. The pressure to enact a law comes from various sources like political manifesto, governmental department, Royal Commission, non-governmental organizations or lobbies, response to public opinion, law commission, etc. Some of such Bills are inspired from international treaties. However only a small percentage of the Bills make it all the way through the process for final approval (Surya Menon, 2024).

[UK](#) comprises of [England](#), [Scotland](#), [Wales](#) (as [Great Britain](#)) and [Northern Ireland](#); each has its own history, culture and government. The concept of separation of power exists but not in formal sense as it is in USA. The concept of mixed government with checks and balances given by Blackstone is more predominant in UK. The three legal branches (as mentioned earlier) are not formally separated and continue to have overlapped as it is in India.

Discourse surrounding United Kingdom (UK) membership of the European Union (EU) has often centered on the federal nature or otherwise of the EU. This tendency has made the proper assessment of federalism in its domestic British context more difficult to achieve. Yet at the same time, the departure from the EU that this interpretation of the concept of federalism helped bring increased the political salience of the idea of UK federation. Politicians might now feel more able than they once did to talk openly about a federal UK. The consistent coverage of the federal constitution remains with significant variation that not every part of UK has devolved system. The advent of Brexit has created significant uncertainty about the status of devolved systems and this event has upset constitutional balance of the UK (Blick, 2021).

2.3 Federalism in context of [United States of America](#)

In USA, the federation came into existence as a result of the voluntary compact between thirteen sovereign states. These states surrendered a part of their sovereign powers to a federal entity and retained with themselves the un-surrendered residue. The constitution of USA was brought into force in 1787. The powers that the constitution does not delegate to the US are reserved for the States or the people. Powers reserved for the various States shall cover all the objects which, in the course of ordinary business, concern people's lives, freedoms and property, and internal peace, improvements and prosperity. The constitution says nothing about the governments of the states that have control. State governments reflect the composition of the national government: an elected chief executive, two legislative houses and the court. State governments have plenary power that may make legislation on any subject while national governments only have specified powers. State governments structurally vary from domestic governments in several respects. Each state has budget of its own. The key avenues of national government power centralization have been defined through the use of legislative authority in intergovernmental trade regulations. Congress has the authority to enact and levy taxes to maintain America's popular security to welfare.

Thus, the constitution adopts very simple method for Centre-State distribution of powers. It has only one list of specifically enumerated powers of the Centre and the unremunerated residue of powers has been left to the States. The doctrine of separation of power forms the basis of American constitutional structure. Article-I vests legislative power to the congress. Article-II vests executive powers to the president and Article-III vests judicial powers in the Supreme Court. Article III of the constitution, federal courts have authority over disputes between the State and citizens of another State.

There is presidential form of government which is based on theory of separation of powers between the executive and legislature. The President is the head of the state as well as chief executive. He appoints and dismisses other executive officers and thus controls the policies and actions of the government departments. The persons in charge of various departments designed as the secretaries of state hold office at his pleasure and responsible to him and are more like his personal advisors. President is not bound to accept the advice of a secretary and the ultimate decision rests with him. Neither the president nor any member of the executive is member of the congress and thus separation is maintained between the legislative and executive organs. The US constitution guarantees the independent judiciary. However, the District Court and Supreme Court judges are appointed by President and their term of office is lifetime. State or Provincial level, court judges are elected by citizens of respective state or province and that too for lifetime. This system of government is fundamentally different from the parliamentary system prevailing in India. In U.S.A the President is not responsible to the congress unlike India, where the cabinet is collectively responsible to the parliament. The President has a fixed term of office and does not depend on majority support in the congress. Before the expiry of his term, he can be removed only by the extremely cumbersome process of impeachment. President cannot disapprove the congress whereas in India Prime Minister has the power to seek dissolution of the Parliament. The executive therefore is not in a position to provide effective leadership to the legislature and it is not always that the congress accepts the programmes and policies proposed by the executive (Jain, 2018).

2.4 Federalism in context of [India](#)

India emerged as the federation after the British Raj. The pre-independence center and provinces became Indian Union with clear powers divided up into three lists: Union, States and concurrent lists. Since Indian Federation was indissoluble, it was Union and no government was allowed to

separate from it. Besides, federation is a union because it is an indestructible strong center to secure the nation. In general terms, the confederation is the structure in which the units dominate the union and in the unitary state, the union dominates the units. The union is effectively dividing legislative authority, with each unit in its position being sovereign. There are essentials necessary to be called as 'federal' and these are Written and rigid constitution with the supreme rule of the land; transfer of powers between union government and different states or provinces may take place and formation of autonomous and impartial judiciary to interpret the constitution and the rules. However, the term 'federation' has not been used deliberately.

Constitution brings into existence of constitutional entities *viz.*, union, states and union territories. It creates three major instruments of power, the legislature, executive and Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. Executive powers are vested to President, Parliament is vested with legislative powers and Judicial powers are endowed to judiciary (Supreme, High and Sub-ordinate Courts). They should function with the spheres allotted to them. The Supreme Court has been given power to declare void the laws passed by the legislature and the actions taken by the executive, if they violate any provisions of the constitution or the laws passed by the legislature in case of executive actions. On the other hand the executive has power to affect the functioning of the judiciary by making appointments to the office of Chief Justice and other Judges.

2.5 Indian Federalism Compared to Federalism of US and UK

India	USA	UK
Territorial integrity is not basic structure of constitution. Territory ceded to Bangladesh under 9 th & 100 th constitutional amendment Act. As per articles 1-4, no state can cede from the Union	States cannot unilaterally cede from the Union	Any member state may choose to leave single market at any time. For this, usually, withdrawal agreement has to be negotiated and there may be transition period
Article-3 of the constitution provide for the merging or splitting of States; such power is exclusively vested with	Merging / splitting of states not allowed except by consent of US - affected States	Merging / splitting of member states possible with consent of citizens of respective state

Government of India		
Indian president indirectly elected; PM leader of parliament, directly elected by citizens (Lok Sabha) or indirectly elected as member of Rajya Sabha	President elected by citizens <i>via</i> Electoral College ; USA is presidential republic	Power of EU exercised collectively by council, collegiate body, defines priorities & political directions of Union. Comprises heads of state / govt. of EU / member states President of E Council and President of E. Commission (latter two have no voting power)
President appoints Governors of States with advice of Union Govt. CM, head of state government , leader of Legisl. Assembly (Vidhan Sabha) or indirectly elected as member of Legislative Council (Vidhan Parishad)	Citizens of the individual States directly elect their Governor	Election of head of state varies from member- state to member-state
Free movement of labour and goods permitted between States. Interests of migrant workers protected by Inter-state Migrant Workmen Act (1979)	Free movement of labor & goods permitted between the States	Main purpose of EU is free movement of labor & goods between member-states
Single currency, foreign policy and armed forces controlled by Govt. of India	Single currency, foreign policy & armed forces under by Federal Govt	Single currency for all EU member-states, Eurozone foreign policy & armed forces responsibility of individual member states
Every state has constitutional right to impose certain taxes, raise debt, part of union Govt. revenue is devolved to states for public purposes	Every state has the constitutional right to impose taxes & raise debt	EU has no power to raise taxes/raise debt, European Central Bank indirectly influence fiscal policy
Multilingual people follow	People speak single	Generally, multilingual people

multiple religions under secular constitution	language, follow the multiple religions under secular constitution	follow one religion under secular constitution
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Chapter III:

Conclusion

Salient features of the comparison of federalism amongst USA, UK and India are as under:

- In USA there is only one list whereas in India there are three lists.
- In USA only the exclusive powers of the Center are defined, there is no concurrent field and the residue vests with the States while In India, the exclusive powers of the Center and States are defined, there is large concurrent area and residue vests with Centre and not with States.
- Functions assigned to Center in India are more complex than those assigned to Center in USA.
- Defense and external affairs are central subjects in both the countries but the Center's external powers appears to be broader in India than in USA.
- Supreme Court in USA has helped in the growth of Centre as powerful entity, whereas in India Centre has powerful status given by the constitution itself which is more persistent than that of the Centre in USA.
- On the other hand, the structure and concept of separation of power in India and UK is almost similar to each other.
- Certain features of federalism are common to both India and USA.
- Many aspects related to the federal character of the constitution differ amongst India and USA.
- Both USA's and India's federalism despite of having limitations are by and large successful.
- Even though UK, USA and India are democratic countries their way of the functioning and making laws are different.
- Both USA and India are having written constitution while UK doesn't.
- Both India and UK have parliamentary form of Govt. while USA follows presidential system.
- India and USA have federal structure but India is more unitary in nature comparing to USA.
- Crown presides as head of UK Parliament while USA and India are having President as head.
- In USA and India, legislative power is governed by the constitution (the supreme law of land) whereas it is uncontrolled in UK.
- The constitution of India is more flexible one in comparison with constitution of USA.
- The constitution of India is the youngest it still holds more constitutional amendments than the

oldest constitution of USA.

- India's federal system, more tilt towards unitary system of government that is sometimes considered a quasi-federal system as it has features of both federal and unitary system.

Federalism has to maintain balance between Center and States. No legal or institutional formula can guarantee the smooth functioning of federal polity. Ultimately, people and political process must develop the culture and set of values and virtues like mutual trust, toleration and a spirit of cooperation. Federalism celebrates both unity as well as diversity. National unity cannot be built by streamlining differences. Such forced unity only generates greater social strife and alienation and tends finally to destroy unity.

Chapter V:

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