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# **A COMPARATIVE ANALYSIS OF INDIAN AND AFRICAN FEDERALISM"**

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## **ABSTRACT**

This article conducts a comparative examination of federalist structures in India and across various African nations, acknowledging the diversity of historical, cultural, and political contexts within the African continent. Federalism serves as a fundamental aspect of governance in both India and several African countries, albeit with distinct manifestations influenced by unique socio-economic dynamics and historical legacies. Through an exploration of constitutional frameworks, power distribution between central and regional entities, intergovernmental relations, and mechanisms for conflict resolution, this study seeks to identify commonalities, disparities, and underlying factors shaping federal systems in these regions. By analyzing historical trajectories and contemporary challenges, this research contributes to a nuanced understanding of federalism's efficacy and adaptability within diverse national and continental contexts, thereby informing potential avenues for institutional development and governance reforms in both India and Africa.

## **KEYWORDS-**

Federalism, India, Africa, Comparative analysis, Governance, Constitutional framework, Power distribution, Historical legacies.

## INTRODUCTION-

Federalism, as a system of governance, has emerged as a pivotal mechanism for managing diversity and promoting unity within nations characterized by pluralistic societies and regional disparities. India and Africa stand as two regions where federalist structures have been adopted to accommodate linguistic, cultural, ethnic, and geographical diversities while ensuring national cohesion. This introduction sets the stage for a comparative analysis of federalism in India and across various African nations, recognizing the complexities and nuances inherent in their respective historical trajectories, socio-political contexts, and governance frameworks.

India, the world's largest democracy, adopted a federal system following its independence in 1947. With its diverse population comprising numerous linguistic, ethnic, and religious groups, India's federalism has been instrumental in accommodating regional aspirations while maintaining the integrity of the nation-state. The Indian federal model, enshrined in the Constitution, delineates powers between the central government and the states, ensuring a delicate balance of authority and autonomy.

Similarly, across the vast and diverse continent of Africa, federalism has been embraced by several nations as a means of managing ethnic diversity, addressing regional inequalities, and promoting democratic governance. From Nigeria to South Africa, federal arrangements have been established to devolve powers to sub-national entities, recognizing the unique cultural and historical identities of different regions.

Despite the shared objective of promoting unity amidst diversity, the implementation and effectiveness of federalism vary significantly between India and African countries. Historical legacies, colonial experiences, socio-economic dynamics, and institutional frameworks have shaped federal systems differently in these regions, leading to divergent outcomes and challenges.

This article seeks to undertake a comparative analysis of Indian federalism and federalist structures across various African nations. By examining constitutional frameworks, power distribution mechanisms, intergovernmental relations, and conflict resolution mechanisms, this study aims to identify similarities, differences, and underlying factors influencing federal systems in these regions. Through this comparative lens, insights can be gleaned into the strengths,

weaknesses, and potential areas for improvement within both Indian and African



federalist frameworks, contributing to a broader understanding of federalism's adaptability and effectiveness in diverse national contexts.

## What is Federalism?

Federalism is compound mode of two governments. That is, in one system there will be a mixture of two governments – state government with central government. In India, we can describe federalism as a distribution of authority around local, national, and state governments. This is similar to Canadian model of political organization.

Federalism is at its core a system where the dual machinery of government functions. Generally, under federalism, there are two levels of government. One is a central authority which looks after the major affairs of the country. The other is more of a local government which looks after the day to day functioning and activities of their particular region.

For example, our Indian Constitution says that India too is a federal country. As you know we have two levels of parliament, the at center the Union government and at State level, we have the individual State governments.<sup>1</sup>

## Features of Federalism

The best way to comprehensively understand the federal system is to learn about its features. These characteristics combined to reflect the true essence of federalism.<sup>2</sup> Let us study them.

1. The essential feature, which is the definition of federalism is that there are two levels of governance in the country at least. There can even be more. But the entire power is not concentrated with one government.
2. All levels of governance will govern the same citizens, but their jurisdiction will be different. This means that each level of government will have a specific power to form laws, legislate and execute these laws. Both of the governments will have

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<sup>1</sup>Introduction to Federalism, www.topper.com ,available at <https://www.toppr.com/guides/political-science/federalism/introduction-to-federalism/>, last seen on 24/03/2024.

<sup>2</sup> Ibid, at 5.

clearly marked jurisdiction. It will not be that one of the government is just a figurehead government.

3. Another important feature is that the constitution must guarantee this federal system of government. Which means the powers and duties of both or all governments must be listed down in the constitution of that country hence guaranteeing a federal system of governance.

4. As stated above the federalism of a country must be prescribed by the constitution. But it is also important that just one level of government cannot make unilateral changes or amendments to the important and essential provisions of the constitution. Such changes must be approved by all the levels of the government to be carried through.

5. Now there are two levels of government with separate jurisdictions and separate duties. Yet there is still a possibility that a conflict may arise between the two. Well in a federal state, it will fall upon the courts or rather the judiciary to resolve this conflict. The courts must have the power to interfere in such a situation and reach a resolution.

6. While there is power sharing between the two levels of government, there should also be a system in place for revenue sharing. Both levels of government should have their own autonomous revenue streams. Because if one such government depends on the other for funds to carry out its functions, it really is not autonomous in its true nature.

### **Evolution of Indian Federalism**

In India, Between 321 and 185 B.C. in Magadha, the Mauryans for the first time assimilated a number of kingdoms and republics which might be the first sub-continental state in Indian history India. The Mughals, beginning with Sher Shah's land revenue system and Akbar's division of his empire into Provinces provide excellent examples of a federal government.

The turning point in India's federal scheme came when it was taken over by the British forces. The genesis of the present federal system in India lies in the Simon Report of May 1930 which supported the idea of a federal government in India. The Government of India

Act 1935 aimed to establish India as a Federation of States.<sup>3</sup>

## Constitutional Framework:

The constitutional framework of India meticulously delineates the distribution of powers between the Union (central government) and the States, establishing a robust federal structure that maintains a delicate balance between centralized authority and regional autonomy.

Distribution of Powers between the Union and States:<sup>4</sup>

- The Indian Constitution delineates the powers of governance between the Union and the States through three distinct lists: the Union List, State List, and Concurrent List.
  - Union List: Encompasses subjects of national importance such as defense, foreign affairs, currency, banking, and communication. The Union government has exclusive legislative jurisdiction over matters listed here.
  - State List: Includes subjects of regional interest such as public health, police, agriculture, and local government. States have exclusive legislative authority over items enumerated in this list.
  - Concurrent List: Contains subjects where both the Union and States can legislate concurrently, such as criminal law, marriage, bankruptcy, and education. In case of a conflict between Union and State laws on concurrent subjects, the Union law prevails.
- Role of Concurrent List and Residuary Powers:
- The Concurrent List is a unique feature of Indian federalism, allowing both the Union and States to legislate on specified subjects. It fosters cooperative federalism and facilitates harmonization of laws on shared subjects.
  - Residuary Powers: Any matter not explicitly mentioned in the Union List, State List, or Concurrent List falls under the residuary powers. These powers reside with the Union government, ensuring that in matters not covered explicitly, the central authority holds

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<sup>3</sup> Insights Mindmaps, *Federalism in India*, 1, available on <https://www.insightsonindia.com/wp-content/uploads/2018/11/Federalism-in-India.pdf>, last seen on 1/4/2024.

<sup>4</sup> Neelu Kishnani, *Indian Federalism: In Theory And Practice*, 11, International journal of creative research thoughts, 3(2023), available on <https://ijcrt.org/papers/IJCRT2312743.pdf>, last seen on 1/4/2024.

legislative jurisdiction. Amendment Procedures and Federal Balance:

- The Constitution of India outlines procedures for amendments to maintain a balance between federal and unitary aspects of governance.
- Amendments to certain provisions require a special majority in Parliament (two-thirds majority of members present and voting) and ratification by at least half of the state legislatures. This ensures the consent of both the Union and the States in matters impacting federal relations. The Constitutional provisions pertaining to the distribution of powers, the role of lists, concurrent jurisdiction, residuary powers, and the amendment procedures collectively form the backbone of India's federal structure. They provide a framework that balances the authority of the central government with the autonomy of the States, fostering a cooperative and resilient federal system that adapts to the evolving needs of the nation while preserving its unity and diversity.<sup>5</sup>

## **Features and Challenges of Indian Federalism:**

Division of Powers: Legislative, Executive, and Financial:

- **Legislative Powers:** The Constitution delineates the legislative powers between the Union and States through the three lists—Union List, State List, and Concurrent List. This division ensures exclusive, concurrent, or shared legislative authority over specific subjects, fostering a balanced distribution of powers.
- **Executive Powers:** Both the Union and States have their executive machinery responsible for implementing laws within their respective jurisdictions. The federal structure allows for the autonomy of states in executing laws pertaining to State List subjects while maintaining national unity through the Union's executive authority over Union List subjects.
- **Financial Powers:** India practices a system of fiscal federalism where financial resources are allocated between the Union and States through mechanisms like tax sharing and grants-in-aid. However, financial disparities and dependence on the Union for resources often pose challenges to the fiscal autonomy of States.

Role of Federal Institutions: President, Parliament:

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<sup>5</sup> Ibid at 8.

- **President:** As the ceremonial head of the state, the President's role in federalism includes appointing governors, assenting to bills, and ensuring the smooth functioning of federal institutions.
- **Parliament:** Comprising the Lok Sabha (House of the People) and the Rajya Sabha (Council of States), Parliament legislates on Union List subjects and Concurrent List subjects. The Rajya Sabha represents the interests of States, ensuring their participation in the legislative process.

#### Centre-State Relations and Conflicts:

- Challenges persist in maintaining a harmonious relationship between the Union and States, often leading to conflicts over jurisdiction, allocation of resources, and implementation of policies.
- Issues like disputes over water resources, distribution of finances, interference in State matters by the Union, and differing political ideologies between ruling parties at the center and in States contribute to these conflicts.

#### Language and Cultural Diversity:

- India's federalism is deeply influenced by its linguistic and cultural diversity. Recognizing this diversity, the Constitution provides for the use of multiple languages for official purposes and safeguards cultural rights.
- Challenges arise in managing linguistic diversity, ensuring equitable representation, and balancing regional aspirations without compromising national unity. Conflicts over language policies and cultural rights occasionally surface, demanding delicate handling by the federal structure.

In conclusion, while Indian federalism presents a robust framework with distinct features in division of powers, federal institutions, and recognition of diversity, challenges persist in maintaining a harmonious relationship between the Union and States. Balancing the need for a strong centre with regional autonomy, addressing fiscal disparities, resolving conflicts, and respecting linguistic and cultural diversity remain ongoing tasks in India's federal governance. Achieving a balance between unity and diversity remains a constant endeavour for Indian federalism.<sup>6</sup>

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<sup>6</sup> Supra note 8 at 10.

## Origins and Rationales of Federalism and State Restructuring in Africa-

During the 1960s and 1970, in the wake of decolonization, several federal orders were made in Africa, but all were shortlived, making the continent home of failed federal arrangements. The Central African Federation (1953–1963), the Senegambia Confederation (1982–1989), Kenya's Majimbo constitution (1963–1964), the Mali federation (1959–1960), the Ethiopian-Eritrean Federation (1952–1962), and Federal Cameroon (1961–1972) are prominent failed federations after which Steytler (2019, 175) described the continent as “the graveyard of federations.” The failures can be attributed to the absence of an autonomous and genuine federalist initiative preceding African independence. As most African states are multinational, federalism should be preferred. However, federalism is very unpopular in Africa, which can be due to the burden of an authoritarian past, colonial or non-colonial. Colonial powers pursued divide-and-rule policies, imposed arbitrary boundaries, followed ethnic and racial profiling and classification that reinforced cleavage lines, and, in some cases, created divisions that did not exist previously that hindered federalism from growing (Osaghae 2004, 166) . As most states are multinational, the absence of democratic and accommodative mechanisms also exacerbated internal conflicts. Consequently, the governing elites fear that federalism is a springboard for secession. The continent's history of federal failure should also have discouraged African states from embracing federalism.<sup>7</sup>

Regardless, Nigeria observed a federal order arranged by the departing British authorities. And its federalism helped maintain the state's territorial integrity (Suberu 2009, 68). At birth, Nigeria's territorial organization was based around its major ethnic groups, the Hausa-Fulani in the Northwest, the Yoruba in the Southwest, and the Igbo (Ibo) in the Southeast (Falola 2001, 5). Post-1990, the politics of territorial restructuring intensified in Africa as more states adopted federalism.

A prominent case is Ethiopia, which restructured its century-old centralized state following a prolonged civil war (1974–1991). The origin of Ethiopian federalism is the suppression of diversity and the violent state-building process under the imperial and the Derg eras, which led to the emergence of identity-based forces demanding autonomy. The process was galvanized

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<sup>7</sup> Bizuneh Yimenu, *Federalism and State Restructuring in Africa: A Comparative Analysis of Origins, Rationales, and Challenges*, 54 *Publius: The Journal of Federalism* 5,6,(2024), available on <https://academic.oup.com/publius/article/54/1/6/7152467?login=false>, last seen on 6/4/2024.

by the Ethiopian Students Movement that embraced Stalin's notion of national self-determination, ultimately toppling the communist Derg in 1991 (Rock 1996, 93). Post-1991, Ethiopia became a constitutionally cemented federation of its nations, nationalities, and peoples with the right to self-determination, including secession, a model akin to the former Soviet Union. Post-apartheid South Africa welcomed federalism in 1993 by adopting an interim constitution that set a framework for a complex negotiation, which led to a new constitution that territorially devolved powers in 1996 (Simeon 1998, 42–43). Federal developments in Ethiopia and South Africa were followed by the revitalization of federalism in Nigeria, the oldest-living African federation, after the military rule in 1999 (Suberu 2013, 416).

Post-2000, federalism and state restructuring got more attention in two post-conflict African states: Somalia and South Sudan. The first attempt to assemble Somalia as a united polity started during the 1960s anti-colonial struggle. After independence, efforts were made under the banner of “greater Somalia,” an idea to unite five territories inhabited by Somaliethnic groups (Dahir and Sheikh Ali 2021, 3). The internationally pushed Somali reconciliation conference embraced federalism by adopting the Federal Charter in 2004 to rebuild the country after decades of civil war (Kefale 2019). This was followed by elections and a new interim federal pact in 2012, setting a good foundation for federalism. Between 2012 and 2016, four Federal Member States (FMS) were created (Dahir and Sheikh Ali 2021, 3–5). South Sudan's federalism root is the 1994 Sudan constitution that created 26 new states; ten would become South Sudan (Fessha and Dessalegn 2022, 873). In 2005, negotiated settlement with Sudan enabled South Sudan to inaugurate its ever-first parliament and endorse South Sudan to be federally governed (Sudan Tribune 2009). The country adopted a transitional constitution that established a bicameral chamber and crudely distributed powers among three tiers of government.<sup>8</sup>

Although the approaches they followed diverge, accommodation of diversity and conflict management are the primary rationale of federalism in Africa, as is the case in Asian federations such as Iraq, India, Malaysia, and Sri Lanka (Breen 2017; Bhattacharyya 2019; Shakir 2019). Diffusing secessionism by allowing territorial self-rule is additional justification

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<sup>8</sup> Ibid at 7.

## Constitutional Basis of Territorial Government in Africa-

Federalism is based on the constitutional distribution of powers between at least two tiers of government.<sup>9</sup> Nigerian states have wide-ranging residual powers (Nigerian Constitution, Schedule 2 parts 1 and 2). The first Nigerian republic created stronger regions the center. However, the fourth republic changed the locus of power to the center by empowering it over matters like the police, state creation, political parties and making oil and natural gas federal competencies (Adamolekun 2005,386). Ethiopian regions have residual powers (except tax) besides competencies regarding regional police, working language, civil service, land administration, regional development policies, and regional constitutions (Ethiopia Constitution, Articles 52 and 98). However, the center's power over nationwide policies and constitutional centralization of lucrative revenue sources limits regional policy autonomy. South African provinces are conferred exclusive powers over less vital matters such as liquor licenses, provincial planning, cultural affairs, and provincial roads and traffic. Key policies such as agriculture, health, housing, transport, education, language, police, and welfare are concurrent. Provinces have weak fiscal powers because they have a narrow tax base and lack autonomy over provincial taxes as they are subject to national regulation (South African Constitution, Schedule 4-5 and Section 228(2)).

Like Ethiopian regions, South African provinces are constitutionally empowered to adopt their own constitutions. For instance, Kwazulu-Natal and the Western Cape exercised such powers by enacting provincial constitutions. De jure, South African provinces have limited legislative competence relative to Nigerian states and Ethiopian regions. However, de jure and de facto regional competences rarely correspond in Ethiopia as regions lack the autonomy to exercise constitutional prerogatives, not just residual powers but also exclusive regional competence such as land administration (Yimenu 2022a). In the three federations, the center cannot unilaterally amend the constitutions; it needs a two-thirds majority of the states.

African federations vary regarding CU representation in the second chamber. Nigeria's upper House (Senate) consists of 109 directly elected three representatives from each state and one from the Federal Capital Territory (FCT), Abuja (Nigerian Constitution, Chapter 5 Part V, Articles 48 and 77). Senate leadership posts are allocated informally for ethnic power-sharing

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<sup>9</sup> Bizuneh Yimenu, Federalism and State Restructuring in Africa: A Comparative Analysis of Origins, Rationales, and Challenges, 54 *Publius: The Journal of Federalism* 5,6,(2024), available on <https://academic.oup.com/publius/article/54/1/6/7152467?login=false>, last seen on 6/4/2024.

(Baba 2013, 113). The Senate joins the House of Representatives in lawmaking (Nigerian Constitution, Chapter 1 Part II, Article 4). Initially, Nigeria's Senate resembled the politically weak British House of Lords (Dent 1989, 183). Later, the American style is followed, a directly elected Senate with important competence (Suberu 2009, 74).

Ethiopia's second chamber, the House of Federation (HoF), is unique because it explicitly represents NNP rather than regions. NNP are the federation's founders, sovereigns, and constitutional adjudicators (Ethiopian Constitution, preamble, Articles 8, 61, and 62). Each NNP is represented by at least one member, denoting equal representation and one additional representative for each million of its population, suggesting proportional representation. Contrary to other second chambers in Africa, the size of the HoF's members is revised regularly to reflect the population and NNP represented (Yimenu 2022b, 7). The HoF has no legislative power but non-legislative competencies regarding self-determination, federal grant, and constitutional adjudication (Ethiopian Constitution, Article 62). This arrangement leaves Ethiopian regions with no representation in lawmaking. The system is further complicated because the lower House is dominated by two populous regions, Oromia and Amhara, which can form a majority in the House, risking other regions' interest in policymaking.

South Africa's upper house, the National Assembly of Provinces, is composed of a single delegation from each province consisting of ten delegates. Like the Nigerian Senate, it joins the National Assembly (lower House) in legislating laws (South African Constitution, Section 42 and 60(1)). The provisional Constitution of Somalia declares that members of the upper House shall be elected directly, states shall be equally represented in the House, and the House legislates (Articles 71-76). South Sudan's transitional Constitution asserts that members of the upper House, the Council of State, constitute all State Assemblies members and thirty members appointed by the country's president (Articles 58-59). Africa's second chambers equally represent subnational units to enable them to participate in making laws at the national level, except Ethiopia's, which neither joins the lower House to make laws nor legislate unilaterally.

### **Case Laws Related**

India is not a federal State in the traditional sense of the word, the Apex Court stated in *Pradeep Jain V. Union of India*<sup>10</sup>. It is not an agreement between independent States that

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<sup>10</sup> *Pradeep Jain V. Union of India*, 1984 AIR 1420, 1984 SCR (3) 942.

have joined forces to create a union by reneging on unquestionably federal principles. The Supreme Court reiterated the following in *Ganga Ram Moolchandani v. State of Rajasthan*<sup>11</sup>: The Indian Constitution is fundamentally federal in form and is distinguished by the traditional features of a federal system, namely supremacy of the Constitution, power sharing between the Union and States, and the existence of an independent judiciary. Similar sentiments were voiced by the Supreme Court in *ITC LTD v. Agricultural Produce Market Committee*<sup>12</sup>.

The Supreme Court expanded the doctrine's importance as being superior to any parliamentary law in the 1978 *Maneka Gandhi v. Union of India*<sup>13</sup> case. The ruling states that if a parliamentary act broke the fundamental principles of the constitution, it cannot be regarded as a law. This important fundamental rights assurance was hailed as a singular illustration of judicial independence in upholding the sanctity of fundamental rights.

Fundamental Rights, which can only be changed by a constitutional amendment, serves as a check on not only the executive department but also the legislatures of the federal and state governments. The rights granted by Article 19 may be temporarily suspended as a result of the declaration of a state of emergency.

## Conclusion

In conclusion, the comparative analysis of Indian federalism and federalist structures across various African nations reveals both commonalities and disparities, underscoring the complexity of federal governance in diverse socio-political contexts. While federalism serves as a mechanism for accommodating diversity, promoting unity, and decentralizing power, its implementation and effectiveness are influenced by historical legacies, institutional frameworks, and socio-economic dynamics.

Both India and African countries have grappled with challenges such as balancing centralization with decentralization, managing intergovernmental relations, and resolving conflicts between central and regional authorities. However, the specific manifestations of these challenges differ due to the unique historical trajectories and contextual factors shaping federal systems in each region.

India's federal model, anchored in a robust constitutional framework, has provided a platform for accommodating linguistic, cultural, and regional diversity while maintaining

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<sup>11</sup>*Ganga Ram Moolchandani v. State of Rajasthan*, AIR 2001 SUPREME COURT 2616.

<sup>12</sup>*ITC LTD v. Agricultural Produce Market Committee*.

<sup>13</sup>*Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621.

national cohesion. The principles of cooperative federalism and asymmetric devolution have facilitated cooperation between the central government and states, contributing to India's democratic resilience and socio-economic development.

In contrast, federalist structures in African nations exhibit greater heterogeneity, reflecting the continent's diverse colonial experiences, ethnic compositions, and governance traditions. While federalism has been adopted as a means of addressing ethnic tensions and regional disparities, its effectiveness has been hindered by challenges such as weak institutional capacity, ethnic fragmentation, and political instability.

Despite these challenges, both India and African countries continue to navigate their federal systems, adapting to changing socio-political dynamics and pursuing avenues for institutional reform. By learning from each other's experiences and exploring best practices, there exists an opportunity for mutual learning and collaboration in strengthening federal governance and promoting inclusive development.

Moving forward, policymakers and scholars must engage in informed dialogue and exchange to address the evolving challenges facing federalism in India and Africa. Emphasizing principles of subsidiarity, inclusivity, and democratic participation can enhance the resilience and effectiveness of federalist structures, fostering greater harmony and prosperity within diverse multiethnic societies.

In essence, the comparative analysis of Indian and African federalism underscores the importance of context-specific approaches and collaborative efforts in advancing federal governance as a means of fostering unity, diversity, and inclusive development in the 21st century.