***FEDERALISM IN COMPARATIVE PERSPECTIVE***

**CONFEDERATION AND FEDERALISM**

Both confederation and federalism signify an association of states, but there is a vast difference between the two. Confederation is an association of states, but this association is voluntary in nature. In a federation, states agree to give up a part of their powers and follow the national laws and policies defined by the constitution. In a confederation, states enjoy a larger degree of autonomy and could freely leave the union when they decide to do so. In a confederation, the central government derives its power from the component states, whereas in a federation, all powers of the central government are derived from the constitution. In a confederation, one could not see the presence of a strong legislature, whereas in a federation, there is a dual government, each having its own legislature, executive and judiciary. Confederation is a conglomeration of independent states which create a union or central government for some common purposes. At the same time, the confederating units retain their cardinal powers of government, and the very existence of the central government depends on the cooperation and understanding of the member states. What is no less important is that in a confederation, the central government has no direct authority over citizens in several states; whatever power it possesses has to be exercised through the component states. A confederation owes its existence not upon the terms of the constitution, but upon a loose agreement, which they are free to leave at will. The central authority in a confederation is a mere agency of the member states, and the latter have powers superior to that of the agency. The central agency has a direct relationship with the people, and the commands of the agency would operate upon the people in each individual states only to the extent the state government so permits (Basu 1987, 6–7). The best example of confederation is the United States (in its early years of political formation), which was later turned into a federation once its constitution came into force. Another example could be the European Union (EU), which is composed of many countries that willingly decided to give up a part of their independence but still maintain their sovereignty in order to create a supranational body and present a united front on the global fora.

**LIVINGSTON ON NATURE OF FEDERALISM**

William S. Livingston in his article ‘A Note on the Nature of Federalism’ (Livingston 1952) argues that the classical definition attempts to explain federalism in juristic and legalistic terms. For them, federalism is a system of government whereby the power is divided between central and state governments in such a manner where each level of government is independent of the other. But the boundary between the units and extent of their powers may vary from country to country. Therefore, studying federalism merely on the basis of the law enshrined in it will not help. One needs to take into account the use of extra-constitutional forces that also shape and influence the government process in a federal system. He argues that it is the federal nature of the society that gives birth to a federal political system. According to him, ‘the essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected’ (Livingston 1952). Societal forces are more important to him. He introduced the concept called ‘instrumentalities’ to explain the non-constitutional matters such as habits, attitudes and acceptances which facilitate the adoption of federalism. Livingston also noted that his ‘instrumentalities’ could, after a period of time, become ‘rigidified and acquire a status of their own’.

**EVOLUTION OF COMPARATIVE FEDERALISM**

Federalism as an idea, and practice is widely implemented in countries worldwide in the present day. However, it is imperative to reflect on the origin of the idea and gradual evolution of the concept. It was initially an independently explored practice in a less cohesive and coherent manner. One cannot just trace back the idea to any time or place. A federation is characterized by a common union which integrates its constituents in a manner preserving their autonomous identities. A typical ancient example of this union is the Amphictyonic League of ancient Greece, which integrated indigenous tribes to preserve and protect their customs and religious practices in a loose manner. Another example which needs to be mentioned is Israel, which typically integrated the 12 tribal groups in ancient times for several years. It was characterized by a written constitution, which is a notable feature of federations. Since the 13th century, Israelites were united for more than seven centuries under the Torah of Moses as a common constitution that integrated all the tribes. Such unions were not just confined to Israel and Greece but were evident in other parts of the world also. There were few tribal groups like the Bedouin tribes and Iroquois league in America which were good examples of such unions. The key factors behind the formation of such groups were protection of religious rites and aggregation of military powers.

The middle ages saw a rise of confederations in several European cities. It was a new age of federalism. The smaller self-governing cities combined into larger cities to serve common economic and military purposes. The best examples were the Lombard League (1167–1250) and the Hanseatic League (1250–1669) in Europe. However, confederations were not just confined to the continent of Europe. In North America, the United States was established under the Articles of Confederation (1781–1788). It was the colonial government’s inadequate economic policies and legislation through far away parliament which sourced dissatisfaction that eventually culminated into the American revolutionary war (1775–1783) and the Declaration of Independence (1776). It was to accomplish the revolutionary task of removing the colonial government that the 13 states together formed a confederation. However, very soon a sense of dissatisfaction was understood in the prevalent set-up of confederation. Under the Articles of Confederation, each state had an equal vote in Congress, with state delegations subject to recall by state legislatures; consequently, representatives were tied mostly to the interests of their states (Tarr 2005, 383). At the same time, the confederal government was confined to selective responsibilities with no say in the matters of constituent units. The absence of adequate national authority reduced the United States, in the words of Alexander Hamilton, ‘the last stage of national humiliation’ (Tarr 2005, 383). The congress could only make requests to the states but could barely enforce them. Whereas the legal design of the confederation still allowed for success in the revolutionary war, it turned out to be unfit to solve the problems of the post-war period, especially those of an economic nature, with each state creating trade obstacles by passing protectionist legislation and issuing its own currency (Palermo, 2017, 71). At the same time, the constitutions of the states never proved to be able to contain the unaccountable activities of the state legislatures. The state legislatures functioned in a manner hampering individual liberty. It was in response to these issues that the first federal state of the United States was formed in Philadelphia Convention in 1787. The framers of US constitution were already familiar with the confederacies existing in Germany, Switzerland and the Netherlands. All these confederacies seemed to have displayed the same inefficiency and instability of government that had plagued their own confederation since independence. So, the framers came together in Philadelphia in 1787 to think of a new order that would guarantee both individual freedom and collective security. Montesquieu’s three principles, namely recognition of intermediate powers between people and government as necessary for political stability, constitutional separation of powers among the branches of government and organization of a large state as a federal republic, subdivided into smaller units on the basis of mutual agreement (Hueglin and Fenna 2006, 99) helped the American constitution framers in establishing their desired new order. The third principle, that is, federal republic, was only related to federalism. It would provide the best of both worlds—the smallness necessary for democracy to function and the largeness necessary for both internal and external security (Hueglin and Fenna 2006, 100). A compromise was reached in Philadelphia where everyone agreed on the principle of ‘shared sovereignty’.

As early as 1787–88, Alexander Hamilton, John Jay and James Madison were able to clearly identify the distinctive characteristics of the new proposed constitution. The principle of separation of power between the three organs of government, that is, legislature, executive and judiciary, became the cornerstone of this new era of federalism. At the same time, the idea of judicial review with a system of checks and balances became highly significant. This federation was nowhere a result of confederation but was in itself an independent revolutionary incident. Achievement of both economic and political objectives through a federal set-up and not a unitary one became important. Hence, the creation of a stable federal government with preservation of necessary individual freedoms against the orders of such strong federal government was the main driving force. Also, the protection of order, security and property through a system of shared responsibility between a stable central government and accountable state governments became highly significant. Some of the key features of the federal set-up in America which marked it as different from the earlier model of confederation are the adoption of principle of constitutional supremacy, direct importance of central legislation over individuals and establishment of a strong senate or the House of Representatives.

Very soon, the formation of a federal state was witnessed in the other parts of world. In Europe, two such examples were Switzerland and Germany with their distinct federal systems. Even before the establishment of a federal system, Switzerland had been working on a confederal system. In 1291, initially only the first three cantons, that is, Schwyz, Unterwalden and Uri, founded a confederal alliance. Later, other parts joined this alliance, like Lucerne in 1332, Zurich in 1351, Glarus and Zug in 1352, Berne in 1353, Fribourg and Solothurn in 1481, Basle and Schaffhausen in 1501 and Appenzell in 1513. After the defeat of Napoleon, the last three cantons of Geneva, Neuchatel and Valais joined in 1815. Hence, the integration of Switzerland was a gradual process. The federal constitution of 1848 which established a federal government in Switzerland occurred after the war of Sonderbund between the Protestants and the Catholic separatist league in 1847. Hence, federalism in Switzerland was majorly inducted as a lasting solution to the conflict between these communities. It established the right to freedom of religion in Switzerland. Although, not as famous as their American counterparts, the founding fathers of the Swiss Confederation pursued a worthy and noble goal: to bring peace, security, freedom and reconciliation of diversity to their country by means of a modern federal constitution (Kincaid 2005, 351). Similar to their American counterparts, in Switzerland, this constitution of 1848 was to serve as the highest law of the land. At the same time drawing from the American example, a strong Council of States was established with effective representation of the cantons. Two very distinguished features of this constitution was dual membership in legislatures at both federal and provincial levels and unequal representation of the cantons in the second chamber. At the same time for the first time it was in Switzerland that the idea of direct democracy was merged with that of federalism. The Philadelphia convention had failed to introduce instruments of direct democracy, already existing in municipalities and some states, equally at the national level (Palermo 2017, 77). While the 1848 constitution established modern Switzerland, it has been completely modified two times, that is, in 1874 and in 1999. In 1848, the main principle for the distribution of powers was to give to the confederations the minimum of powers necessary to survive as a union of cantons. The Swiss constitution has at its foundation the theory of classical liberalism with special focus on the negative conception of liberty, where the individual functions freely with least interference of the state.

**VARIETIES OF FEDERAL GOVERNANCE: CASE STUDIES**

It is understood that federalism has been witnessing growing popularity in all these years. Worldwide it has been seen as an institutional instrument towards warding off separatism and fissures within states. It is in the light of this growing popularity of the concept that Rekha Saxena in her notable work Varieties of Federal Governance tries to draw the origin and development of the idea of federal governance in various countries of the world. She initiates the process by classifying the various well-known federal political systems into presidential federations, British Commonwealth parliamentary federations, non-commonwealth parliamentary federations and European parliamentary federations. This classification has been further enhanced by the addition of devolutionary systems and confederal supranational organizations of the EU.

The US American constitutions of 1777 and 1787 have been the first written constitutions presenting the modern idea of federalism. The powers of the government have been subjected to checks and balance through the dual mechanisms of vertical separation of power between the different levels of government and horizontal division of power between the three hands of the government, that is, legislature, executive and judiciary. The establishment of federalism in America was followed by its further adaptation in Switzerland in 1848. A major difference between the two was Switzerland unlike America comprises a collegial executive having seven presidents. It then spread to Germany, Canada, Australia, India, Malaysia, South Africa, etc., emerging as a global idea. The gradual spread of federalism saw modifications with experiments in new places and contexts. Presidential federations comprise the federations of the United States, Switzerland, Latin American countries, post-communist Russia and African countries like Nigeria. All these federations maintain the separation of powers between three organs of government, with each having its constitutionally defined jurisdictions more or less independent of each other. The second classification of countries is grouped under parliamentary federations. The examples are Canada (1867), Australia (1901), India (1950) and Malaysia (1957). They functions like Westminster form of government where cabinet is accountable to the legislature, that is, parliament. One could find a ‘fusion of powers’ in parliamentary federations. Another model that has been discussed is of the parliamentary federations. The major examples are Canada (1867), Australia (1901), Germany (1949), India (1950) and Malaysia (1957). They all function with Westminster form of government with the cabinet being responsible to the legislature, that is, the parliament. On the contrary, in presidential federations, the executive is not responsible to the senate.

Parliamentary federations could be classified into commonwealth parliamentary federations and non-commonwealth parliamentary federations. Prominent examples of commonwealth parliamentary federations are Canada, Australia, India, Malaysia and South Africa. All these parliamentary federations had the common history of British colonialism with Queen being the head of the state. Canada and India have been said to be originally having very centralized structure but eventually moving in the direction of pure federalism from the quasi-federal features. At the same time, Australia has been seen adopting a few features of presidential federations like a directly elected federal second chamber and employing referendum for making constitutional amendments. It has also emulated some example from the American federal model, like residuary powers being handed over to the constituent units. The federations of Ethiopia and Nepal have been classified as non-commonwealth federations as both escaped the colonial rule. A separate category of European parliamentary federations could also be noticed with the major examples being Germany, Austria, Spain, Belgium, Portugal, etc. as they are characterized by distinctive and distinguished features and internal variations, like constitutional courts as the federal umpires and Kelsenian judicial review. The constitutional courts in Germany and Austria are solely responsible for adjudication of intergovernmental disputes.

The aforementioned typologies could be supplemented with two other systems, that is, devolutionary systems and supranational confederal integration. Devolutionary systems could be witnessed in those countries wherein the different states/provinces have been amalgamated into unions through royal acts or through colonial rules but eventually have witnessed demands for territorial autonomy and secession. Examples of this systems are Scotland and Sri Lanka. Scotland underwent the devolution of domestic powers through a referendum in 1997. On the other hand, post-independent Sri Lankan government followed Sinhalese linguistic majoritarianism and Buddhist religious majoritarianism, which escalated conflicts between the Sinhala community and Tamil community. It saw demands by Tamilians for greater autonomy which further aggravated into violent secessionist demands for a separate state. On the other hand, the EU could be identified as the best example of confederative organization at the supranational level. The EU is the economic and political union of 28 member states located in Europe. It is a political entity with decision-making involving intergovernmental mechanisms. These classifications of different federations signify that federalism cannot be identified and defined through a single system and the task of comparative federal theory is to identify such variegated models of federalism.

**REFERENCE:** Singh Pushpa, 2019, eds., *Comparative Government and Politics*, SAGE: New Delhi.