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Comparative Analysis of Indian and American Federalism

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ABSTRACT

This article embarks upon the concept of Federalism and also strives for comparative analysis of Indian & American Federalism, the article examines the federal structure of both the country in light of the traditional conception of federalism and it further examines the structure on touchstone of Ivo D. Duchacek's ten yardsticks of federalism, Both countries have been examined in light of their constitutional scheme and judicial pronouncements.

Keywords: *Federalism, India, US, and Comparative Analysis etc.*

MEANING OF FEDERALISM

K.C. Where defined federalism as "*the method of dividing powers so that the general and regional governments are each within a sphere co-ordinate and independent.*"¹

Federalism is a political system which creates in a society broadly two levels of Government with assigned powers and functions arising from a variety of social, economic, cultural, and political factors.² It is one element of power dispersion among others in the creation of political order which is built in consonance with the principles of constitutional government. The principles of federalism are grounded on and formed with the combination of self-rule and shared rule. In the broadest sense, federalism involves the linking of individuals, groups, and politics in the lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrity of all parties. Federalism as a political principle deals with the constitutional diffusion of power so that the constituting units in a federal arrangement share in the processes of common policy making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrity.³

Federalism constitutes a complex governmental mechanism for the governance of a country. It binds into one political union several autonomous, distinct, separate and disparate entities or administrative units. It seeks to draw a balance between the forces working in favour of the concentration of power at a central point and the forces which favour a dispersal of the power in a number of units. Federalism thus seeks to reconcile unity with multiplicity, centralisation with decentralisation and nationalism with localism. The originality of the federal system which lies in that power is, at one and the same time, concentrated as well as divided. There is centralisation of administration and legislation in certain areas along with decentralisation in other areas.⁴

The essential features of federalism are dual government, distribution of powers, and supremacy of the constitution, the authority of courts, written Constitution, decentralization, and a real division of power, though the aforementioned principles are not exhaustive, they do encompass major elements of federalism.⁵ A federal constitution establishes a dual polity, comprising two levels of government—a central government having jurisdiction over the entire country in some areas, and state governments, each of which exercises jurisdiction within defined regional boundaries. A citizen in a federal country is subject to the decrees of two governments. The totality of governmental powers and functions are divided between the Centre and the states. Each level of government thus functions within its assigned field. The several governments do not, however, function in watertight compartments.

¹ K.C. Wheare, Federal Government, 4th ed. (London: Oxford University Press, 1963) at 11.

² S. A. Paleker, FEDERALISM : A CONCEPTUAL ANALYSIS, The Indian Journal of Political Science, Vol. 67, No. 2 (APR.- JUNE, 2006), pp. 303-310

³ Daniel J. Elazar, Federalism Theory and Application, HSRC Press, 31-Dec-1995, ISBN: 9780796916990

⁴ M.P. Jain, Indian Federalism: A Background Paper, (2015)

⁵ Daniel J. Elazar, Exploring Federalism, University of Alabama Press, 30-Jan-1987,

They come in contact with each other at several points, and thus a host of inter-governmental relations arise in a federal country. The pattern of these relations is not static; it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces operating in the country, and, that is why the subject of inter-governmental relations is of much significance to a student of any federal constitution.⁶

COMPARATIVE ANALYSIS OF FEDERALISM IN INDIA & USA

There are roughly 25 federal countries in the world today, which together represent 40 per cent of the world's population. The two of the most significant federal countries in the world are the United States and India, the former is the world's oldest democracy and latter is the world's largest democracy, both United States, and India are based on federalism in their political structure. The 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 several smaller states had affiliated forming a union with a central government that came to be called as Federal Government in the US and Central Government in India. Thus, both states became Federal Republics.⁷ The Federation does not operate in isolation but rather real politics, culture, ideology, and history determine the actual working of a federation, and so while on one hand there are many similarities between the federal structure of India and United States, on the other hand, both federations differ in various aspects. This paper will strive to elucidate the key features of the U.S. and the Indian federal polity and will also elaborate upon the comparison between the federations models of both the countries.⁸

The pivotal features of United States federation are: it has written constitution, which is the supreme law of the land; it is a coming together state as the USA is union of autonomous states for common purposes; the constitution of US is rigid, there have been only 27 amendments in 229 years; there exist the division of legislative power between the national government and state government, which is governed by the rule that the former is a government of enumerated powers, while the latter is government of residuary powers; the direct operation of each government, within its assigned spheres, upon all persons and property in their territorial limits; the provision of each government with the complete apparatus of law enforcement, both executive and judiciary; federal supremacy over any conflicting assertion of state power.⁹ In the United States, the two levels of government exercise direct authority simultaneously over people within their territory. Dual citizenship exists under federalism, and individuals can claim a wide range of rights and privileges from both state and national governments.¹⁰

The federal system in India has been designed by its founding fathers on three pillars: a strong Centre, flexible federation and cooperative federalism. India is a holding together state as India has been defined as "India, that is Bharat, shall be a union of States," in Article 1 (1) of Indian Constitution, Dr. B.R. Ambedkar said in the Constituent Assembly that the word 'union' instead of the word 'federal' is used for two definite advantages, viz. that Indian federation is not the result of an agreement by the units, and that the component units have no freedom to secede from it.¹¹ The fundamental features of federal system of India are that there are two sets of government in India: the central or union government and the state government. The Central government works for the whole country and the State governments look after the States. The areas of activity of both the governments are different; there exists division of powers in India, The Seventh Schedule of the Constitution contains three lists of subjects which show how division of power is made between the state and the centre; India has its own written Constitution, every provision of the Constitution is clearly written down and has been discussed in detail. It is regarded as one of the longest constitutions of the world which has 395 Articles 22 Parts and 12 Schedules; The Constitution is regarded as supreme law of the land in India; there exist separate judiciary body as guardian of the Constitution. These are some of the features of a federal form of government in the Indian Constitution.¹² The Constitution has also included some unitary or non-federal features, for example Constitution of India is not strictly rigid as it has been amended for more than 100 times in 68 years, there exists single citizenship, unified judiciary, unequal representation of states in Rajyasabha, existence of emergency provision, and the existence of a State or a federating unit depends upon the authority of the Centre as the boundary of a State can be changed by created out of the existing States.¹³

The aforementioned key features of federalism are founded on basis of conventional theories of federalism, But Ivo D. Duchacek approached the Federalism in a different manner by raising certain questions based on classical model constitution of America. He provided ten yardsticks of federalism in the form of ten questions to be directed at the national systems that are considered to be or claimed to be federal. The ten yardsticks given by Ivo D. Duchacek are Exclusive Control over Foreign Relations, Immunity against Secession, Independent Sphere of Central Authority, Amending the Federal Constitution, Indestructible Identity and Autonomy, Residual and Significant Powers, Bicameralism and Equal Representation, Two Sets of Independent Courts, The Supreme Court, and Clear Division of Power. The comparative analysis of the US and Indian federalism will be based on above mentioned yardsticks.¹⁴

⁶ Vinayak Narain Srivastava, Why Federalism? A Perspective, Yojna (Feb. 2015) Vol 59

⁷ Rama Lingam, The Similarities and Differences Between American Federalism and Indian Federalism, knoji, available from <https://general-law.knoji.com/the-similarities-and-differences-between-american-federalism-and-indian-federalism/> [Accessed on 10th February, 2017]

⁸ Basu, D.D, Comparative Federalism 6 (2nd edition, 2008, Wadhwa, Nagpur)

⁹ Louis Fisher, American Constitutional Law, Volume 1, CUP Archive, 2005.

¹⁰ Norman Redlich et al, Understanding Constitutional Law, LexisNexis, 16-Mar-2007.

¹¹ CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX, Saturday, the 17th September, 1949

¹² Humayun Kabir, India and Federalism, Harold Laski Institute of Political Science, 1958

¹³ Asok Kumar Chanda, Federalism in India: a study of union-state relations, G.Allen & Unwin, 1965

¹⁴ Ivo. D. Duchacek. Comparative Federalism. Holt Rinehart and Winston Inc, New York, 1970

The first question directed towards federal natural of state by Ivo D. Duchacek is that “Has the Central Authority exclusive control over diplomacy and defence as befits a nation-state in its relations with other nation-states?” In a federation, it is the national (federal) government in whose hands lies the ultimate control over the major issues in foreign policy and the conduct of peaceful or violent international relations. The tasks of both the diplomatic service and the armed forces mirror the preoccupation, interests, and goals of the federal nation rather than those of nation’s territorial components. In US, the article 1 section 10 of their Constitution specifically provides for the above-mentioned powers that No state shall enter into any Treaty, Alliance or Confederation.....No State shall, without the consent of Congress, keep Troops, or Ships of War in time of Peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.¹⁵ In India Article 246 read with schedule VII provides for such powers, various entries in list 1, such as entry no. 1,2, 4,10,11,13,14 and15 directly provides for the exclusive control of the central authority. Besides these direct provisions there are other entries like 5,6,7,9,12,16,17,18,19,37 and 41 of the List I which support the union in this matters, Articles 53(2), 352,353 and 355 further strengthen this power of central authority. The existence of these powers under the Indian Constitution is more elaborate than in the American Constitution. Thus, the Indian Constitution answers the first of the ten yardsticks of federalism more positively than the American Constitution.

The second question directed towards federal natural of state by Ivo D. Duchacek is that “Is the Federal Union Constitutionally immune against dissolution by secession?” The United States Constitution does not contain any explicit interdiction of secession. Implicitly it may be argued that the Preamble’s first sentence, which stresses a “more perfect Union,” should be read with conjunction with the Articles of Confederation, which it amended and which had committed the thirteen states to a “perpetual union.” In the first seventy years of the United States existence, there could be some doubt about the right of national self-determination of the federal components. But after the verdict of US Supreme Court in Texas vs White¹⁶, now the law is settled that “United States is an indestructible Union of indestructible states.” In India, secession is not possible of Indian states as the country has been defined as “India, that is Bharat, shall be a union of States,” in Article 1 (1) of Indian Constitution. And further, Dr. B.R. Ambedkar even specifically stated in the Constituent Assembly that the word ‘union’ instead of the word ‘federal’ is used to imply that the component units have no freedom to secede from it.¹⁷

The third question directed towards federal natural of state by Ivo D. Duchacek is that Is the exercise of the Central Authority, as it reaches all citizens, directly independent of the individual approval and resources of the component units? This question basically has two indirect questions: a union directly tax people without state’s permission and, can union directly reach people and provide welfare without state’s permission. In a federal system, powers are so divided “that the general and regional governments are each, within a sphere, co-ordinate and independent,” and in the issue of financial resources, federal constitutions make the federal government independent of the constituent units by granting it the right to levy direct taxes and enforce the federal laws In United States Article 1, section 8 of US constitution gives power to Congress to lay and collect taxes. But until 1913, in principle direct taxes were to be apportioned among the several states according to population. In 1913, the Sixteenth Amendment gave the Congress the right to impose income taxes “without apportionment among the several States, and without regard to any census or enumeration. In India, Article 246(1) read with Schedule 7, Entry 82 to 92 provides that the Union has direct authority to impose tax. The entire gamut of financial relations has been provided for under the constitution itself. Along with the tax bases mentioned in Schedule VII, Article 268 to 281 also speak about the tax sharing between them. Further the Union Government can make grant-in-aid to the States every year. Thus, the Central authority is very much independent of the individual approval and resources of the component units with regard to the financial as well as other resources.¹⁸

The fourth question directed towards federal natural of state by Ivo D. Duchacek is “Who has the ultimate control over amendments to the federal Constitution?” If the American model of federalism were viewed as the only pure one, the fourth yardstick may be expressed as retention of veto over constitutional changes by a majority of, but not all, component units. As per many experts this is by far the most reliable yardstick of federalism when the text of constitutions is analysed. In US Article V provides the manner in which amendments can be made to the Constitution, any amendments to US Constitution requires the ratification by 3/4th States. In the United States, all amendments, even if they do not affect the federal distribution of power, require ratification by three fourths of the states. In India, the power and procedure for amendments have been provided under Article 4, Schedule VI and principally under Article 368 of the Constitution. The power to initiate the amendments is vested with the union in all the cases. There is no need for the ratification by the states for all amendments. Articles 368(2) provides that only for the Amendment of some 58 Articles (Article 54, 55, 73, 162 or 241; Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI,) and 2 Schedules (out of 395 articles and 12 schedules) the assent of the States is required. Thus, it is clear that when Amendments are likely to be affecting the federal structure to some extent, ratification by not less than half of the States is necessary.¹⁹

The fifth question directed towards federal natural of state by Ivo D. Duchacek is “Are the component units immune to elimination of their identity [antedating or postdating the Union] and authority?” In United States, all 50 States of America are having the immunity: States are indestructible Units, having separate Constitution. And by the virtue of Article 4, section3 and Texas v. White, the states cannot be destroyed, their boundaries cannot be altered and not even their names. But in India the position is different,

¹⁵The United States Constitution, Article 1, Section 10

¹⁶ Texas v. White, 74 U.S. 700 (1869)

¹⁷ CONSTITUENT ASSEMBLY OF INDIA DEBATES (PROCEEDINGS) - VOLUME IX, Saturday, the 17th September, 1949

¹⁸ Madabhushi Sridhar, Evolution and Philosophy behind the Indian Constitution, PCCI

¹⁹ Yogesh Pratap Singh, COMPARATIVE FEDERALISM: TESTING INDIAN CONSTITUTION ON THE YARDSTICS OF IVO D. DUCHACEK, Rostrumlegal, 2016, available from <http://rostrumlegal.com/comparative-federalism-testing-indian-constitution-on-the-yardstics-of-ivo-d-duchacek/> [Accessed on 10th February, 2016]

territories of the State are specified in Schedule I and under Article 2 of the Constitution, parliament is having the power to admit and establish new states. Under Article 3 (a), Parliament can alter the boundaries of States or name of existing States on its own. Thus, the power to alter the boundaries of the States or change the name of the existing ones is given to the Union Parliament. Although the power for the total elimination of a State's identity is available with Parliament under Article 3(a) of the Constitution of India, but this power has not been used by the Parliament (except in Kutch Award Tribunal Case) on its own discretion.^{20,21}

The sixth question directed towards federal nature of state by Ivo D. Duchacek is "Have the component units retained all the powers that the constitution has not given to the central authority?" In United States, the federal government is considered as government of enumerated powers, while the state government are government of residuary powers. Article 1, Section 8 of U.S Constitution provides for 18 subject matters for the centre to legislate upon and is restricted. The remaining power is with the States. In India, apart from making three lists in Schedule VII (Union, State and Concurrent powers), the residuary powers are vested in the Union and not to the states. Three exhaustive lists are prepared which chalks out the various areas of the Centre and States. There never arose any question of residuary power. But then too, if any entry is not mentioned in any of the three lists, then by virtue of Article 248 the Centre has the authority over it. Thus, residuary power is with Centre. Under this yardstick, India reflects certain unitary features as Union is allowed to make laws relating to even state matter (in national interest and at time of emergency).²²

The seventh question directed towards federal nature of state by Ivo D. Duchacek is "Is the Collective Sharing in federal rule making adequately secured by equal representation of unequal units in a bicameral system?" In United States, equal representation in Senate is secured by virtue of Article 5, this article states that "no State, without its consent, shall be deprived of its equal suffrage in the Senate." And so, in US every state irrespective of its size have 2 seats in senate. In India, there is no collective sharing in federal rule making as there is unequal representation of unequal units in the Rajya Sabha. States are represented unequally in the Rajya-Sabha on the basis of population of an individual State. The allocation of seats to the States in the Rajya Sabha (Council of States) in the Parliament is provided under Schedule IV read with Article 80 (2) of the constitution.²³

The eighth question directed towards federal nature of state by Ivo D. Duchacek is "Are there two independent sets of Courts, one interpreting and adjudicating Federal Laws and the other State Laws?" In USA, there are two independent sets of court, federal court and state court. The federal judiciary have 95 district courts, 12 circuit courts, and one US Supreme Court. The U.S. Supreme Court has jurisdiction over the entire country but only in case of Federal Laws. The States have their own Constitutions and their individual Supreme Court to interpret their own laws and appeals from State Supreme Court are possible only when any question of federal law is involved. In India, there is a unified judicial system with the Supreme Court as the apex body followed by the twenty-four other high court. The Supreme Court as well as the high courts can interpret the Constitution, and the Union as well as the State laws. A State Law can be challenged in High Court and unlike US, appeal against the decision of High Court in State law matter can be challenged before Supreme Court of India.²⁴

The ninth question directed towards federal nature of state by Ivo D. Duchacek is "Is there a judicial authority in the central authority but Standing above that Central Authority and the Components Units to determine their respective rights?" In all systems, federal as well as unitary, there is a need for an impartial agency that can ascertain the meaning of the nation's supreme law, the constitution, and that, in light of its findings, can determine the compatibility of any given law or official act, national or local, with the constitution. In a federal system there seems to be an even more acute need for an impartial agency, because the interpretation of the meaning of the constitution includes also the delicate original political agreement between territorial communities from which the whole federal system had issued. In US the Supreme Court stands above the central authority and the component units. The rights of the units can be determined by the SC in the event of conflict between the federal and the state government or among the states, this fall within the original jurisdiction of SC. So there exists a concept of judicial review where the Supreme Court has jurisdiction to try centre-state dispute in US and *Mculloh V. Maryland* is the classic case of centre state dispute, where judicial review was used. In India, judicial review is explicitly provided under article 13(2) of the Constitution read with Article 14, 32, 226 thereof. Article 131 also speaks about the original jurisdiction of the Supreme Court in any intra-federal disputes between the Government of India and one or more States, or between two or more states. Thus, there is a judicial authority in India, standing above the Central authority as well as the components units that can determine their respective rights.²⁵

The tenth question directed towards federal nature of state by Ivo D. Duchacek is "Is the territorial division of authority is clear and unambiguous?" In US, Article 1. section 8 of the constitution provides 18 subject matters over which federal government has power and residuary power with states. In India, the territorial division of authority is clear as constitutional makers provided schedule 7 and 3 lists which clearly provides powers between Union and States and thereby ensures that clarity can be provided and conflicts can be avoided. And as there are very few instances which came up before the court regarding conflict of lists; this makes it clear that there is no ambiguity prevailing in India.²⁶

²⁰ Jeffrey Kopstein, *Comparative Politics: Interests, Identities, and Institutions in a Changing Global Order*, Cambridge University Press, 15-Aug-2000

²¹ Prof. K. Nageshwar, *Interpreting Contemporary India*, Author House, 03-Nov-2016, ISBN 9781524665319

²² Sanjiv Agarwal, *The Indian Federalist*, Notion Press, 2014, ISBN: 9789383808823

²³ D. K. Sarmah, *Political Science*, vol 2, New Age International, 01-Jan-1997

²⁴ Dr. Irfan Rasool Najar, *Indian Federalism: A Short History*, Asian Journal of Research in Social Sciences and Humanities, Vol. 5, No. 6, June 2015, pp. 130-138.

²⁵ JUDICIAL SYSTEMS IN U.S., U.K., FRANCE AND INDIA: A COMPARISON

²⁶ Karn Marwaha, Yes, India is a Federal Country, *IJMAS*, Volume 02, No.1, Jan - Feb 2015

Through the above analysis of the 10 yardsticks it can be clearly stated that India, though does not strictly follows those yardsticks, but considering the practical features, India can be termed as federal country. And United States does follow major yardstick and its system is very close to being a pure federal state.

As mentioned above that the federation does not operate in isolation but rather real politics, culture, ideology, and history determine the actual working of a federation. History is one of the major determinants of the type of federal structure a country is going to pursue. Federalism does not consist of a set of fixed principles, which are applied, to different historical situations. Rather, federalism as a principle of government has evolved differently in different situations. American federalism – one of the first major attempts to build a federal polity – is different from Indian federalism. And so, without historical analysis of Indian and American federalism, the comparative study will be considered as incomplete.

Both India and US have a different history, The American Federation can be described as the outcome of the process of evolution, in that, the separate States first formed into a Confederation (1781) and then into a Federation (1789). The Declaration of Independence adopted on July 4, 1776, acknowledged the independence, freedom, and sovereignty of thirteen colonies which became the States. On June 12, 1776, the Continental Congress had appointed a committee which consisted of members from each colony, to prepare and digest the form of a confederation to be entered into between these colonies, after independence. Accordingly, in November 1777 was adopted, by Congress, the Articles of Confederation which constituted the first Constitution of the United States of America. The Congress of the confederation had definite and express powers over subjects of common concern. In the coming years, however, the complications were caused in dealing of the states with each other and the central government. The climax was reached in 1786 when all attempts to improve Articles of Confederation failed and states were on a verge of civil war. And so, in 1787 was called a conference, at Philadelphia, of delegates from all States to review the whole system. The Federal solution of distributing power in the new republic was in harmony with the traditions of local autonomy which extended back in time a century or more and a dual system of government was established exercising legislative, executive and judicial powers within the mandate of the Constitution. The American States were independent sovereign States and the territorial boundaries of those independent States cannot be touched by the Federal Government. It is these 13 independent sovereign units which together decided to form into a federation.²⁷ In India, on June 3, 1947, the British Partition of India was announced and was accepted by both the League and the Congress. The Indian Independence Act which for the independence of a separate India and Pakistan was introduced Parliament on July 6, 1947, and was passed on, the same act provided more than 500 princely states with the option as to go with either go with India or Pakistan or declare itself as an independent. And so, the States were not independent sovereign units but they were formed by Article 1 of the Constitution and their areas and boundaries could, therefore, be altered, without their concurrence, by Parliament. Speedily now. Out of such 500 princely states, by virtue of States Reorganisation Act of 1956, 14 states and 6 union territories were created. Due to the bad experience of Provincial Autonomy in India, which led to British occupation of Indian territory, our founding fathers made a strong centre to hold together all the component units together. The federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle the outcome of our own historical process and a recognition of the ground realities. And so, because of two different historical backgrounds, US became coming together federation, and India became holding together federation.²⁸

The form of federalism prevailing in the US is very close to pure federalism, but there has been always a debate about which form of federalism is followed in India, Ivor Jennings stated that ours is a federal Constitution with strong centralizing tendencies.²⁹ This debate has been much settled after the judgement of S.R. Bommai case³⁰, in this case, Justice Ramaswamy while delivering the majority decision stated that ours is a co-operative federalism, which implies promoting mutuality and common purpose for rendering social, economic and political justice, equality of status and opportunity, he further mentioned that Indian Constitution federalism is not based on any agreement between federating units but one of integrated whole as pleaded with vision by Dr. B.R. Ambedkar on the floor of the Constituent Assembly.

The strong powers of central government have been justified because of the history of our nation, DR. Ambedkar in Constitution Assembly debates while answering the question that why we are having strong centre mentioned that over-strong. "Yes, we want a strong Centre by all means, if serve or maintain our new-born freedom, and if we want the solidarity country. We have had enough experience of Provincial of which we had been enamoured in the past and we have seen its effect. Centrifugal and fissiparous tendencies that it has generated and we all know if we want to hold together all the component units there must be a Centre which would be able to bring them into cohesion and that centre must have ample power for that purpose. This does not mean that provincial autonomy should be ruthlessly curtailed."³¹ 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.

²⁷ Sunita Parikh and Barry R. Weingast, A COMPARATIVE THEORY OF FEDERALISM: INDIA, 83 Va. L. Rev. 1593 1997

²⁸ Benjamin N. Schoenfeld, FEDERALISM IN INDIA, The Indian Journal of Political Science, Vol. 20, No. 1 (JANUARY-MARCH, 1959),pp. 52-62

²⁹ M. G. Chitkara & Baṃśī Rāma Śarmā, Indian Republic: Issues and Perspective, APH Publishing, 1997

³⁰ S.R. Bommai vs Union Of India, 1994 AIR 1918, 1994 SCC (3) 1

³¹ CONSTITUENT ASSEMBLY OF INDIA - VOLUME - VII Friday, the 5th November 1948.

CONCLUSION

Real politics, culture, ideology, and history determine the actual working of a federation. A culture of trust, cooperation, mutual respect, and restraint helps federations to function smoothly. Political parties also determine the way a constitution would work. If any single unit or State or linguistic group or ideology come to dominate the entire federation it could generate a deep resentment among people or its units not sharing the dominant voice. These situations could lead to demands for secession by the aggrieved units or could even result in civil wars. Many countries are embroiled in such conflict situations. USSR was one of the world's super powers, but after 1989 it simply broke up into several independent countries. One of the major reasons for its break up was the excessive centralisation and concentration of power and the domination of Russia over other regions with independent languages and cultures of their own e.g. Uzbekistan. Some other countries like Czechoslovakia, Yugoslavia, and Pakistan also had to face a division of the country. Canada came very close to a break up between the English-speaking and the French-speaking regions of that country. Europe is also on verge of collapse after Brexit. But, India being a land of continental proportions and immense diversities has managed to be together happily. There are more than 20 major languages and several hundred minor ones. It is the home of several major religions. There are several million indigenous peoples living in different parts of the country. In spite of all these diversities we share a common land mass, isn't it a great achievement that India, which emerged as an independent nation-state in 1947 after a painful partition, has remained united over six decades of its independent existence. What has kept India together is that we have also participated in a common history, especially, when we fought for independence. We also share many other important features and this has led our national leaders to visualise India as a country where there is unity in diversity.³² Sometimes it is described as unity with diversity. Though the Indian constitution has been criticised as not being federal for having a powerful centre, Federalism does not consist of a set of fixed principles, which are applied, to different historical situations. Rather, federalism as a principle of government has evolved differently in different situations. And the form of federalism enshrined in Indian Constitution has worked fabulously for India.³³ Both USA and Indian federalism has met with challenges, USA federalism was challenged with the new deal and Indian federalism was crippled in 1975-80 during an emergency, but afterwards, both federal systems emerged even strongly and this speaks volume about the competency of the Constitution and federal structure. The structure of federalism of US and India differs widely, but with a different history and different challenges both systems have worked efficiently and have secured the national integrity. Federalism is like a rainbow, where each colour is separate, yet together they make a harmonious pattern. Federalism has to continuously maintain a difficult balance between the centre and the States. No legal or institutional formula can guarantee the smooth functioning of a federal polity. Ultimately, the people and the political process must develop a culture and a set of values and virtues like mutual trust, toleration and a spirit of cooperation. Federalism celebrates both unities 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. A responsive polity sensitive to diversities and to the demands for autonomy can alone be the basis of a cooperative federation.

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