

Federalism: Concept and Its importance in Democratic System

Dr. Rahul Tripathi, Associate Professor, Amity University Rajasthan, Jaipur (India)

ABSTRACT

Federalism is a system of government in which a written constitution divides power between a central government and regional or sub-divisional governments. Both types of government act directly upon the people through their officials and laws. Both types of government are supreme within their proper sphere of authority. Both have to consent (agree) to any changes to the constitution. The paper intends to throw light on a comparative study of Federalism in few countries along with its merits and demerits.

Keywords

Federalism, Government, States, Bicameral

FEDERALISM

A federal system of government is one that divides the powers of government between the national (federal) government and state and local governments. The Constitution of the United States established the federal system, also known as federalism. Under federalism, each level of government has sovereignty in some areas and shares powers in other areas. For example: both the federal and state governments have the power to tax. Only the federal government can declare war.

Under federalism, power is shared and divided between national and state governments. Both levels have their own agencies and officials and directly affect the people.

Federalism is a system of government in which the same territory is controlled by two levels of government. Generally, an overarching national government governs issues that affect the entire country, and smaller subdivisions govern issues of local concern. Both the national government and the smaller political subdivisions have the power to make laws and both have a certain level of autonomy from each other. The United States has a federal system of governance consisting of the national or federal government, and the government of the individual states.

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Both types of government are supreme within their proper sphere of authority. Both have to consent (agree) to any changes to the constitution.

In America the term “federal government” is usually understood to refer exclusively to the national government based in Washington. This, however, is not an accurate interpretation of the term as it excludes the role played by other aspects of government concerned with the federalist structure.

Federalism can be seen a compromise between the extreme concentration of power and a loose confederation of independent states for governing a variety of people usually in a large expanse of territory. Federalism has the virtue of retaining local pride, traditions and power, while allowing a central government that can handle common problems.

Federalism is a system of government. Federalism means dividing a nation up into various zones. Often, these zones are called states.

The federal system of government is where a country is divided up into several different regions, each of which is able to govern itself, to some extent.

Under a federal system of government, each of the self governing units is answerable to a central authority. So, in this way the whole country is unified under a common constitution or other legal system, despite being separated out into separate regions.

One example of the federal system of government is the United States of America. Here, the country is divided up into several different states, each of which have (to some extent) their own laws and self governing ability. However, all of the states are part of the same country and governed by the central authority of the White House.

The Constitution of India also fulfills most of the conditions of a Federalism. In India, the powers to govern are properly distributed between the Central Government and the State Governments.

Federalism is an institutional mechanism to accommodate two sets of polities—one at the regional level and the other at the national level. Each government is autonomous in its own sphere. In some federal countries, there is even a system of dual citizenship. India has only a single citizenship.

The people likewise, have two sets of identities and loyalties—they belong to the region as well as the nation, for example we are Gujaratis or Jharkhandis as well as Indians. Each level of the polity has distinct powers and responsibilities and has a separate system of government.

The details of this dual system of government are generally spelt out in a written constitution, which is considered to be supreme and which is also the source of the power of both sets of government. Certain subjects, which concern the nation as a whole, for example, defence or currency, are the responsibility of the union or central government. Regional or local matters are the responsibility of the regional or State government.

To prevent conflicts between the centre and the State, there is an independent judiciary to settle disputes. The judiciary has the powers to resolve disputes between the central government and the States on legal matters about the division of power. Real politics, culture, ideology and history determine the actual working of a federation.

HISTORY OF FEDERALISM

Federalism has evolved over the course of American history. At different points in time, the balance and boundaries between the national and state government have changed substantially. In the twentieth century, the role of the national government expanded dramatically, and it continues to expand in the twenty-first century.

Dual Federalism (1789–1945)

Dual federalism describes the nature of federalism for the first 150 years of the American republic, roughly 1789 through World War II. The Constitution outlined provisions for two types of government in the United States, national and state. For the most part, the national government dealt with national defense, foreign policy, and fostering commerce, whereas the states dealt with local matters, economic regulation, and criminal law. This type of federalism is also called layer-cake federalism because, like a layer cake, the states' and the national governments each had their own distinct areas of responsibility, and the different levels rarely overlapped.

Cooperative Federalism (1945–1969)

Federalism over much of the last century has more closely resembled a marble cake rather than a layer cake as federal authority and state authority have become intertwined. The national government has become integrated with the state and local governments, making it difficult to tell where one type of government begins and the other types end. State and local governments administer many federal programs, for example, and states depend heavily on federal funds to support their own programs. This type of

federalism is called cooperative federalism, or marble-cake federalism.

New Federalism (1969–present)

Since the 1970s, political leaders and scholars of the New Federalism School have argued that the national government has grown too powerful and that power should be given back to the states. Although the national government remains extremely important, state governments have regained some power. Richard Nixon began supporting New Federalism during his presidency (1969–1974), and every president since Nixon has continued to support the return of some powers to state and local governments. Although political leaders disagree on the details, most support the general principle of giving power to the states.

New Federalism has taken concrete form in a variety of policies. New Federalists have argued for specific limits on federal power, as well as devolution, a policy of giving states power and responsibility for some programs. For example, the 1996 welfare reforms gave states the ability to spend federal dollars as they saw fit. Supporters claim that local and state governments can be more effective because they understand the circumstances of the issue in their state. They argue that a one-size-fits-all program imposed by Washington cannot function as effectively.

CHARACTERISTICS OF FEDERALISM

A federal system of government is a system in which the powers of government are constitutionally shared between the central government and regional units in such a way that each level of government is independent and autonomous.

Countries with a federal system of government include the United States of America, Nigeria, Canada, Malaysia, Australia and Germany.

A country can be divided into different smaller units to form a federal state. Usually, that country is very big geographically and by population. An example of this type of federation is Nigeria. A federation can also be formed by previously independent entities coming together. An example is the former colonies of the United States of America.

Supremacy of the Constitution

In a federation, the constitution is supreme. The final authority lies in the constitution. Each of the two levels of government can exercise their powers only as determined by the constitution.

A federation is an agreement between two or more sovereign states to create a new state in which each will

exercise specific powers. This agreement is in the shape of the constitution. The constitution defines and explains the powers and the jurisdiction of each government. For this purpose the constitution is considered to be the supreme law in the federation. No central or provincial, which is against the constitution, can be enforced. Similarly if a change is desired in the constitution, it must be according to the method provided by the constitution. Supremacy of the constitution means:

1. **A Written Constitution:** Since it is an agreement, it must be in the written form so that there are no doubts about the powers and functions of each set of government. A written thing is generally very clear.
2. **Rigid Constitution:** It means that there should be a definite and difficult method of amending the constitution. In this way it will remain supreme.
3. **Sovereignty of the Amending Body:** Since both the federal and the provincial government derive their powers from the constitution, neither can be sovereign. So sovereignty lies with the body which has the power to amend the constitution.

Division of powers

The powers of both the central and the component government are divided formally by the constitution and each level of government is given particular roles to play. In federalism the powers are divided between the federal and the provincial governments. There is no uniform method for the distribution of powers. The general and the basic principle is that matters of local importance are given to the provinces and that of national importance to the federal government. Besides this there are the following three methods of distribution of powers commonly used in the world today:

1. **American Method:** Under this method powers of the central government are written down and the remaining powers known as the residuary powers are given to the provinces. The aim behind this method is to keep the center weak and the provinces strong. This method is used in the USA.
2. **Canadian Method:** This is just opposite of the American method. Under this system the powers of the provinces are written down in the constitution and residuary powers are given to the federal government. The idea is to make the center strong. This method is used in Canada.
3. **Indian Method:** This method was introduced in India under the Act of 1935. Under this method three lists are drawn. One contains the powers of the federal government called the Federal List.

Similarly there is the Provincial List and then there is the third list, which is, called Concurrent List containing the powers, which can be exercised by both the governments. In case of conflict between the federal and provincial law regarding the concurrent subject, the central law will prevail.

Written Constitution

Usually, a federal system of government operates under a written constitution. The constitution is usually rigid. This way, the entrenched clauses cannot be easily amended, it will require the consent of both the central government and the government of the component units before it can be amended.

Bicameral Legislature

There is usually an existence of a bicameral legislature in a federation. This ensures that the second chamber could give equal representation to the units to bring equality. It is also to slow down the making of hasty decisions. A federal state has two kinds of governments having different interests and rights. There is, therefore, a need for the protection of these rights and interests. This can be done only when there is a bicameral legislature. The two houses represent the two interests. Normally the Lower House represents the interests of the nation and the upper house represents the interests of the provinces. Normally representation in the Lower House is based on population and for the upper house the principle of parity is followed that is whether a state is small or large it will have equal number of seats. This method is followed in USA and in Pakistan

Secession is denied

In a federation, the right of secession is generally denied. Once component states come together to form a unified state, the federal constitution does not allow the units to break away any more.

Supremacy of Judiciary

Constitution is an important document and the basic law of the country. A federation can remain intact only when the constitution remains inviolable. For this purpose there must be an agency to seek and judge whether or not the two governments have violated the constitution. This agency is called the judiciary. It can perform this function only when it remains supreme. This means that the judiciary has to perform the following function:

1. Whenever there is a dispute regarding any provision of the constitution judiciary has to interpret it.
2. It has the duty to declare any law whether central or provincial as unconstitutional if it is in conflict with

the constitution. This is called the power of judicial review.

3. Since the formal method of amending the constitution is normally very difficult, it is the judiciary, which by its liberal interpretation of the provisions of the constitution makes it flexible and workable. This is called the Doctrine of implied powers.

FEDERALISM IN DEMOCRATIC COUNTRIES

In USA

Federalism is a system of government in which power is divided between a national (federal) government and various state governments. In the United States, the U.S. Constitution gives certain powers to the federal government, other powers to the state governments, and yet other powers to both.

States have their own legislative branch, executive branch, and judicial branch. The states are empowered to pass, enforce, and interpret laws, as long as they do not violate the Constitution.

The federal government determines foreign policy, with exclusive power to make treaties, declare war, and control imports and exports. The federal government has the sole authority to print money. Most governmental responsibilities, however, are shared by state and federal governments and these include taxation, business regulation, environmental protection, and civil rights.

Federalism in the United States has evolved quite a bit since it was first implemented in 1787. Two major kinds of federalism have dominated political theory. There is dual federalism, in which the federal and the state governments are co-equals. Under this theory, there is a very large group of powers belonging to the states, and the federal government is limited to only those powers explicitly listed in the Constitution. As such, the federal government has jurisdiction only to the extent of powers mentioned in the constitution.

Under the second theory of federalism known as cooperative federalism, the national, state, and local governments interact cooperatively and collectively to solve common problems. Cooperative federalism asserts that the national government is supreme over the states.

Regardless of the kind of federalism, the Constitution does provide some very specific powers to both the states and the federal government. They are:

- Delegated Powers – Delegated powers are those powers specifically assigned to the Federal

Government. The national government has very specific enumerated powers including the regulation of interstate and international trade, coinage and currency, war, maintenance of armed forces, postal system, enforcement copyrights and power to enter into treaties.

- Reserved Powers – In this case, all powers not specifically delegated to the Federal Government are to be reserved or saved for the State Governments. These powers include power to establish schools, establishment of local governments, and police powers.
- Concurrent Powers – Concurrent means “at the same time.” Concurrent powers are those that both the federal and state governments share simultaneously, for example the power to tax, maintain courts and the ability to construct and maintain roads.
- Implied Powers – These are powers that are NOT specifically delegated in the Constitution, but are understood to be necessary or allowed. The “necessary and proper clause” of the Constitution state that Congress has the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers” (art. I, sec. 8 of the US Constitution).

In the United States, government is recognized on both the state and national level. This relationship between the levels is known as federalism. While federalism in the United States responds to the political atmosphere, there still a balance between state and national government.

The first American governments after the revolutionary war did not use federalism. Prior to the U.S. Constitution, America was made up of colonies that were under the rule of England. While these colonies did cooperate with each other, particularly during the Revolutionary war, they were essentially self-sustained bodies of government.

The idea of combining these smaller divisions to centralize government as is found in federalism was heavily criticized. These colonies had fought against the oppression of England, which had a central government, similar to the national government suggested in the U.S. Constitution. However, soon after declaring independence, it was clear that individual states would not be able to sustain themselves without creating some form of a central government

Federalism helped unify the states without destroying all of their governing powers. For example, a centralized government allows the states to use the same currency. However, states would still be able to set their own laws as

well, for example, whether a death penalty would be used in the state.

The U.S. Constitution was drafted, which carefully defined just how federalism would be and the relationship between the state and national government. It also worked to limit the national government's power while protecting the rights of citizens.

In Canada

Central to the organization of government in Canada is the principle of federalism. Under this principle, Canada is divided into two constitutionally autonomous levels of government: the federal or central government, and the provincial governments. The nation's basic division of government plays an important role in public finances and public policy. The basic framework and operation of Canadian federalism are discussed in this article with specific emphasis on the concept of federalism, the different levels of government, the formal division of powers, the operation of fiscal federalism, and the key means of interaction between different governments.

Canadian federalism has two constitutionally recognized levels of government: federal and provincial. The country also has two further forms of government, territorial and local, which are not constitutionally recognized. The following section introduces each level of government and its status within Canada's federal framework.

Federal Level of Government

The first constitutionally recognized level of government is the federal or national government. This level is responsible for enacting and implementing laws for the whole country. In doing so, the federal government is provided with its own constitutional powers and jurisdictions, which it may exercise independently from the provincial level of government.

The head of state for the federal government is the Monarchy; however, his/her role is primarily ceremonial under Canada's contemporary system of government. The bulk of federal power lies with the federal head of government and his/her executive council, which are officially referred to as the Prime Minister and Cabinet, as well as the elected legislative chamber, the House of Commons. The second federal legislature, the Senate, is an appointed body and exercises considerably less power relative to the elected House of Commons.

Another key federal institution is the federal judiciary. This includes the Supreme Court of Canada, which is appointed by the federal government and is the highest court in the country. Other important federal-level courts include the Federal Court of Appeal, the Federal Court, the Tax Court of Canada, the Court Martial Appeal Court,

and the Courts Martial (the latter two are military courts). Another important federal institution is the national public service. This includes all of the federal government departments and agencies, which are responsible for helping the federal government form and implement policy within its jurisdictions.

Provincial Level of Government

Provincial governments form the second constitutionally recognized level of government in Canada. There are 10 provinces in Canada, each with their own provincial government: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island. These provincial governments enact and implement laws within their particular provincial territory, and are provided with their own constitutionally recognized powers, which they may exercise independently from the federal government, and from each other.

The fundamentals of Canadian federalism were first provided at the time of Confederation via the 1867 *British North America Act* (which, in 1982, was renamed the *Constitution Act, 1867*). This Act set out the jurisdictional powers of both the federal and provincial levels of government.

In India

There are two sets of government created by the Indian Constitution: one for the entire nation called the union government (central government) and one for each unit or State called the State government. Both of these have a constitutional status and clearly identified area of activity. If there is any dispute about which powers come under the control of the union and which under the States, this can be resolved by the Judiciary on the basis of the constitutional provisions. The Constitution clearly demarcates subjects, which are under the exclusive domain of the Union and those under the States.

One of the important aspects of this division of powers is that economic and financial powers are centralized in the hands of the central government by the Constitution. The States have immense responsibilities but very meager revenue sources.

It is generally accepted that the Indian Constitution has created a strong central government. India is a country of continental dimensions with immense diversities and social problems. The framers of the Constitution believed that we required a federal constitution that would accommodate diversities. But they also wanted to create a strong centre to stem disintegration and bring about social and political change. It was necessary for the centre to have such powers because India at the time of independence was not only divided into provinces created

by the British; but there were more than 500 princely states which had to be integrated into existing States or new States had to be created.

ADVANTAGES OF FEDERALISM

- 1. Governance becomes easier.** It is very hard for a central authority to govern the entirety of a large country at once. Splitting the country up into manageable chunks makes it easier to govern. Further, it's easier to give specific directions if you can narrow things down by state boundaries.
- 2. Local issues are given more weight.** Federalism enables local government to govern in a way that reflects the needs and interests of their specific region. Under a federal system, federal governments can pay attention to the issues that matter most to the people in their region – and then respond to these issues in the way that they create and implement laws.
- 3. Diversity.** A federal system encourages diversity within a country. Different federations may have different ways of doing things, but they will all be respected equally.
- 4. Ability to choose. It enables people to choose the best place for them to live.** Citizens of a federal country can choose which region's way of doing things suits them best – and then move to live or work in the region that best suits their life style.
- 5. Citizens feel more in touch with their governors.** It can be hard to feel connected to the people governing you when they live many hundreds of miles away in the HQ of a central authority. However, under a federal system, your federal governors will always live in your region.
- 6. Constitutionality.** A federal system is not one that aims to overthrow the central government. Rather, all federal governments will be answerable to the country's national legal system and/ or constitution. So in this way a federal system provides unity for its people as well as diversity.
- 7. People have more power.** When people can vote to change federal laws, or when they can vote to replace federal governors, they have more immediate power over the issues that concern them and their region.
- 8. Agriculture.** Large countries may have entirely different climates in different regions of the country. Thus, a federal system is useful as federal laws relating to agriculture and similar issues can

be tailored to suit the particularities of a region's climate.

- 9. Federal governors have a better understanding of their region.** It is very difficult for a centralized government to have an in depth knowledge of all of the regions of the country. A federal government, on the other hand, will have an excellent knowledge of the region.
- 10. Keeping centralized power in check.** When a centralized government is not the only power in a country, it can be kept in check better. Different federations can act as checks and balances for each other and give each other ideas about how to govern. This also helps to balance out the power of a central government.
- 11. Better for larger nations: This system is ideally suited to big countries.** It can be easier to govern several smaller states than one large nation alone. Large nations work better when they are divided up into smaller federations as this makes governing them easier.
- 12. Local character:** Recognizing distinct federations helps to preserve the local character of each federation.

DISADVANTAGES OF FEDERALISM

- 1. Parochialism.** It could be argued that federal governments become overly parochial, putting the interests of a relatively small region of a country ahead of national interests in a counterproductive way.
- 2. Potential for conflict between federations.** When several federations deeply disagree on legal matters, conflicts can arise. Conflict and disputes between states can cause friction.
- 3. Conflicts of authority.** In a federal government, federal governors and the central government may become engaged in conflicts of authority about what is best for a given region of the country.
- 4. A lack of unity.** A federal system of government may feel very fragmented – the country can seem broken up into various parts without real unity between them.
- 5. Feeling out of touch with each other.** Citizens may feel out of touch with other citizens in different parts of the country, making it harder for them to relate to people from different states or federations.

6. **Feeling out of touch with the central government.** When your most visible system of government is the federal government, you may feel out of touch with the central government, especially when it is far away.
7. **Confusion and inconsistency:** Different laws for different states can be confusing. It can be argued that it's better to have a consistent system for all areas of a nation.
8. **Complex:** Federalism can be complex to navigate.

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ABOUT THE AUTHOR

Dr. Rahul Tripathi is presently working as Associate Professor at Amity University Rajasthan (India). He is UGC-Net qualified and Ph.D from University of Rajasthan. Having a teaching experience of 13 years, his area of interest includes History of Rajasthan, Legal History of India and Research Methodology.