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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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GOVERNANCE THROUGH FEDERAL STRUCTURE: A COMPARATIVE ANALYSIS BETWEEN UNITED STATES OF AMERICA AND INDIA

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ABSTRACT

This Article conducts a detailed comparative analysis of federal governance in the United States and India. Examining various aspects, the analysis covers Constitutional Foundations, Division of Powers, Unitary Features, Rigidity of the Constitution, Autonomy of states, Bicameralism, and the Roles of Governors and Presidents. The Constitutional basis of Federalism is explored, highlighting the Tenth Amendment in the United States and the Seventh Schedule in India, which establish distinct legislative authorities for the Federal or Center and the State Governments. The Division of Powers, Categorized into Union, State, and Concurrent Lists in India, and enumerated, reserved, and concurrent powers in the U.S., is examined to showcase the delicate balance of legislative authority. The article delves into Unitary features present in both federal systems during crises, emphasizing adaptability to national challenges. The rigidity of USA's Constitution and the flexible nature of the Indian Constitution in terms of amendments are discussed, shedding light on the enduring nature of foundational principles. Autonomy of states is a central theme, with both countries granting significant authority to states over various policy domains and enabling regions to address unique challenges. Bicameral legislatures in the United States of America and the Indian Parliament are compared, showcasing nuanced approaches to representation. The Roles of Governors and Presidents in the Federal Dynamics are explored, highlighting the decentralized executive in the U.S. and the constitutional bounds within which Indian governors operate. The Article emphasizes the unique characteristics shaped by historical, cultural, and constitutional considerations in the United States of America and India. Understanding these similarities and differences provides valuable insights into the functioning of these robust democracies. The complexities inherent in federal systems, balancing centralized authority and regional autonomy in diverse democracies, are thoroughly examined. The article also incorporates insights from the

Indian context, discussing the Quasi-Federal identity of the Indian Constitution and the impact of historical context on the articulation of Federal Principles. Finally this paper analysis on the evolving nature of Federalism in both nations, emphasizing the need for a harmonious balance between Centrifugal and Centripetal forces in a diverse country like India.

HYPOTHESIS

This paper hypothesizes that, despite their distinct historical and cultural backgrounds, the federal structures of the United States and India exhibit both unique and common features in their governance systems. It aims to demonstrate that while the U.S. federal system is anchored in a rigid constitution emphasizing state autonomy, the Indian federal system is more adaptable, blending unitary characteristics with federal principles and constitutional flexibility to accommodate diverse regional needs and historical contexts

INTRODUCTION

Worldwide, federal regimes are marked by their distinct inconsistencies. Each is uniquely tailored, yet they all navigate a world of shifting goals and common aspirations. This is particularly evident in the evolving federal structures of India and the USA, as both strive to address significant internal disparities and animate democratic principles. Despite the evident differences between these two systems, examining the elements and challenges within each can be enlightening for observers in both contexts. The architects of the Indian Constitution aimed to blend the best aspects of global constitutional designs while avoiding specific pitfalls, necessitating compromises across various theoretical and structural aspects. One such compromise is the fusion of federal and unitary features. The American federal system, in its genesis, structure, and constitutional basis, stands in stark contrast to India's federal framework as established by its Constitution. Consequently, a direct comparison of the American and Indian federal structures is not my objective. Instead, I will highlight key distinctions between them, acknowledging the coincidental similarities that do exist. My focus will be on elucidating both the American and Indian federal systems for the readers of this post.

RESEARCH QUESTION

What are the key similarities and differences between the federal structures of the United States and India, particularly in terms of constitutional rigidity versus flexibility, the division of powers between central and state governments, the roles of bicameral legislatures, and the mechanisms for balancing centralization and state autonomy, and how do these elements reflect their unique historical and cultural contexts while addressing diverse regional needs and national crises?

ORIGINS OF INDIA'S FEDERAL SYSTEM

Among academics, there is a lot of debate as to whether or not the political structure adopted by the Indian Constitution is 'federal'. The Drafting Committee described the Constitution as '**Federal**' in form but preferred to call it a '**Union**' to imply two important features of Indian federalism, namely.

- i. That the India's federation is not the product of arrangement between the states
- ii. That the states do not have the right to secede.

Granville Austin observed that the Indian Constitution might have been the first to adopt the principle of cooperative federalism right from its inception.

As A.H. Birch explains, "Cooperative Federalism is characterized by administrative cooperation between national and regional governments, the dependence of regional governments on financial transfers from the national government, and the use of conditional grants by the national government to promote advancements in areas that are legally under regional jurisdiction"

Furthermore, the Learned Judge elaborates on these points. "*The problem of every federation, as observed by Bryce is, to keep the centrifugal and centripetal forces into equilibrium, so that neither the planet States shall fly into space nor the Sun of Central Government shall draw them into consuming fires.*"¹

Some of the federal constitution's important features are as follows:²

- i. In the form of a written constitution, the state of the nation is carried on;
- ii. The national and many regional governments are the governments operating in the world.
These government's powers are synchronized with one another and are defined in the

¹ GRIFFITH, THE IMPASSE OF DEMOCRACY (1930)

² K.C. WHEARE, MODERN CONSTITUTIONS (1932).

Constitution. In the Constitution for the national legislature and some others for state legislatures, different topics of legislation are provided for. Some federal constitutions also have a simultaneous list of subjects;

- iii. In the event of a conflict between national and regional governments, there is an independent tribunal to interpret the Constitution and to adjudicate with powers to declare null any legislation that infringes on the area assigned to the other;
- iv. The separation of powers between national and regional governments is such that each government has control over some revenue sources, such that each government can be financially independent of the other, in theory, if not in practice.

However, the label used by the builders of the Constitution is not definitive on the issue of whether the political structure adopted by it can legally claim to be categorized as federal: we must review the specific provisions of the Constitution itself, with regard to the norms applied by political scientists to identify a political system as federal or unitary. The fact that a constitution is defined as federal does not actually demonstrate that it really is federal in nature. In dealing with the Constitution, which is federal in the letter of law, it is often important to discover how the Constitutional Act works in effect. As noted by the Federal Constitution, a unitary Constitution may be in effect, as is indeed the so-called Federal Constitution of Mexico, Venezuela, Brazil and Argentina.

CONSTITUTIONAL BASIS OF FEDERALISM

Federalism, the delicate dance between national and regional governance, finds its constitutional foundations in carefully penned clauses. Here, we'll explore how two key amendments - the Tenth in the US and the Seventh Schedule in India - establish distinct legislative territories for federal and state governments.

The US Tenth Amendment: A Bastion of State Sovereignty In a bold declaration, the Tenth Amendment states, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This serves as a powerful shield for state autonomy, reserving all undelegated powers for them. It's a constant reminder that the federal government's authority stems from, not over, the states.

The Indian Seventh Schedule: A Delicate Balancing Act The Indian Seventh Schedule takes a different approach, meticulously enumerating three lists: the Union List (exclusively federal

powers), the State List (exclusively state powers), and the Concurrent List (shared powers). This creates a clear demarcation of authority, fostering both national unity and regional diversity.

Similarities and Contrasts between USA and INDIA:

Both amendments achieve the core goal of federalism: preventing excessive centralization and protecting state-level autonomy. However, their methods differ:

- **Specificity:** The Indian Seventh Schedule explicitly lists powers, while the US Tenth Amendment takes a more broad, residual approach.
- **Flexibility:** The US Tenth Amendment allows for adaptation through judicial interpretation, while the Indian Seventh Schedule requires constitutional amendments for significant changes.

Despite their respective frameworks, both federal systems face constant challenges regarding the scope of federal versus state powers. Issues like environmental regulation, healthcare, and criminal justice spark ongoing debates about the appropriate balance. Whether through the affirmative listing of the Indian Seventh Schedule or the negative reservation of the US Tenth Amendment, the constitutional pillars of federalism ensure a dynamic interplay between national and regional governance. It's a delicate balance, constantly evolving to meet the needs of a diverse and changing nation.³

THE DIVISION OF POWERS

Reserved Powers in the US and India's Three Lists

Federalism, the balancing act between a central government and regional authorities, rests on the delicate distribution of power. In the United States and India, two of the world's largest democracies, this equilibrium hinges on distinct approaches to defining and allocating legislative authority. While the US leans on the concept of "reserved powers," India relies on a meticulously crafted system of three lists: Union, State, and Concurrent.

The Tenth Amendment, America's Unspoken Guardian: In the US, the Tenth Amendment serves as the silent guardian of state autonomy. It declares, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." This essentially means that any power not explicitly granted to the federal

³ www.maine.gov/dep/schools/lessons/documents/Environmental-Regulations-PP.pptx

government by the Constitution remains with the states or the people. This "negative list" approach has several implications. First, it empowers states to experiment and innovate in various policy areas, fostering diversity and adaptation to local needs. Second, it acts as a check on federal overreach, ensuring that the central government stays within its designated boundaries.

India's Three Lists: A Choreographed Division of Power: India's Constitution takes a different route, outlining the division of powers through three meticulously defined lists. The Union List, containing 97 entries, encompasses national concerns like defense, foreign policy, and interstate trade. The State List, with 66 entries, covers matters of local interest like education, public health, and agriculture. Finally, the Concurrent List, featuring 47 entries, allows both the central and state governments to legislate on shared issues like labor, education, and forests.

This system offers multiple advantages. First, it provides clarity and avoids ambiguity, minimizing disputes over jurisdictional boundaries. Second, it allows for flexibility, enabling both the central and state governments to respond to emerging challenges by adding or removing items from the Concurrent List.

Similarities and Differences while sharing the Federal Stage: Despite their contrasting approaches, both the US and India share certain key principles. Both aim to maintain a balance between national unity and regional diversity, acknowledging the need for both centralized authority and localized solutions. Additionally, both systems allow for evolution through interpretation and amendments, responding to changing societal needs and challenges.

However, significant differences remain. The US system grants states greater inherent autonomy, relying on judicial interpretation to define the limits of federal power. Conversely, India's enumerated lists offer more clarity and predictability, albeit with slightly less state flexibility.

The US and India, through their unique approaches to dividing power, strive for the same objective i.e. a vibrant and responsive federal democracy. The Tenth Amendment's unspoken reservation of powers and the meticulously crafted Three Lists represent two sides of the same coin, ensuring that both national interests and regional aspirations are addressed. Analyzing these contrasting systems offers valuable insights into the complexities of federalism and its crucial role in balancing diversity and unity within a nation.

THE VERY BASIS OF DISTINCTION

Comparison in USA and India on these basis Constitutional Foundations, Division of Powers, Unitary Features, Rigidity of the Constitution, Autonomy of states, Bicameralism, and the Roles of Governors and Presidents

- i.) **Constitutional Foundations:** US Constitution is founded on the principle of limited government, the US Constitution sets out the framework for federalism, dividing power between the federal government and the states through a system of enumerated powers. Whereas India Rooted in a blend of federal and unitary features, the Indian Constitution establishes a strong central government but also grants significant autonomy to states through three lists of legislative subjects: Union, State, and Concurrent.
- ii.) **Division of Powers:** In US the powers are explicitly divided between the federal government (enumerated powers) and the states (reserved powers) through the Tenth Amendment and Supreme Court interpretations. Whereas in India the powers are categorized into three lists: Union List for exclusive central powers, State List for exclusive state powers, and Concurrent List for shared powers. This system provides greater clarity but less flexibility than the US.
- iii.) **Unitary Features:** Both systems exhibit unitary features during crises, such as war or national emergencies. In the US, the federal government can assume greater control over states. In India, emergency powers grant the central government extra authority.
- iv.) **Rigidity of the Constitution:** The US Constitution is relatively rigid, requiring a complex amendment process. This ensures stability but can make it challenging to adapt to changing needs. Whereas the Indian Constitution is relatively flexible, allowing for easier amendments. This facilitates adaptation but raises concerns about stability and unintended consequences.
- v.) **Autonomy of States:** The US States enjoy significant autonomy in various policy areas, with limited federal oversight. However, the federal government can influence states through funding and regulations. In India while states have autonomy in specific areas, the central government can exert greater control through various mechanisms, including finance commissions and governors' powers.

- vi.) **Bicameralism:** Both countries have bicameral legislatures: Congress in the US and Parliament in India. This adds complexity but provides broader representation and checks and balances.
- vii.) **Roles of Governors and Presidents:** In U.S Governors are elected heads of states with limited executive power. They mainly deal with state politics and implement federal laws. In India the President, appointed by the central government, serves as the head of state and acts as a constitutional check on the executive power of the Prime Minister. Governors are appointed by the President and act as representatives of the central government in the states.

Key Similarities between USA and India

- Both are federal democracies with bicameral legislatures.
- Both exhibit unitary features during crises.
- Both seek to balance central authority with regional autonomy.

Key Differences between USA and India

- US Constitution is based on enumerated powers, while India has three lists.
- US amendment process is more complex than India's.
- US states have more autonomy than Indian states.
- US Governors have less power than Indian President and Governors.

Comparing America and India on these features reveals intriguing similarities and differences. Both nations strive for a balance between centralization and regional autonomy, but achieve it through distinct constitutional frameworks and practices. Understanding these variations offers valuable insights into the functioning of federal democracies and the challenges they face in accommodating diverse needs and aspirations.

GOVERNORS AND PRESIDENTS IN THE FEDERAL SPOTLIGHT IN USA AND INDIA

- **A Decentralized Dance of Governors in USA:** In the US, the executive power is dispersed among 50 independent actors - the governors. Each governor, elected by the people of their respective state, stands as the chief executive of their domain, wielding significant authority

over state affairs. They appoint officials, veto legislation, and manage budgets, wielding a conductor's baton over state policy and administration. This decentralized approach offers several advantages. Governors are deeply connected to their local constituencies, allowing them to tailor policies to specific needs and challenges. Their autonomy fosters experimentation and innovation, leading to a diverse array of solutions across the country. However, this decentralization can also lead to fragmentation and inequality, as states with different priorities and resources may diverge in their approaches.

- **The President Bound by Constitutional Chords in INDIA:** Across the globe, India presents a contrasting picture. The President, elected indirectly by the national Parliament and state legislatures, serves as the head of state and the supreme commander of the armed forces. However, the President's executive power is circumscribed by the Constitution, acting more like a constitutional monarch than a leader with direct control over the government. This limited authority has its own advantages. It prevents the concentration of power in a single individual, upholding the principles of checks and balances within the federal system. It also ensures stability and continuity, particularly during periods of political upheaval. However, the President's limited role can sometimes lead to bureaucratic inertia and a lack of decisive action, hindering the government's ability to respond swiftly to challenges.
- **Comparing between USA and India:** While the US and India employ contrasting approaches to executive power within their federal frameworks, both systems aim to achieve similar goals. Both seek to ensure effective governance at both the national and regional levels, balancing national unity with regional needs and aspirations. Additionally, both systems incorporate mechanisms for checks and balances, preventing the concentration of power and ensuring accountability.

However, the differences in the roles of governors and presidents remain significant. The decentralized US system empowers states to experiment and innovate, while India's centralized approach emphasizes stability and continuity.

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THE NATURE OF CONSTITUTION OF INDIA

“A federal structure with unitary features”

Essential characteristics in federal politics.

- **Supremacy of the Constitution:** As a corporation derives its existence from the grant from which it is founded, a federal state derives its existence from the Constitution. Whether it belongs to the federation, or to be component states, any power-executive, legislative, or judicial-is subject to and governed by the Constitution.
- **Dual Government:** Although there is only one government in a unitary state, namely the national government, there are two governments in a federal state, the national or federal government and the government of each component state. While a unitary State can create local sub-divisions, such local authorities do not enjoy their own autonomy, but only exercise the powers delegated to them by the national Government from time to time, and it is competent for the national Government to remove the delegated powers or any of them at will.

In the other hand, the unification of multiple States into a single State is a federal State with regard to matters concerning shared interests, while each component State retains autonomy with respect to other matters.⁴ The component states are not merely federal government representatives or agents, but both the federal and state governments derive their authority from the same source,

⁴ LIVINGSTONE, FEDERATION AND CONSTITUTIONAL CHANGE (1956), PP. 6-7.

namely the land constitution. A component state, on the other hand, has no right to secede at will from the federation.

- **Distribution of Powers:** It follows that a separation of authority between the federal government and the states is the very purpose for which a federal state is created. "This is what **Professor Wheare** describes as the "federal principle," i.e. "the method of dividing powers so that each of the general and regional governments is coordinated and independent within a sphere." While the demarcation of powers between the central and local governments is made by the central government in a unitary state and can be altered by itself in a federal state, this demarcation is new.

In a federal state, the moral supremacy of the Constitution is central to the life of the State.

- **Authority of Courts:** The separation of powers between not only the coordinated branches of government, but also between the federal government and the states themselves, must be upheld. This is assured by providing a final power in the Courts⁴ to interpret the Constitution and to annul any action by the Federal and State Governments or their various bodies that breaches the provisions of the Constitution

PECULIAR CHARACTERISTICS OF FEDERALISM IN INDIA

It is therefore important to analyse its peculiar characteristics with regard to other federal systems, especially the American, which is still regarded as the mother of federal constitutions, in order to make a proper estimation of the existence of the Indian federation.

A. MODE OF FORMATION

A federal union, taking into account the pre-existing state of the component units, may be established in one of two key ways:

- i. A voluntary arrangement may be reached between a number of sovereign and independent States to handle such matters of general concern, such as those of the United States of America or Australia⁵
- ii. As in the case of Canada, the provinces of a unitary state may be turned into a federal union. Apart from the colonial government of Canada, the provinces of Canada had no separate or independent life, and the Union was not established by any agreement between

⁵ *Atiabari Tea Co. v. State of Assam*, (1961) 1 SCR 809.

them, but enforced by a British statute which withdrew all their former rights from the Provinces and then re-divided them between the Dominion and the Provinces.

In A.G. Commonwealth v. Colonial Sugar Refining Co. ⁶

According to Lord Haldane: *"In a loose sense, the word 'federal' may be used, as it is there (in Canada) used, to describe any arrangement under which self-contained States agree to delegate their powers to a common Government with a view to frame entirely new Constitutions even of the States themselves. But the natural and literal interpretation of the word confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original Constitutions."*

Thus, the Australian federation reflected the true form,

"Their Lordships are called upon to interpret the constitutional arrangement made between the Commonwealth and the States, and they must settle on the language of the Legislation (the Commonwealth of Australia Constitution Act), which law rights the federal colonies have proclaimed to be reserved for themselves. It is clear that any alteration in the existing distribution of powers has been safeguarded." ⁷

His Lordship, on the other hand, followed the Canadian Constitution,

*"While it was founded on the Quebec Resolutions and must therefore be accepted among the then provinces as a Union Treaty, it constituted a new departure once enacted by the Imperial Parliament and established a new Dominion and Provincial Government with defined powers and duties, both derived from an Act of Parliament that was their legal source."*⁸

This particularity of the roots of the federal system in India is well worth recalling. The provinces were in no way 'sovereign' states like the States of the American Union either before or under the Act of 1935. The Constitution, too, was framed by the 'People of India' assembled in the Constituent Assembly, and no compact or agreement between autonomous states can be said to derive from the Union of India.

The progress has been from a unitary to a federal entity as far as the Provinces are concerned, but

⁶ A.G. for Commonwealth v. Colonial Sugar Refining Co., (1914) AC 237.

⁷ GRIFFITH, THE IMPASSE OF DEMOCRACY (1930).

⁸ A.G. for Ontario v. A.G. for Canada, (1896) AC 332.

even then, this has not arisen since, as in Canada, the Provinces wanted to become independent entities under a federal union. As has just been shown, the provinces were arbitrarily made autonomous by the Government of India Act, 1935, within a given domain. What the builders of the Constitution did was to associate these autonomous provinces with the Indian States into a federal union, to which the Indian States had declined to accede in 1935. A prerequisite for their willingness to create a federal union is some amount of homogeneity of the federating units.

Although, in India, the stance was different. The Indian States had a distinct political body from the earliest times, and there was nothing that was popular between them and the provinces that comprised the rest of India. The Provinces and the Indian States were handled differently even under the federal system of 1935; the accession of the Indian States to the system was optional while it was mandatory for the Provinces, and the powers exercisable by the Federation over the Indian States were also to be specified by the Instruments of Accession. It is because it was optional that they declined to join the 1935 federal system with the rulers of the Indian States. They missed the 'federal sentiment' (Dicey), that is, the urge for the rest of India to create a federal union. But, as already pointed out, with the lapse of paramountness of the British Crown, the political situation changed as a result of which most Indian States acceded to the Dominion of India on the eve of India's independence and were brought within the Union by a process of 'merger' and 'integration' envisaged by the Constitution (which is fully dealt with in Part VII, post).⁹

Therefore, the credit of the builders of the Constitution lies not so much in getting the Indian States under the federal system, but in putting them under the same Constitution, as much as possible, on the same footing as the other units of the federation. In short, the survivors of the old Indian States were, with small exceptions, put under the same political structure as the old Provinces (States in Part B of the First Schedule) (States in Part A). By removing the separate bodies of the States in Part A and States in Parts B and replacing them with one category of 'States' by the Constitution (Seventh Amendment) Act, 1956, the unification of the units of the two categories has finally been completed. The Constitution's federal scheme is now uniform and not heterogeneous, as it was under the 1935 Act.

B. POSITION OF THE STATES IN THE FEDERATION

It has also become clear from the historical perspective that the role of the States in our federal

⁹ Automobile Transport v. State of Rajasthan, AIR 1962 SC 1406.

scheme must inevitably be somewhat subordinate to that of the Union. Since the union was not the product of any compact between independent states, there was no issue with how to preserve 'state rights' before the Constitution's authors. A divergence from the strict federal principle on some points has resulted from this. The American Federation has been described as "an indestructible Union composed of indestructible States." Without the agreement of the Legislatures of the States concerned, it is not possible for the national government to redraw the map of the United States by creating new states or by altering the borders of the States as they existed at the time of the compact. The same concept is introduced in the Australian Constitution, with the additional safeguard superimposed that a common referendum involves a change of boundaries in the affected State.

FEDERALISM IN USA

On July 4, 1776, when the 13 North American colonies proclaimed their independence from Great Britain, they acknowledged the need to coordinate their war efforts and to collaborate generally with each other. For these purposes, the Articles of the Confederation were adopted, a constitution establishing a League of Sovereign States which committed States to cooperate with each other in the fields of military relations, foreign policy and other important fields. Over the war against England, the articles were barely adequate to keep the states together and, at the triumphant end of that war, fell completely apart as the states followed their own interests rather than the new United States' national interest.¹⁰

ORIGIN AND DEVELOPMENT OF AMERICAN FEDERALISM

"George Washington, Alexander Hamilton, James Madison, and other nationalist leaders called on the states to send delegates to a constitutional convention to meet in the city of Philadelphia in May 1787 to remedy the defects of the Articles (or, in the words of the Constitution of 1787, "to create a more perfect union. Of course, it was the convention that created the United States Constitution. Both confederal and unitary forms of government were opposed by the framers of the Constitution. Instead, they focused on an entirely new ideology for the new American government: federalism. The member states make up the union within a confederation.

¹⁰ M.P. JAIN, INDIAN CONSTITUTIONAL LAW (2010).

Sovereignty resides with the states and the citizens of their respective states are citizens, not of the national government.¹¹

On the other hand, in a unitary structure, the national government is sovereign and the states are mere administrative arms of the central government, if they exist at all. The citizens maintain their basic autonomy in the American federal system and they delegate certain powers to the national government and reserve other powers for the states. The people of both the general government and their respective states are individuals. For two reasons, this brief history is important.

- First, it is not actually a decentralized hierarchy that the American federal system is. States are not administrative bodies that function exclusively for the execution of such central government policies. In their own right, states are completely functioning constitutional policies, empowered by the American people to establish a broad range of policies for their own citizens.
- Second, the framers expected that the principal policymakers in the federal system will be the states. There are relatively few powers given to the federal government and they deal mostly with international and military relations and national economic problems, such as the free flow of trade across state lines. In keeping with their own backgrounds, needs and traditions, most domestic policy problems have been left to the states to address. Constitutional and political controversies over the essence of American federalism marked the first 75 years of American development (1790–1865).

George Washington, Alexander Hamilton, John Marshall and their Federalist colleagues almost immediately supported a systematic conception of federal authority, while Thomas Jefferson, James Madison, Spencer Roane and their partisan allies insisted that the American union was nothing more than a confederation in which the states remained in power and supremacy. The controversy concentrated in the 1850s about whether slavery was a matter of national or state policy. The American Civil War (1860-1865) did a lot to answer these concerns regarding federalism. The northern victory and the subsequent ratification of the Constitution's 13th, 14th and 15th amendments abolished slavery, established national citizenship, restricted the control of states in the areas of civil rights and freedoms, and established the dominance of the national Constitution and laws over the states in general.¹² Of course, federal problems persisted, and during

¹¹ K.C. WHEARE, FEDERAL GOVERNMENT (1951).

¹² Dr. Ambedkar, Constituent Assembly Debates, Vol. VII, pp. 34-35.

the first third of this century, the U.S. In order to limit federal authority over the economy, the Supreme Court frequently cited federal considerations.

However, two developments led to the expansion of federal authority, and brought about an imbalance in American federalism, according to some critics. First, the functions of the federal government widened enormously under President Franklin D. Roosevelt's New Deal programmes.¹³ It was the New Deal that gave rise to social security, unemployment compensation, federal welfare programmes, industry and agriculture price stabilization programmes, and labour union collective bargaining. While funded by the federal government, many of these programmes were administered by the states, creating the federal grant-in-aid scheme. This expanded federal role was legitimized by the U.S. Supreme Court and has allowed the national government to define the scope of its authority for itself since 1937. Second, the national government came to be regarded as the principal advocate and protector of civil rights and freedoms during the 1950s and 1960s.

In a sequence of very significant choices, the U.S. The Supreme Court struck down state-supported racial discrimination, state legislation discriminating against women, and state criminal prosecutions in violation of the 14th Amendment's due process of law clause. Thus, to defend them against their own state governments, people looked to the institutions of the national government (especially to the U.S. Supreme Court). A reconceptualization of federalism was required by these two developments. Until the New Deal, "dual federalism," a system in which the national government and the states have completely separate sets of responsibilities, was the prevailing concept of federalism. Thus, foreign affairs and national defence were the federal government's business alone, while education and family law were exclusively matters for the states.¹⁴

This arbitrary distinction was broken by the New Deal and gave rise to the idea of cooperative federalism, a framework in which national and state governments would work with each other to deal with a wide variety of social and economic problems. Through the 1950s and into the 1960s, cooperative federalism characterized American intergovernmental relations. Grant-in-aid, a mechanism through which the federal government uses its greater financial power to give the states money to achieve mutually negotiated objectives, was the key instrument of cooperative federalism. As an example of cooperative federalism working at its best, the creation of the

¹³ D.D. BASU, COMPARATIVE FEDERALISM (2008).

¹⁴ GRANVILE AUSTIN, THE INDIAN CONSTITUTION (1966).

interstate highway system in the United States during the 1950s and 1960s is generally cited. The federal government paid up to 90 percent of the cost of highway construction, provided the states with technical assistance in the construction of highways, and set requirements for new roads in general. Currently, the highways were constructed and maintained by the states. It is important to make clear three points about this sort of cooperative federalism.

- First, the priorities were negotiated between the federal government and the states; each wanted the roads constructed.
- Second, in the projects, only the federal government and the states were involved. In the cooperative federalism of the 1950s and early 1960s, cities and other units of local government were not full partners.
- Third, only a limited number of policy areas were impacted by grant-in-aid programmes; much of the money went to roads, airport construction, and housing and economic development. The cumulative budget for all federal grants-in-aid was just around \$9 thousand million as late as 1963.

Reagan effectively advocated for increased military spending, tax cuts and increased (or at least maintained) levels of social security contributions, seeking a smaller position for the government, especially for the federal government. The consequence was that federal domestic grant-in-aid projects had fewer and less funds available. Although during the Bush administration, federal grant-in-aid spending crept upwards and stayed reasonably steady during the Clinton administration (over \$225,000,000,000,000 in 1996),¹⁵ Reagan's policy has succeeded, but it has generated a new set of problems for state and local government.

American Federalism Today and Tomorrow

American federalism, frozen in time by the U.S., was never just a series of static institutional structures. Uh. Constitution. Instead, American federalism is a complex, multi-dimensional structure that has both economic, administrative, political and constitutional dimensions. Today, this is even truer than ever before. Let me propose three key issues facing Americans today.

A. Unfunded Mandates

With the lack of federal funds to fund federal objectives, Congress placed direct regulations on the

¹⁵ M.P. JAIN, INDIAN CONSTITUTIONAL LAW (2014).

states, using its constitutional power to "regulate trade between the states." Since these regulations compel states to act, but do not have sufficient funds to support these actions, they are considered "unfunded mandates." Many of these regulations deal with the protection of the environment, historical preservation and protection of individual rights, but they all bring considerable costs to the states with them. The states revolted against these federal requirements and, in reaction, Congress passed the 1995 Unfunded Mandates Act, which forbids the federal government from imposing new requirements on state and local government without providing the required funds (with some threshold requirements).¹⁶ It remains to be seen if this legislation would effectively restrict the range of federal operations, especially given how narrowly the U.S. Congress' authority was perceived by the Supreme Court.

B. Problems of the Constitution

The U.S. after 1937 The Supreme Court has interpreted the power of Congress to spend money on general welfare and its power to control trade between states so narrowly that almost any economic, social or even cultural activity it wants can be done by the national government. National laws therefore resolve problems such as crime, fire safety, land use, education, and even marriage and divorce, which are usually local. However, in its 1995 decision in *United States v. Lopez*, the Court suddenly ruled that by enacting a law banning the carrying of hand weapons near public school buildings, the national government had surpassed its constitutional authority. The Court held that no link between the presence of weapons near school buildings and the power of Congress to control interstate trade had been shown by the federal government. It was the first time in 60 years that the Court had seriously challenged the exercise of its trade power by Congress. At this point in time, we do not know whether the *Lopez* decision of the Court will simply be an exception to the otherwise unrestrained expansion of the federal government's constitutional authority or the beginning of a new jurisprudence seeking to restore federal authority limits.

¹⁶ D.D. BASU, *COMPARATIVE FEDERALISM* (2008).

CONCLUSION

Both India and the United States have moved beyond the original cast of actors, broadened some of the decision-making venues, created more networks and capacity for cooperation, increased political and practical policy dispute opportunities, and also increased performance concern with participation of third parties. Although there are clear differences between the two systems, studying all sets of players and stresses will prove to be useful in both settings for students.

Both nations are constantly changing and provide a hospitable environment for a variety of researchable issues. To examine the differences between the two countries, comparative analysis approaches can be used. But it is also possible to use comparative methods to formulate studies that concentrate on variations between the techniques used by states within a single country. For instance, in an examination of collaborative versus conflictual strategies used in various states in India, the author thinks there is potential. The author hopes that these comments will inspire people to look for these and other researchable questions in this audience.



WHITE BLACK
LEGAL.