

---

## EVOLUTION AND DYNAMICS OF FEDERALISM: A COMPARATIVE STUDY OF LEGISLATIVE POWER ALLOCATION IN INDIA AND THE USA

---

Swetha Mariam Saji<sup>1</sup>

### **Abstract**

Federalism involves the division of powers between a central authority and regional or state governments, ensuring cooperation and interdependence in governance. In a federal system, multiple layers of government share decision-making authority, in contrast to a unitary system where a sole central authority holds supreme power. The United States federalism evolved from a confederation of states, emphasizing local autonomy, reflecting its historical struggle for independence and the desire to limit central authority. In contrast, India's federalism was shaped by the need for a strong central government to maintain national unity amidst its vast cultural, linguistic, and regional diversity. This paper explores the historical and political circumstances that shaped federalism in the U.S. and India, providing a comparative analysis of the distribution of legislative powers. This comparative study focuses on the evolution and dynamics of federalism in India and the United States, particularly examining how legislative powers are allocated in both countries. In the U.S., the Constitution specifically enumerates the powers of the federal government, with residuary powers reserved for the states. India's federal structure divides powers among the Union, State, and Concurrent lists, ensuring both central and state authority in specific areas. By comparing these two models, this research aims to highlight the differences in how each country has structured its federal system to address its unique political challenges and governance needs. This paper also focuses on how the contours of federalism in both countries have changed over time.

---

<sup>1</sup> Student, Faculty of Law, University of Delhi

**Keywords:** Federalism, Constitution, Evolution, Government, Cooperation etc

## **Introduction**

Federalism refers to the distribution of powers between the Central Government and various subnational or regional governments. The concept entitles the cooperation and interdependence between central, state and regional units within a nation with regards to decision making authority and allocation of powers. A federal polity involves a two-fold system of government in comparison to a unitary system where a sole central government is supreme. In a federation each unit are sovereign in its own sphere. The federal design divides power between multiple levels of Government-often state and national.

According to Prof. Wheare “the systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Government federal”. The federal principle can be defined as "the approach of allocating powers in a manner that establishes both the general and regional governments are coordinate and independent in their spheres." Five conditions such as supremacy of the constitution, rigidity of the constitution, constitutional division of powers, bicameral legislature, and independence of judiciary are to be satisfied for a nation to be considered federal.

Both United States of America and India adopted federalism in their political structure. In the year 1789, USA became a Federal Republic by promulgating its constitution. The Indian Polity was described to be a federal despite of its Unitary features. 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 (a) that the Indian federation is not the product of an arrangement between the units and (b) that it is free to secede from the component units.

This comparative study examines the evolution and dynamics of federalism in India and the United States, with a particular focus on the allocation of legislative powers in each country. In the U.S., the Constitution explicitly outlines the powers of the federal government, while reserving residual powers for the states. In contrast, India's federal system divides authority across three legislative lists—Union, State, and Concurrent—allowing both the central and state governments to exercise control in specific areas. By analysing these two models, this research aims to highlight the differences in how each nation has designed its federal system to address its distinct political challenges and governance needs. Additionally, the paper explores how the nature of federalism in both countries has evolved over time. The methodology for this research relies on a doctrinal approach, utilizing a range of sources including legal enactments, case laws, books, articles, and journals.

### **Origin of Federalism in the USA and India**

The origin of federalism in the USA and India has distinct historical paths but shares some common foundations in balancing power between central and state governments.

Federalism in the USA emerged from the necessity to unite the American colonies after declaring independence from Britain in 1776. In 1774, colonies like Virginia and Massachusetts proposed meetings to ensure cooperation and unity among themselves. The first Continental Congress convened in September 1774, consisting of delegates from 12 colonies. This Congress adopted “The Declaration and Resolves of the First Continental Congress,” which later influenced the American Declaration of Independence and the Federal Constitution. After the colonies declared independence on July 4, 1776, they initially adopted a loose form of government under the Articles

of Confederation. This confederation allowed decentralized power at the state level, with a weak central government. However, the limitations of this system led to calls for a stronger union. A constitutional convention was held to revise the Articles of Confederation, leading to the drafting of a new Constitution. The new Constitution was submitted to the states for ratification, and by December 7, 1787, Delaware became the first state to ratify it. Once eleven states ratified the Constitution, it was officially adopted, marking the formation of the federal government in the USA. This structure allowed citizens to have dual political identities—state and federal—protected from interference by either authority.

Federalism in India has its roots in British colonial rule, especially during the early 20th century. The Simon Commission report of 1930 promoted the idea of federal governance in India, which was discussed further at the First Round Table Conference in 1930. The British government, in response to various demands for Indian political autonomy, issued the White Paper in 1933 proposing a new Indian Constitution. Based on the White Paper, a Joint Select Committee put forward recommendations, which led to the Government of India Act of 1935. This Act established a federal structure by dividing legislative powers between the federal, provincial, and concurrent lists. It also set up a Federal Court to handle disputes between federal and provincial authorities.

By the time of independence, the Indian National Congress was committed to federalism but emphasized a strong centre. Leaders like Jawaharlal Nehru and B.R. Ambedkar argued that India's vast diversity and post-partition challenges necessitated a centralized authority. This perspective influenced the design of India's federal system during the drafting of the Constitution. Dr. Ambedkar, who played a key role in drafting the Constitution, declared that India would have a federal system,

though the word "federal" was not explicitly used in the Preamble or provisions of the Constitution.

The Constitution of India adopted a federal system with a strong central authority. Powers were divided between the Union and state governments across three legislative lists—Union, State, and Concurrent. This structure has allowed India to manage its vast diversity while ensuring national unity. The constitutions of both countries allow for the allocation of legislative powers between the states.

### **Allocation of Legislative Powers between States and Centre**

The Constitution of the United States of America does not contain the term Federal or Federalism. The provisions of the Constitution clearly demarcated the powers of the Federal Government and the State Government. Article 1 Section 8 enumerates the subject matters on which the Congress, the national legislature of the United States of America has the power to legislate. These powers clearly express the limitations within which the Federal Government has to function. By virtue of the said article, the Congress is given the authority to levy tax, regulate commerce, control foreign affairs, promote the progress of science, create common defence etc to ensure the general welfare of the masses of the nation. The said section also provides the establishment of a uniform Rule of Naturalization, and uniform Laws on the subject of bankruptcy along with the duty to coin money, punishing for counterfeiting the Securities and current Coin of the United States. To provide for the common defence, the federal government is given the power to develop militia with a strong army and naval power and declare war.

In 1824, *Gibbons v. Ogden* presented a significant case on congressional powers. This case involved competing steamboat ferry owners operating between New York and New Jersey. The Supreme Court reversed the decision favouring Ogden, emphasizing Congress's power to regulate commerce among the states. *Gibbons* expanded the

federal government's authority by recognizing Congress's broad power to regulate commercial activity.

The necessary and proper clause comprised in the last clause of Article I, Section 8, enables Congress “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers” and also the constitutional responsibilities. While the enumerated powers define the policy areas in which the national government has authority, the elastic clause allows it to create the legal means to fulfil those responsibilities. The deep and open-ended interpretation of this clause enabled the federal government to expand its boundaries and create an expansive construction.

Congress chartered the Second Bank of the United States, a private corporation handling federal fiscal transactions. Maryland subsequently passed legislation to tax the Bank, leading to the landmark case *M’Culloch v. Maryland*. The Supreme Court made two crucial rulings in this case. First, it held that the Necessary and Proper Clause granted Congress discretion in choosing means to execute its enumerated powers, affirming the constitutionality of creating the Bank. Second, the Court asserted that, under the Supremacy Clause, Maryland lacked the power to tax the Bank, emphasizing the supremacy of federal laws.

The powers of the State Governments were not provided in the original constitution. There was a consensus among the framers of the Constitution to give the power to the State Governments to legislate on all other matters which was not specially reserved for the Federal Government. The Tenth Amendment made to the Constitution confirms the reserved powers of the 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.”

Sections 9 and 10 of Article 1 and several amendments made to the constitution provide for the restrictions on the Federal and State Governments. The Federal Government is not empowered to adopt measures which will result in the denial of personal liberty of people, and the government cannot suspend the writ of habeas corpus by virtue of section 9. Moreover, the government can neither pass a bill of attainder nor enact an ex post facto law.

The states are also put under constraints by the Constitution. The states are prohibited from entering into treaties or contracts with foreign nations, coining money, or levying taxes on exports and imports by virtue of Article 1 Section 10 of the US Constitution. As per Section 9, States also cannot violate personal freedoms. The Fourteenth Amendment made to the constitution of the USA, forbids the states from depriving the citizens, of constitutional rights to which they are allowed, the due process of law, or the equal protection of the laws. The Fifteenth, Nineteenth, and Twenty-Sixth Amendments prevent both the Federal and State Governments from taking away the right to cast vote on the basis of race, sex and age. However the states in this context failed to ensure equal protection.

Article 6 declares that the Constitution, the Laws and all Treaties made under the power of the United States shall be supreme. Thereby it provides that the states or the courts of states shall not encroach or clash with the federal law. If such a situation occurs, as per the Constitution by virtue of the Supremacy Clause, Federal law shall prevail. The intent of the supremacy clause is not to subordinate the states to the federal government; rather, it affirms that one body of laws binds the country.

In 1810, the Supreme Court, solidifying its authority, rendered a pivotal decision in *Fletcher v. Peck*. This ruling asserted that Georgia's legislature lacked the authority to invalidate the contract, emphasizing that the federal Constitution prohibited bills of attainder or ex post facto laws. Chief Justice John Marshall took care to express that



the Court did not intend any disrespect toward the legislature of Georgia. Despite this respectful tone, *Fletcher v. Peck* established the precedent that the Supreme Court possesses the power to strike down unconstitutional state laws. In 1816, the Court affirmed its authority to override state courts in *Martin v. Hunter's Lessee*. This followed the Supreme Court's earlier ruling in *Fairfax's Devisee v. Hunter's Lessee*, where it declared that the Jay Treaty between the United States and Britain prevented Virginia from appropriating loyalist property. The Virginia Supreme Court contested the Supreme Court's jurisdiction, asserting that it was not bound by its ruling. In *Martin*, the Supreme Court reiterated its cautious approach when reviewing state court judgments, acknowledging the difficulty of the task while underscoring the Constitution's establishment by "the people of the United States." By 1816, the Court declared its ability to overrule state courts and invalidate unconstitutional state laws.

To govern and regulate the relations between the states within the Federation several provisions are included in the Constitution itself. Article 4, Section 1, referred to as the full faith and credit clause or the comity clause, requires the states to accept court decisions, public acts, and contracts of other states. In the case *Baehr v. Lewin*, the Hawaii Supreme Court ruled that banning same-sex marriage by Governments is unconstitutional and against the privacy of a person. This case put a test on the full faith and credit clause. Congress to rectify this problem and the then President signed the Defence of Marriage Act (DOMA). The law stated that "No state (or other political subdivision within the United States) need recognize a marriage between persons of the same sex, even if the marriage was concluded or recognized in another state." The law also took away the federal benefits that shall be provided for same-sex partners. DOMA made this a subject of state and states were given the authority to decide the issue of marriage equality. The U.S. Supreme Court in *United States v. Windsor* nullified a part of the DOMA act that took away federal benefits. In 2015, in the case



of *Obergefell v. Hodges* the Supreme Court recognised the constitutional right to marriage.

The states are banned from discriminating against persons who are not from the state by denying them rights such as access to legal protection, property rights, and travel rights by virtue of the privileges and immunities clause incorporated in Article 4 of the Constitution. There is also a constitutional provision that prohibits states from creating trade restrictions on goods that are produced outside their own state. However, a state is permitted to tax such goods if it is sold within the borders of the state.

In India, Part XI, Articles 245 to 255 of the Constitution of India provides for the distribution of powers between the central and state governments. According to Article 245, the Parliament is empowered to make laws for the whole or any part of the territory of India and the legislature of a state is authorized to make laws for the whole or any part of the state. Article 246 confers exclusive jurisdiction on parliament and the state legislatures to make laws with respect to any of the matters enumerated in List-I, II, III i.e., union, state and concurrent list of the seventh schedule. The union list includes 97 subjects and the parliament of India is permitted to make laws on the subjects included in the list. The Union is also given the residuary powers by which it has the exclusive authority to legislate on any matter that has not been included in the state list or concurrent list. Subjects of national importance including the maintenance of defence, development of the army, navy and air forces, foreign affairs, Coinage, Banking Railways etc are included in the list. 66 subjects are included in the state lists state legislature has the power to legislate. The concurrent list, which comprises 47 subjects, accords power to both the union and state to legislate according to the needs of the time, but the states are not permitted to encroach upon the law made by the union.

As per Article 249 of the Constitution of India, in the view of national interest, the union can legislate on matters included in the state list, if the Rajya Sabha, that is the Council of States passes a resolution that such legislation is expedient in the national interest. By virtue of Article 250, upon the proclamation of an emergency, the parliament can legislate on any matter in the state list. Article 252 permits the parliament to legislate for two or more states by consent and adoption of such legislation by any other state. In the case of repugnancy between a Central law and a state law, the former prevails over the latter. The parliament has the power to legislate for implementing an international treaty, agreement or convention as per Article 253. When a proclamation is made by the President under Article 356, the President may declare that the powers of the state legislatures shall be exercisable by or under the authority of parliament.

In the West Bengal case of 1963, the Supreme Court engaged in a thorough discussion on the exercise of sovereign powers by Indian states. The court rejected the notion of absolute federalism in the Indian Constitution. While acknowledging the decentralized nature of authority, it attributed this decentralization more to the challenges of governing a vast territory than to a principle of absolute federalism. The court highlighted key characteristics distinguishing the Indian Constitution from a traditional federal constitution. Firstly, there is no separate constitution for each state; instead, the Constitution governs all states. Secondly, the Constitution can be altered solely by the Union Parliament, with no power granted to the states for alteration. Thirdly, the distribution of powers aims to facilitate local governance by states while leaving national policies to be decided by the Centre. Lastly, unlike federal constitutions with internal checks and balances, the Indian Constitution grants supreme power to the courts to invalidate any action violating constitutional principles. While some judges, including Justice Subba Rao, championed state rights, the majority held that the structure of the Indian Union is centralized, with states in a

secondary position to the Centre. The majority opinion asserted that the Union possesses the necessary powers to acquire properties belonging to states due to the principle of paramountcy or the superiority of the Union. The majority opinion, however, has been criticized for its confusion and inconsistencies. In summary, the West Bengal case of 1963 shaped the understanding of federal principles in India, highlighting the centralized nature of the Indian Union and the overriding powers of the Union over the states.

In the Rajasthan case of 1977, the court acknowledged the existence of a federal structure in the separation of executive, legislative, and judicial organs in the states. The court asserted that the degree of federalism in the Indian Union is significantly influenced by the imperatives of progress, development, national integration, political and economic coordination, and social and spiritual upliftment. The judges listed Constitutional provisions that establish the supremacy of Parliament over state legislatures.

In the Karnataka case, Chief Justice Beg further expounded his theory of "pragmatic federalism," suggesting that the Constitution sets up a federalism overlaid with strongly unitary features. He questioned whether such a system could be deemed federal in a sense denoting more than a convenient division of functions, emphasizing the Central Government's role in supervision. Justice Kailasam asserted that while there is a tilt in favour of the Union in the distribution of powers, the Union Government cannot claim powers not vested in it by the Constitution. He emphasized that the Constitution is supreme, and both the Union and the States derive their powers from its provisions. In summary, the Rajasthan and Karnataka cases highlighted the nuanced understanding of federalism in the Indian context, acknowledging a federal structure while recognizing the influence of specific provisions to address exceptional circumstances. The debate centred on the degree of

Central control and the justiciability of the division of powers mandated by the Constitution.

In *S.R. Bommai v. Union of India*, it was enunciated that: *“the constitution provide more power to Central government but the state is also supreme within its spheres”...The constitution of India is differently described, more appropriately as ‘quasi- federal’ because it is a mixture of the federal and unitary elements, leaning more towards the latter but then what is there in a name, what is important to bear in mind is the thrust and implications of the various provisions of the constitution bearing on the controversy in regard to scope and ambit of the Presidential power under Article 356 and related provisions”.*

In the case of *State Bank of India v. Santosh Gupta*, the court acknowledged that the Constitution of India is a mosaic drawn from global experiences, with its federal structure largely reflected in Part XI, derived from the Government of India Act, 1935.

In the case *UCO bank v Dipak Debbarma*, it was held that “federal structure under the constitutional scheme can also work to nullify an incidental encroachment made by the Parliamentary legislation on a subject of a state legislation where the dominant legislation is the State legislation. An attempt to keep the aforesaid constitutional balance intact and give a limited operation to the doctrine of federal supremacy”.

## **Differences and Similarities existing between the two Countries**

### **Similarities**

#### **1. Written Constitution**

Both the United States and India possess written Constitutions, establishing a federal political structure where each government exercises its designated powers. The constitutions provide provisions for demarcating powers between the Central and State governments. These Constitutions allow for amendments to accommodate

evolving circumstances and the dynamic political, economic, and social needs of their respective nations.

## **2. Bill of Rights and Fundamental Rights**

The U.S. Constitution, through its 'Bill of Rights,' grants fundamental rights to citizens, encompassing equality, freedom, protection against exploitation, religious freedom, cultural and educational rights, property rights, and Constitutional remedies Part III of the Indian Constitution guarantees fundamental rights to the people as delineated in Articles 14 to 34.

## **3. Supremacy of the Federal or Union Government**

In both countries, the federal government operates at the centre, with numerous states aligning themselves with the federal government. The U.S. has 50 states, while India's Union consists of 28 states and 9 Union territories. States in both countries that adopt the federal structure lack the individual power to secede from the central or union government. While both central and state governments can legislate on concurrent list subjects, federal or union government laws supersede state laws in case of a dispute, establishing the supremacy of the federal or union government in the existing federal structure.

## **4. Separation of Powers**

The Constitutions of both the United States and India delineate a separation of powers among the executive, legislative, and judicial branches. Each branch is vested with distinct powers, where the executive governs, the legislature formulates laws, and the judiciary ensures justice. The U.S. President is the chief executive head, while in India, the Union cabinet, led by the Prime Minister, holds the real executive authority. Both countries have bicameral legislatures, with the U.S. having the Senate and the House

of Representatives, and India having the Lok Sabha and Rajya Sabha as its upper and lower houses, respectively.

## 5. Powers of Checks and Balances

Despite the clear separation of powers, both countries acknowledge the potential for overlapping and abuse of power, necessitating a system of 'checks and balances.' In the U.S., the President, as the chief executive, appoints members of the 'Kitchen Cabinet,' serves as the Supreme Commander-in-Chief, and negotiates treaties subject to Senate approval. In India, the Prime Minister and the cabinet wield significant power, subject to removal through a successful no-confidence motion. Laws enacted by the parliament are subject to judicial review by the Supreme Court of India. The system of checks and balances serves as an effective method in both the U.S. and India, safeguarding democracy in each nation.

### Differences

#### 1. Admission of States

In India, the Constitution lacks provisions safeguarding the territorial integrity of the States. Parliament holds the authority to unilaterally modify the area of any State, alter State boundaries, or change the name of any State. It is noteworthy that, unlike other federal Constitutions, the Indian Constitution does not emphasise the preservation of the territorial integrity of the constituent units. This represents a rare distinctiveness in the federal structure of India. Article 4, Section 3 of the U.S. Constitution explicitly states that the formation or establishment of new states within the jurisdiction of any existing state requires the consent of the legislatures of the states involved and that of Congress. Relying on the precedent set by *Texas v. White*, it was determined that this constitutional limitation is essential to prevent the concentration of power at either the national or state level.

## **2. Citizenship**

The Constitution of the United States approves of dual citizenship. However, the Indian Constitution does not envisage dual citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

## **3. Constitution**

Each state of the Federation of USA has their own constitution and specific identity. The Constitution of states provides for the structure of the government, the process followed by the particular government etc. Opposed to that, in India, even after having a specific identity, the states do not have their own constitution.

## **4. Representation**

The US Constitution provides for a bicameral legislature. Each state in the federation has equal representation in the Upper House of the federal legislature (i.e., the Senate). On the contrary, in the Council of States, according to the population of the states. States have unequal representation. The unequal representation and nomination of members to the Rajya Sabha is a clear violation of federal principles but a very diverse feature of Indian federalism.

## **5. Amendment Procedure**

The amendment process in federal systems is typically characterized by rigidity. However, the Indian Constitution deviates from this norm by incorporating a relatively simple procedure. In the Indian constitutional framework, only the Parliament holds the authority to make proposal of amendments. Moreover, a significant number of constitutional provisions can be amended directly by Parliament. The vitality of the States is contingent upon Parliament, and the States play a role solely in matters affecting federal interests. In cases where a proposed amendment pertains to federal concerns, a bill necessitates ratification by the legislatures of at least half of the States. This departure from the traditional federative



model, where amendment procedures are rigid and states are deemed indestructible units, distinguishes the Indian system from, for instance, the American federalism structure. Consequently, India's amendment process combines elements of both rigidity and flexibility.

## 6. Judicial Powers

In contrast to the United States' dual system of justice administration, which includes separate state systems such as the State Supreme Court enforcing state laws and the Federal Supreme Court, India adopts a hierarchical structure of courts. This hierarchy, primarily determined by appellate jurisdiction, features both High Courts and the Supreme Courts at the state and federal levels enforcing laws at both the state and Union levels.

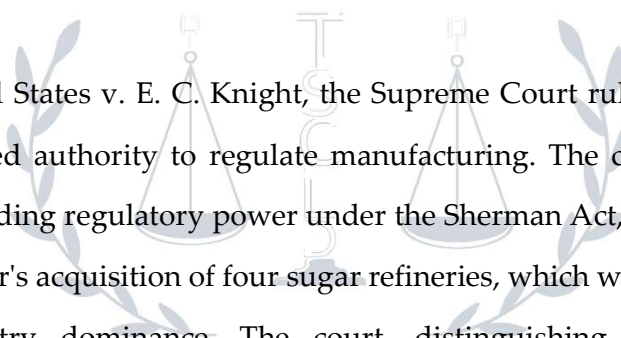
### Evolution of Federalism in USA and India

#### USA

The federation during its initial days faced the movement of secession from the states. Despite the Southern states' assertion of a right to secede, Abraham Lincoln staunchly rejected this claim. He argued that the Union, formed in 1774, was established under a compact that could only be dissolved with the unanimous agreement of all states. This perspective gained judicial backing in the Supreme Court case *Texas v. White*, which asserted the Union's status as an "indestructible union" and emphasized that Texas had never ceased to be a state within the Union. Consequently, Later the concepts of dual federalism, cooperative federalism, coercive federalism, creative federalism and new federalism can be found out in the history of American federalism.

#### *Dual federalism*

The late 1870s marked a pivotal stage in the evolution of U.S. federalism, introducing the era of dual federalism. In this framework, the states and the national government wield exclusive authority within clearly delineated spheres of jurisdiction. Two key factors shaped the development of dual federalism. Firstly, a series of Supreme Court decisions thwarted attempts by both state and federal entities to exceed their jurisdictional limits. Secondly, the prevailing economic philosophy of the time strongly opposed government intervention in industrial development. To combat rampant anticompetitive practices in the railroad industry, Congress enacted the Interstate Commerce Act, establishing the Interstate Commerce Commission. Three years later, the Sherman Antitrust Act further augmented national regulatory capabilities, criminalizing monopolistic activities and conspiracies to restrain commerce.



In 1895, in *United States v. E. C. Knight*, the Supreme Court ruled that the national government lacked authority to regulate manufacturing. The case arose when the government, wielding regulatory power under the Sherman Act, sought to intervene in American Sugar's acquisition of four sugar refineries, which would have conferred significant industry dominance. The court, distinguishing between interstate commerce and the production of goods, contended that the national government's regulatory authority extended only to commercial activities. The court argued that including manufacturing within the commerce clause's purview would leave "comparatively little of business operations" under state control. In the late 1800s, some states endeavoured to regulate working conditions. For instance, in 1897, New York State enacted the Bakeshop Act, limiting bakery employees to a maximum of sixty hours per week. However, in *Lochner v. New York*, the Supreme Court deemed this state regulation unconstitutional, asserting that it violated the due process clause of the Fourteenth Amendment. Essentially, the court maintained that the right to

engage in the buying and selling of labour is an individual liberty safeguarded by the Constitution.

### ***Cooperative Federalism***

The Great Depression of 1930 inflicted unprecedented economic hardships on the United States. Between 1929 and 1933, the nation experienced an overwhelming 25 percent national unemployment rate, a 50 percent reduction in industrial output, a loss of more than half the value of stock market assets, the closure of thousands of banks, and a one-quarter contraction in the gross domestic product. Faced with the magnitude of this economic crisis, there was a compelling need for the national government to orchestrate a comprehensive response in collaboration with the states.

Cooperative federalism emerged as a pragmatic response to this necessity. In this model, both the national and state governments cooperatively addressed national challenges, such as the Great Depression and subsequent civil rights struggles. Unlike dual federalism, cooperative federalism blurred jurisdictional boundaries between states and the national government, creating a blended approach. This era facilitated the gradual encroachment of national authority into the states' jurisdictional domain and the expansion of the national government's influence in concurrent policy areas.

President Franklin D. Roosevelt's New Deal programs, conceived to combat the Great Depression, faced resistance from the justices on the Supreme Court adhering to a dual-federalism mindset. Key pillars of the New Deal, such as the National Industrial Recovery Act and the Agricultural Adjustment Act, were struck down on the grounds that the federal government encroached on matters within the states' purview. In response, Roosevelt proposed a court-packing plan in 1937, which aimed to add new justices and alter the court's composition. Before Congress acted on this proposal, a shift occurred within the Supreme Court as Chief Justice Charles Evans Hughes and Justice Owen Roberts revised their views on federalism, signalling support for the

New Deal. The Supreme Court, in *National Labor Relations Board (NLRB) v. Jones and Laughlin Steel*, validated the constitutionality of given National Labor Relations Act of 1935. The New Deal transformed the relationship between Americans and the national government, shifting from minimal financial aid, social benefits, and economic rights to the provision of old-age pensions (Social Security), unemployment insurance, agricultural subsidies, workplace organizing protections, and various public services during Roosevelt's administration.

Commencing in the late 1950s and enduring until the late 1960s, federalism underwent a period of innovation characterized by the introduction of numerous new programs and a heightened interconnection among federal, state, and local governments. This innovative phase reached its pinnacle during the tenure of President Lyndon Johnson who famously coined the term Creative Federalism. Within this creative phase, three prominent features of federalism emerged: a surge in categorical project grants, an augmented emphasis on program planning and administration, and an increased involvement of citizens and interest groups in intergovernmental affairs. President Lyndon Johnson expanded the national government's role further, introducing programs like medical aid, Medicare, school nutrition initiatives, and legislation promoting environmental and consumer protection, educational opportunities, and civil rights equality. The era of cooperative federalism witnessed a broadening of federal powers in concurrent and state policy domains, accompanied by increased coordination between states and the federal government.

The social welfare and insurance programs created during the New Deal and Great Society eras were administered jointly by state and federal authorities, with shared funding. While cooperative federalism led to a nationalization of politics through federal legislative activism addressing marketplace inefficiencies, social inequality, and poverty, it also granted flexibility to states and local authorities in implementing

federal social welfare programs. However, this administrative flexibility resulted in cross-state variations in benefit levels and coverage.

### ***New Federalism***

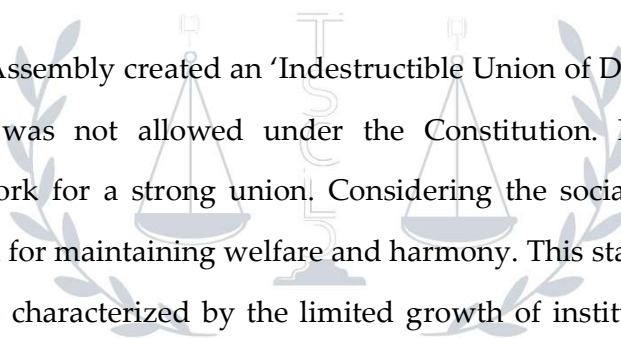
During the tenures of Presidents Richard Nixon (1969–1974) and Ronald Reagan (1981–1989), efforts were undertaken to reverse the trend of nationalization, seeking to reinstate the prominence of states in policy areas that had previously come under federal jurisdiction. The concept of new federalism is grounded in the belief that decentralizing policies enhances administrative efficiency, reduces overall public spending, and leads to improved policy outcomes. In Nixon's administration, general revenue sharing programs were established, distributing funds to state and local governments with minimal restrictions on expenditure. The election of Ronald Reagan marked the onset of a "devolution revolution" in U.S. federalism, with the president pledging to restore authority to the states in accordance with the Constitution. The Omnibus Budget Reconciliation Act of 1981 saw congressional leaders and President Reagan consolidating various federal grant programs related to social welfare, providing greater discretion to state and local administrators in utilizing federal funds. Reagan's attempts to fully devolve Aid to Families with Dependent Children (a New Deal-era program) and food stamps (a Great Society-era program) to the states faced rejection. Concerns among members of Congress that states would inadequately fund these programs and reservations from the National Governors' Association about the proposal's financial burden on states contributed to this setback. Reagan terminated general revenue sharing in 1986.

Several Supreme Court rulings also advanced the cause of new federalism by limiting the scope of the national government's power, particularly under the commerce clause. In *United States v. Lopez*, the court invalidated the Gun-Free School Zones Act, contending that the regulation did not substantially impact interstate commerce.

This ruling marked the end of a nearly sixty-year period during which the court, with a broad interpretation of the commerce clause, regulated numerous local commercial activities by the 1960s.

Nevertheless, some argue that the years following the 9/11 attacks have shifted the balance back toward central federal power. The establishment of the Department of Homeland Security centralized disaster response power in Washington, and the Transportation Security Administration was created to federalize airport security. Substantial new federal policies and mandates were implemented through initiatives like the Faith-Based Initiative and No Child Left Behind (during the George W. Bush administration) and the Affordable Care Act (during Barack Obama's administration).

## **India**



The Constituent Assembly created an 'Indestructible Union of Destructible States' in India. Secession was not allowed under the Constitution. Indian Constitution provides framework for a strong union. Considering the social diversities, strong Centre is essential for maintaining welfare and harmony. This stage in India's federal development was characterized by the limited growth of institutional mechanisms intended to address the requirements of cooperation and coordination. The dominance of a single party obscured the challenges that would arise in the future. Even during the phase of economic liberalization, the Central government maintains control over all major economic controls. Although deregulation in specific sectors has provided greater room for state initiatives, there is a simultaneous emergence of the need for central regulation in new areas.

## ***Cooperative Federalism***

The framework of cooperative federalism, entails that between the centre and states, the relationship operates horizontally, characterized by mutual collaboration for the greater public good. This approach serves as a crucial mechanism facilitating the

active involvement of states in the development and implementation of national policies.

It was laid down by the Supreme Court in *State of Rajasthan v. Union of India*, that the Indian model of federalism is based on a cooperative stance. In the case of *State (NCT of Delhi) v. Union of India*, the court has made a noteworthy observation regarding India's federal structure. The court recognizes and affirms that India operates under the model of cooperative federalism. According to this model, both the Union Government and the State Governments are expected to collaboratively address and resolve any differences that may arise during the developmental process.

The constitutional obligation for cooperation between the Union and states is delineated in Schedule VII, which comprises the Union list, State list, and Concurrent list, embodying the essence of cooperative federalism. The All-India Services play a pivotal role in executing laws enacted by the Parliament and states. These services form the administrative backbone, facilitating the formulation and execution of welfare programs, and developmental initiatives, and ensuring the effective functioning of government machinery at the grassroots level. The Full Faith and Credit Clause, articulated in Article 261 of the Constitution, extends to public actions, documents, and judicial processes. It emphasizes the significance of recognizing public acts impacting matters of public.

The establishment of the Inter-State Council, mandated by Article 263 of the Constitution, serves as a platform for examining and discussing subjects of mutual interest between the central government and the states. Parliament is vested with the authority to resolve disputes related to interstate water matters. In the legal context, the Hon'ble Supreme Court, in the case of *T.N. Cauvery Sangam v. Union of India*, established that if the central government determines that a dispute raised by a state government cannot be resolved through negotiations, it must establish a court for



adjudication. Furthermore, the Hon'ble Supreme Court, in the case of *Dabur India Limited v. State of Uttar Pradesh*, endorsed the creation of the Inter-State Council under Article 263 to address and resolve issues related to central and state taxation. The inception of the Inter-State Council (ISC) as a permanent body on May 28, 1990, through a presidential order, was a result of strong advocacy by the Sarkaria Commission. Zonal Councils, formed under Part-III of the States Reorganisation Act, 1956, serve as advisory bodies comprising states categorized into five zones, aimed at promoting collaboration among them.

NITI Aayog plays a pivotal role in advancing cooperative federalism by undertaking various functions aimed at fostering collaboration between the central and state governments. The institution serves as a source of crucial strategic and technical advice for governments at both levels, facilitating informed decision-making. Additionally, NITI Aayog engages in the dissemination of best practices, drawing from experiences within the country and abroad, contributing to the overall enhancement of governance. A key function of NITI Aayog is the infusion of innovative policy ideas and targeted issue-based support, adapting to the evolving and more integrated global landscape that India is part of. NITI Aayog emphasizes close cooperation, consultation, and coordination with both the Ministries of the Central Government and State governments. By providing critical directional and strategic input to the development process, with a focus on tangible deliverables and outcomes, NITI Aayog contributes significantly to the overarching goal of cooperative federalism.

The Sarkaria Commission and Punchhi Commission, both pivotal in examining centre-state relations, have provided several recommendations to foster cooperative federalism and proposed actionable measures. It was provided that ensuring the apolitical nature of the office of the Governor, coupled with a revaluation of the terms

governing their removal and imposing limitations on the application of President's rule under Article 356 to curb excessive misuse by the Centre shall be helpful. Moreover, expanding the scope of the Inter-State Council, establishing clear guidelines to prevent the undue misuse of the President's veto power over legislation; incorporating states in the decision-making process when the Centre engages in international agreements etc will foster cooperation between the Centre and the states.

### ***Competitive Federalism***

Competitive federalism refers to a governance model where sub-national entities, such as states or provinces within a country, compete with each other to attract investment, business, and talent by implementing policies and reforms that enhance their economic and social standing. In this system, states strive to create an environment conducive to economic growth and development, aiming to outperform others and gain a competitive edge. This concept is anchored in the idea that healthy competition among states can lead to improved governance, increased efficiency, and better service delivery.

States in India actively compete to improve their rankings in the Ease of Doing Business index. This competition encourages them to simplify regulatory processes, enhance infrastructure, and create a business-friendly environment to attract both domestic and foreign investments. States formulate their investment and industrial policies to compete for investments. They offer incentives, land, and infrastructure facilities to attract industries and create employment opportunities. This competition contributes to a more dynamic and robust industrial landscape across the country. To develop and showcase better infrastructure, including roads, ports, and connectivity, states use their resources. States compete to design and implement effective social welfare schemes, focusing on education, healthcare, and poverty alleviation.

The Smart Cities Mission is a competition-based initiative where cities compete to receive funding for transforming themselves into smart cities. This encourages cities to innovate in terms of infrastructure, technology, and urban planning. The "Make in India" initiative, a central government effort, aims to encourage foreign and domestic businesses to invest in India, focusing on attracting capital and enhancing technological capabilities. The strategic positioning of Indian states and territories is evident in events such as the Vibrant Gujarat Summit, where leaders from various sectors converge to discuss "Sustainable Economic and Social Development." Similarly, Madhya Pradesh's Global Investor Summit in 2019 drew significant investments, and Rajasthan, in its global business summit in January 2022, highlighted commitments exceeding ₹3.5-lakh crore.

To replace the Planning Commission, the NDA-led central government established the National Institution for the Transformation of India (NITI Aayog) as the country's policy think tank. NITI Aayog operates with a bottom-up approach, urging state governments to actively participate in shaping national economic policy. NITI Aayog is dedicated to fostering competitive federalism by enhancing the performance of States and Union Territories (UTs). It promotes a culture of healthy competition among states through transparent rankings across various sectors, employing a supportive and guiding approach. Several indices have been introduced by NITI Aayog to evaluate and benchmark performance, including the School Education Quality Index, State Health Index, Composite Water Management Index, Sustainable Development Goals Index, India Innovation Index, and Export Competitiveness Index. Additionally, NITI Aayog regularly releases delta rankings, providing ongoing assessments of the performance of Aspirational Districts every month. The systematic ranking of States and districts in diverse social sectors, based on objective quantitative criteria, serves as an encouragement for them to enhance their performance.

### ***Uncooperative Federalism***

In the case, *Union of India v Mohit Minerals Private Ltd*, the notion of uncooperative federalism was given emphasis. It was provided: “However, even if the federal units are not entirely autonomous as in the traditional federal system, the units still wield power. The relationship between two constituent units that are not autonomous but rely on each other for their functioning is not in practice always collaborative or cooperative. If the States have been conferred lesser power, they can still resist the mandates of the Union by using different forms of political contestation as permitted by constitutional design. Such contestation furthers both the principle of federalism and democracy. When the federal units are vested with unequal power, the collaboration between them is not necessarily cooperative. Harmonised decision thrives not just on cooperation but also on contestation”.

### **Conclusion**

Federalism in the United States and India developed differently due to distinct historical and political needs. In the U.S., federalism evolved from a confederation of states that valued local autonomy, whereas in India, a strong central government was essential for national unity, given the country’s vast diversity.

In the U.S. federal system, the powers of the federal government are enumerated in the Constitution, and residuary powers are allocated to the states. This contrasts with India, where powers are divided into three legislative lists—Union, State, and Concurrent. Under Progressive Federalism, introduced during the Obama administration, states were granted more autonomy over certain issues traditionally under federal control. For example, California enacted stricter vehicle emissions standards than federal regulations. This model allows states to experiment with various governance approaches, enabling the federal government to learn from successful state policies and adjust national laws accordingly. The Supreme Court's

role in interpreting federalism is significant. Initially, the Court avoided applying the Fourteenth Amendment to same-sex marriage restrictions. However, in *United States v. Windsor*, the Court emphasized states' authority over domestic relations while invalidating the federal definition of marriage. In *Obergefell v. Hodges*, the Court ruled that the right to marry is fundamental and applies equally to same-sex couples under the Fourteenth Amendment's Due Process and Equal Protection Clauses. The Second Amendment has also shaped federalism. Historically, states had wide latitude to regulate firearms. However, the *District of Columbia v. Heller* ruling held that the Second Amendment protects an individual's right to bear arms, limiting the state's ability to regulate firearms. This was extended to the states in *McDonald v. Chicago*.

India's federalism, designed to foster cooperation between the centre and states, has evolved into a cooperative and competitive model. Growing central dominance over fiscal policies has become a concern. The expansion of cesses, which are not shared with states, has shifted the balance of tax collection in favour of the Union government. To address these imbalances, states advocate for a formal framework to facilitate consultations with the centre, particularly on issues in the Concurrent List. Ensuring state autonomy while fostering collaboration is essential for maintaining Indian federalism. Strengthening mechanisms like the Inter-State Council and improving fiscal capacity for states are crucial steps toward preserving the balance between centralisation and decentralization in India.

## References

### Books

1. The Constitution of India
2. The Constitution of the United States of America
3. D.D. Basu, *Comparative Federalism* (LexisNexis, New Delhi, 2nd edition, 2008)
4. K.C. Wheare, *Federal Government* (Greenwood Press, Westport, 4th edn., 1963).

## Articles

1. Sunitha Parikh, Barry Weingast, "A Comparative Theory of Federalism-India" 83 *Virginia Law Review* (1997).
2. Raghav Dhoot, "Comparative Analysis of Indian and American Federalism" 4 *International Journal of Advance Research, Ideas and Innovations in Technology* (2018).
3. Jenna Bednar, "The Resilience of the American Federal System" in Mark Tushnet, Sanford Levinson, et.al. (eds.), *The Oxford Handbook of the US Constitution* 1-30 (Oxford University Press, 2014).
4. Lee H Rosenthal and Gregory P Joseph "Foundations of US Federalism" 101 *Judicature* (2021).

## Websites

1. <https://www.drishtias.com/daily-updates/daily-news-editorials/reshaping-fiscal-federalism-through-16th-finance-commission> (last visited on June 21, 2024)
2. <https://www.governing.com/nw/5-ways-the-tensions-of-federalism-will-play-out-in-2023> (last visited on June 15, 2024)
3. <https://federalism.org/> (last visited on June 25, 2024)
4. <https://blog.ipleaders.in/difference-us-indian-federalism/> (last visited on June 21, 2024)