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The critical analysis of federal structure in the U.S.A

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Abstract

Federalism is a very wider concept the term 'federalism' has been applied to a wide range of issues. Its meaning has been blurred by the amount of terminological and conceptual abuse. Federalism, like the word "democracy, means different things to different individuals. In principle, a compromise between concurrent demands for union and territorial diversity within a society is achieved by the establishment of a single political system, within which general (central) and regional (state) governments are assigned co-ordinate authority, and neither level of government is legally or politically subordinate to the other." The objective of the paper to discuss the federal structure of the U.S.A and also try to analyze some features of the federal feature is available in the Indian Constitution. The primary aim of this paper is to critically examine the federal structure in light of the Indian Constitution. The doctrinal method of research has been taken into the consideration

Keywords: federalism, rigidity, sovereignty and government

Introduction

Federalism is thus a means of separating powers such that the central and state governments are each contained inside a sphere, coordinated and autonomous of one another. To put it another way, federalism is a constitutional device for establishing unity in diversity by balancing the conflicting forces of centripetal and centrifugal trends in the country to achieve common national goals.

The federal government of the "United States (U.S. federal government) is the national government of the United States, a federal republic in North America, composed of 50 states, a federal district, five major self-governing territories, and several island possessions. The federal government is composed of three distinct branches: legislative, executive, and judicial, whose powers are vested by the U.S. Constitution in Congress, the president, and the federal courts, respectively. The powers and duties of these branches are further defined by acts of Congress, including the creation of executive departments and courts inferior to the Supreme Court^[1]."

The American federal system consists of four Elements

1. State sovereignty and constitutional restraints on the government's power
2. The federal government's connection with the states.
3. The interrelationship between the states.

State sovereignty and state authority restrictions are enshrined in the Constitution

State sovereignty is a "given" under the American constitutional system, and states do not get their sovereignty from the federal Constitution. Except to the extent that the Constitution prohibits or restricts a particular exercise of sovereignty, states have full sovereignty over internal concerns. Each state has its own government, legal system, and courts, as well as the capacity to regulate and tax itself.

The Constitution limits state sovereignty over domestic concerns in terms of power distribution. "It states that certain powers, which are few in number, are exclusively federal powers in the sense that they cannot be exercised by the states at all, such as the power to enter into a treaty or the power to coin money^[2], or that they can only be exercised by the states with Congress' consent, such as the power to impose a tonnage duty or to enter into a compact with another state or foreign government^[3]."

State sovereignty is a "given in the American constitutional system, and states have complete control over internal affairs save to the degree that the Constitution prohibits or restricts a particular use of such sovereignty.

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Furthermore, while Congress has the right to preempt state laws, as we will see, both Congress and the Court have endeavored to strike a careful balance between the principles of federal supremacy and state sovereignty when enacting legislation and deciding problems of federal preemption." As a result, federal preemption has been very restricted in practice and has not significantly harmed state sovereignty or altered concurrent power as the dominant element of the American federal government.

According to my research, by implication, the Supreme Court has never clearly said that a certain power is an exclusive federal one. Naturalization and immigration, as well as the right to set weights and measures standards, are two authorities that must be reserved for the federal government. "The bankruptcy power is not exclusive federal power. *Sturges v. Crownshield*,^[4] The power over copyright is not an exclusive federal power. *Goldstein v. California*^[5]"

"Under the supremacy clause^[6], there is federal supremacy in the event of a conflict between federal and state power^[7]. Congress then has the power to preempt state regulation over particular issues or particular areas of activity. Federal preemption is very important in practice, and preemption cases come before the Court with considerable frequency."

In *Minnesota v. Mille Lacs Band of Chippewa Indians*^[8], the Supreme Court ruled that an "Indian tribe's right to hunt, fish, and gather on state land, as provided for in a treaty between the federal government and an Indian tribe, was not incompatible with a state's sovereignty over its natural resources, and thus the treaty was not abrogated when the state joined the union."

From a federalism standpoint, "the most important constitutional limitation on state sovereignty relates to state power to regulate and tax interstate and foreign commerce^[9]. The Supreme Court has long held that the affirmative grant of the commerce power to Congress has a negative or dormant implication, and imposes some important, but precisely-defined, limitations, on the power of the states to regulate and tax interstate commerce."

As the Court stated in "*Southern Pacific Co. v. Arizona*"^[10]: "For a hundred years it has been accepted constitutional doctrine that the commerce clause, without the aid of Congressional legislation, thus affords some protection from state legislation inimical to the national commerce and that in such cases, where Congress has not acted, this Court, and not the state legislature, is under the commerce clause the final arbiter of the competing demands of state and national interests."

The federal government's powers

Congress is given a wide range of authorities by the Constitution. "These include the powers to levy and collect taxes, to coin money and regulate its value, to punish counterfeiting, to establish post offices and roads, to issue patents, to combat piracy and felonies, to declare war, to raise and support armies, to provide and maintain a navy, to make rules for the regulation of land and naval forces, to provide for, arm, and discipline the militia, and to declare war." Many disagreements have arisen regarding the federal government's powers in the two centuries since the United States was founded. Disputes over these issues have frequently resulted in lawsuits that have been determined by the United States Supreme Court^[11].

In the classic case of *McCulloch v. Maryland*^[12], under the necessary and proper clause, Congress can use a combination

of powers to do something that is not permitted by any single authority. "Although Congress was not expressly authorized to charter a Bank of the United States by Art. I, sec. 8, the Court held that Congress had the implied power to do so by combining certain enumerated powers, such as the power to tax and spend, the power to wage war, and the power to regulate interstate and foreign commerce."

"*Panama R.R. v. Johnson*^[13]" There the "Court upheld Congress the power to enact a law increasing the rights of injured seamen. Based on the grant of jurisdiction to the federal courts in admiralty cases, Congress had the power to enact rules for admiralty and maritime cases and make those rules binding on the states."

In "*Gonzales v. Raich*^[14]" the Court held 6:3 that "Congress had the power to apply the Controlled Substances Act^[15] to prohibit the local cultivation and use of marijuana for medical purposes, as authorized by state law."

The relationship between the federal government and the states

The most complicated aspect of the American federal system is the interaction between the federal government and the states. This is because the federal government's relationship with the states affects both the principle of state sovereignty and the idea of federal supremacy, as well as the principle of concurrent authority.

Because the federal government and the states are both sovereigns in the American constitutional system, the Constitution places restrictions on each sovereign's authority to interfere with the activities of the other. The concept of intergovernmental immunity, on the other hand, works in conjunction with the principle of federal supremacy. "In the end, this means that the states cannot interfere with the federal government's activities in any way, but that the federal government can apply its laws to the states as states to a significant extent. Even with federal supremacy, the federal government's capacity to apply its laws to the states is limited by the Constitution."

McCulloch v. Maryland^[16] "that the states cannot impose a tax on any instrumentality of the federal government, such as a federally chartered bank, or otherwise directly interfere with the operations of the federal government."

"*Graves v. New York ex rel. O'Keefe*^[17]" "the principles of federal supremacy do not preclude the states from imposing a non-discriminatory income tax on federal employees."

Helvering v. Gerhardt^[18], in response to the Court's decisions in this area, "Congress has enacted a statute, specifically extending the federal income tax to state and local government employees and specifically authorizing the states to impose non-discriminatory taxes on federal employees. 26 U.S.C. sec.; 4 U.S.C. sec. 111."

In *Davis v. Michigan Department of Treasury*^[19] the Court held that a "Michigan taxation scheme which excluded the retirement pay of state and local governmental employees, but not federal principles, violated the constitutional principle of intergovernmental tax immunity and was not authorized by 4 U.S.C. sec. 411."

The relationship between the states

The part of the Bill of Rights provides that "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". "The Guarantee Clause of Article 4 of the Constitution states that The United States

shall guarantee to every State in this Union a Republican Form of Government. When the United States Constitution was adopted, these two provisions show that states did not relinquish their broad authority to adopt constitutions, which are the foundational documents of state law.” State constitutions typically handle a wide range of problems deemed important enough by the states to be included in the constitution rather than a statute. “Often modeled after the federal Constitution, they outline the structure of the state government and typically establish a bill of rights, an executive branch headed by a governor (and often one or more other officials, such as a lieutenant governor and state attorney general), a state legislature, and state courts, including a state supreme court (a few states have two high courts, one for civil cases, the other for criminal cases). They also provide a general governmental framework for what each branch is supposed to do and how it should go about doing it. Additionally, many other provisions may be included. Many state constitutions, unlike the federal constitution, also begin with an invocation of God^[20].”

Essential feature of federal constitution

The following are typical characteristics of a federal constitution

- 1. Distribution of Powers:** Division of power is a very important element in the federal structure. It also refers to the division of power between the union and state government. The function of the state and union government is governed by the supreme law of the land that is the constitution. Separation of power is the unique feature of the federal structure.
- 2. Supremacy of the constitution:** The constitution is what gives rise to a federal government, just as a company does from the grant that establishes it. As a result, the constitution results governs all forms of the government i.e legislature, executive, and judiciary each of the organs will work in its domain which is prescribed by the constitution. The constitution is the supreme law of the land in a federal state. Prof. Wheare says “that those two institutions – The supreme constitution and written constitution are then, essential institutions to a federal government. The supreme constitution is essential if the government is to be federal; the written constitution is essential if federal Government is to work well^[21].”
- 3. A written constitution:** A written constitution is nearly always required for a federal constitution. Complicated contracts are the bedrock of the federal government. The supremacy of the constitution will be essentially impossible to sustain until the terms of the constitution are reduced to text. It would be impossible to avoid misunderstanding and dispute if such an arrangement was based on understanding or convention^[22].
- 4. Rigidity:** Rigidity and the written constitution are interconnected. It does not mean that a written constitution must have the characteristic of rigidity it depends upon the political will of the people. In a rigid constitution, the process of amendment is quite a difficult process but it does not mean that the constitution should remain unchangeable legally. Simply put, the ability to alter the constitution should not be reserved solely for the federal or state governments. That is why it can be considered as the supreme law of the land^[23].
- 5. Authority of courts:** The legal supremacy of the

constitution is required for the federal system to exist in a federal state. Under the structure of the constitution, the federal state's very nature necessitates a split of authority between the federal and state administrations. It is consequently critical to maintaining the power balance between the two levels of government. This must be done by an independent and impartial authority separate from the customary authorities established by the constitution, such as the federal or state legislatures. In a federal polity, the judiciary has the final authority to interpret the constitution and protect the constitution's enshrined provisions^[24].

Conclusion

The federal constitution of the United States of America is generally recognized. In the federal constitution, there is a complete division of power between legislative, executive, and judiciary like a watertight compartment. In the American constitution, specific provisions are given and defined the spheres of legislative, executive, and judiciary Article 1, 2, and 3 respectively. Residuary power will go to the state jurisdiction. Both the federal and state governments have equal power and are independent in their respective sectors. The federal principle is based on the existence of co-ordinate authorities that are independent of one another. The most important element of the federal constitution is must be in written form. Due to the written constitution, there is less chance of overlapping the sphere of state and federal government. In the federal system, the constitution is rigid. The legislature can not alter the provision of the constitution in a very simple manner or according to the will of the politician. By the passage of time, some needs and desires should be recognized if such needs are reasonable in the light of the law and must be within the framework of the constitution then some provision of the constitution may be amended. US is the glary example of rigidity only 27 amendments are made from 1787 to 2020 we can imagine how complex/ difficult procedure in the US constitution. After the passage of more than 200year only 27 amendments are adopted.

The author is of opinion that the federal structure is suitable for any democratic setup of the country because of a certain set of arrangements in the federal system by which we can reduce corruption. This means that the legislature cannot design any Act by their own will or fashion. There is a check and balance system is available in the federal system. One cannot go beyond the power which is prescribed by the constitution. I think the principle of the federal system will help in the development of the country like boosting up the economy, making foreign policy, and many other schemes also. Some of the limitations in the US Constitution like a president will not hold office more than two times.

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1. Available at: https://en.wikipedia.org/wiki/Federal_government_of_the_United_States (last visited on October 12, 2021).
2. Constitution US, Art. I, sec. 10, cl.1. In order for a power to be an exclusive federal power, it must be affirmatively granted to Congress by Article I, § 8, and either expressly denied to the states by Article I, § 10, or be of such a nature that the exercise of power by the states would be incompatible with its exercise by Congress.
3. Constitution US. Art. 1, sec. 10, cls.2,3.

4. 17 U.S. 122 (1819)
5. 412 U.S. 546 (1973)
6. U.S.CONST., Art. 4, sec. 2.
7. Under Art. 76 of the Constitution of the Russian Federation, there is also federal supremacy with respect to matters within the jurisdiction of the Russian Federation and matters within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation. In addition with respect to matters within the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, federal laws shall be issued, and the laws and other normative acts of the subjects of the Russian Federation shall be adopted in accordance with the federal laws. This being so, even apart from a conflict between federal law and subject of Federation law, it would seem that the laws of the subjects of Federation can be challenged on the ground that they were not adopted in accordance with the applicable federal law.
8. 526 U.S. 172 (1999)
9. Federalism considerations generally do not affect the Court's application of the individual rights provisions of the Constitution. That is, in practice the individual rights provisions operate substantially the same with respect to actions of the federal and state governments.
10. 325 U.S. 761, 769 (1945)
11. Available at:
https://en.wikipedia.org/wiki/Federal_government_of_the_United_States (Last visited on October 13, 2021)
12. 17 U.S. (4 Wheat.) 316 (1819).
13. 264 U.S. 375 (1924)
14. 545 U.S. 1 (2005).
15. 21 U.S.C. secs. 801 et seq.
16. 17 U.S. 316 (1819).
17. 306 U.S. 466 (1938).
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19. 489 U.S. 803 (1989)
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[https://en.wikipedia.org/wiki/State_constitution_\(United_States\)](https://en.wikipedia.org/wiki/State_constitution_(United_States)) (last visited on October 14, 2021).
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22. *Ibid*
23. Pandey JN. Constitutional law of India 18 (Central Law Agency, Allahabad, 53rd edn., 2016)
24. *Ibid*