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## RESEARCH ARTICLE

### THE THEORY OF FEDERALISM

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#### ABSTRACT

Most of the multicultural nations are federal by polity and character though there are cultural linguistic and customatic differences. Generally the mono culture in the people of a particular territory leads to the emergence of federal character. It is not just the diversities which ensures federal character, but in spite of socio cultural differences the groups are whole heartedly unified for a Nobel collective purpose. We find two under-currents namely a force to keep the society united and to keep the society informed about the diversity. Thus, a federal nation needs to balance unity and diversity on a oscillating slippery plane. Here a national government that consists of regional government need to be co-ordinated for smooth run. The interdependence between national and regional governments facilitates fully empowered central ruling setup. Federal government is defined and discussed from the back drop of centralizing and non-centralizing forces. Whether it is classical or contemporary type, the federal concept revolves around division of power between national and regional governments. Federalism specifies three important issues like perfect demarcation of powers, need of autonomy for both central and regional government, co-ordination between central and regional government. In spite of perfect and non-over-lapping division of powers, national concern and maintenance of uniform standards automatically makes the national government a dominant force naturally. Federal government is a pre-requisite to achieve socio-economic development which necessitates planned and well co-ordinated interventions. Hence, third world countries have pragmatically different shades of federal government. The concept of welfare state made it obligatory for national government to ensure balanced regional development and maintenance of uniform standards simultaneously. This in turn necessitates sufficient and judicious legislative and financial powers to direct and monitor regional governments. Strong federalism constituted by dominant empowered national government and autonomous regional governments. The classical federalism is the route of many third world countries that are federal in character. From the analysis it is crystal clear that, the two tier government system and judicious autonomy of these two governments are the essential characteristics of any federal government. A careful management of autonomy of regional government and the realization of interdependence between national and regional government by both is the main essence of classical federalism.

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#### INTRODUCTION

Innumerable attempts have been made to explore the theoretical nature of federalism. Due to the long history, worldwide existence and interdisciplinary character of federalism, a plethora of literature has been written on the topic. Yet, these endeavours have not even resulted in a clear and commonly used definition of the term. Surely, it is one of the great dilemmas of this field of research that despite so much discussion, there is no settled common denominator of 'federalism'. Whereas practical studies and exchange of experience between the various federal systems offer a more conventional research arena, comparative theoretical approaches are much more seldom. This is not the least because of the tremendous semantic challenges of a comparative theoretical approach.

At first glance, it is sometimes difficult to understand the terminology of federalism, the meaning of which differs according to the perspectives of constitutional law, political science or economics. Even more difficulty arises when the substance of federal theories is discussed. Again, differences between theories may be due to different academic approaches, particularly between understanding federalism as an overall principle or as a more concrete concept of a federal state and, in particular, whether the constituent units of a federal state are states, and, if states, whether they are sovereign. In the face of such academic hurdles, it must be remembered that the comparison of federal systems is an important method to develop the theory of federalism. Despite apparent differences, all theories of federalism are more or less based on a small number of historic prototypes that serve as model federal systems.

## FEDERAL SOCIETIES

Major multi-cultural Nations in the world are mostly federal in character. The cultural differences between societies in a nation are exhibited through the differences in their social customs and practices and economic and political systems. Language is one of the main manifestations of the cultural identity. Linguistic grouping of people is a form of cultural division of a society. Certain historical, political and economic factors compel the culturally diversified societies to integrate into a single nation.<sup>i</sup>

The people of different cultures may either be scattered throughout the country or be grouped territorially. If the territorial grouping of people in a country coincides with cultural differences, then such territorial grouping gives rise to formation of a federal society. The territorial grouping of people does not mean that a particular cultural group is wholly confined to a particular region. If the regional concentration of people of a particular culture exists, demarcation of such a region from rest of the country is fairly possible. The dynamic social changes may slowly remove the regional identities of cultural groups, eventually ceasing the society to be federal. It is debatable when a society is federal or ceases to be federal, given the dynamic and complex socio-cultural changes and associated repercussions in the political-economic systems. The mere existence of a diversified society itself will not ensure formation of a federal society. A federal society is one where diversified socio-cultural groups are integrated for reasons such as to reap the benefits of collective defense and co-operative economic development, similarity in their socio-political institutions, and historically these groups were ruled as a single entity by colonial rulers and mostly these groups had successfully launched co-ordinated political movement to obtain political freedom. These factors infuse into them a sense of unity. This unity does not normally undermine the diversified aspects of the society. In such societies, the territorial groups need various institutions to protect their cultural identities and regional autonomy and to facilitate regional development. One can find two forces working through a federal society – a force to keep the society united and a force to keep the society informed about its diversity. The simultaneous operation of these two forces keeps a federal society alive. “A federal situation is thus a highly delicate balance of coalescing and conflicting forces”. Opined Carnell.<sup>ii</sup>

A federal nation has to balance the forces of unity and diversity. The federal situation in a country is primarily reflected in the institution of government. The federal government is a two-tier government system – a national government and a few regional governments.<sup>iii</sup> These two levels of government enjoy, to some desirable extent, independence, but their efforts are to be co-ordinated and have to be co-operative in the larger interests of the nation. Evidently, the existence of federal government is the reflection of the federal society underneath. The co-operative efforts of the territorially grouped people of a nation to solve their common problems, without losing their regional autonomy act as the stimuli to the formation of a federal government in a nation. Thus, according to Livingston, “The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces – economic,

social, political, cultural – that have made the outward forms of federalism necessary”.<sup>iv</sup> The formation of a federal nation of different territorial groups, is the product of centralizing and non-centralizing forces of a federal society.<sup>v</sup> When the territorial groups agree upon the necessity for their united efforts to solve their common problems, then the centralizing forces start running the society. At the same time, when the efforts of territorial groups to retain autonomy over all other matters of regional interests are at work. Then the non-centralizing forces simultaneously start running through the society. The national government is the outcome of centralizing forces and the regional governments reflect the existence of non-centralizing forces.<sup>vi</sup> The division of powers between the national and regional governments is crucial in determining the characters of federalism in a nation. The division of powers may leave the two levels of governments independent of each other or interdependent on one another. The interdependence between national and regional governments will facilitate the emergence of highly empowered national or regional governments. Such developments signify the deviation of a federal country from the theoretical configuration of a federal political system.<sup>vii</sup>

The characteristics of the federal system imperceptibly overshadow two other political systems – confederation and a unitary system with considerable decentralized administration.<sup>viii</sup> It is important to differentiate the federal system from these two systems. A confederation of nations may be formed through a treaty signed by member nations, for a set of specific purposes, such as common defense, liberalizing inter-regional trade, etc... In such a union, the constituent national governments retain all the powers of governance in all spheres of activities and act directly on the people of their nations. The decisions at the confederal level are taken collectively by the member nations, where the constituent nations enjoy equal power. Further, this process of decision-making compels the member nation’s policies to harmonize with the policies of the confederation. Evidently, the confederation cannot act directly on the people and that every member nation is equally empowered in the confederal decision-making process. One can infer that the existence of confederation is at the mercy of member nations. The formation of a confederation is usually the result of geographical proximity of the confederated nations, and there is no necessity for any socio-cultural and political forces to bring about such confederation.

In a unitary government, regional decentralization of administration is effected to achieve greater administrative efficiency and executive convenience. Further, the demarcation of regions for administrative convenience need not coincide with socio-cultural groupings of the people of a nation. Unlike a confederation, where the member nations ensure the existence of the confederation, in a unitary government, the national government ensures the existence of regional administrative centers. Thus, it is clear that both confederation and regionally decentralized unitary governments are conceptually different from federal government.<sup>ix</sup> When the formation of a union of regions is due to the forces such as the sense of togetherness due to the aspirations to reap the benefits of common defense and co-operative economic efforts in a culturally and economically diversified society, the division of powers between the

national and regional governments depends on the relative strengths of the two opposing forces – the centralizing national forces and non-centralizing regional forces. It is in this background the ‘Federal Government’ is defined. The federal principal revolves around the problem of division of powers between the national and regional governments, K.C. Wheare defines the ‘Federal Government’ as a set up where the division of powers is so, “... that the general and regional governments are each within a sphere, co-ordinate and independent”.<sup>x</sup> This definition specifies three important issues related to federalism. First, there is perfect demarcation of the powers of the two levels of governments. There is no scope for any overlapping of powers in any field of activity. Second, each government is independent in its own sphere and acts directly on the people. Thus, people are subjected to dual governments. Third, since the socio-economic development of the nation is the collective responsibilities of the two governments, co-ordination between them is essential, but this coordination should not pave way for dependence of one level of government on the other.<sup>xi</sup>

An unambiguous and exhaustive list of powers for each level of government is to be drawn to ensure independence of the two governments. But establishment of such an arrangement is next to impossibility. Some writers feel that this problem can be overcome by specifying areas under the jurisdiction of one government, leaving the residual powers to the other. The dynamic socio-economic changes may bring up new problems in future, at that stage, the government enjoying residual powers will become dominant. Even if we assume that the division of powers is perfect and non-overlapping, the growing national concern regarding balanced economic development and maintenance of uniform standards of social services throughout the country, urge to reap benefits of large-scale production etc., will automatically give the national government an upper hand in these areas, facilitating emergence of dominant national government. From the above analysis, one can conclude that, care should be taken to see that the division of powers should be in such a way that it will not undermine that regional identities of the territorial groups, and at the same time it should not give room for the growth of secessionist forces which will sabotage the national unity. This is precisely the idea behind the principal of independent national and regional governments.

### EXPERIMENTS IN FEDERAL NATIONS

In the middle of twentieth century, the federal government was popular among the then newly independent Third World countries. Many of these countries exhibited characteristics of federal societies as described by Livingston. The forces of federal unity in these countries were mainly two – historical and economic. Historically, these countries were governed by colonial rulers in somewhat a federal set up. Further, the ideal of common nationality was accepted when different regions launched co-ordinated efforts to do away with the oppressive colonial rule. The aspiration of these Third World countries to achieve rapid economic development necessitated the launch of planned and co-ordinated economic activities of different regions. It is needless to say that a federal government is a prerequisite for the emanation of this sort of economic effort. But, the state guided planned economic development in these countries jeopardized the regional autonomy.<sup>xii</sup> The increased

role of state in nation building in the Third World countries complicated the problem of perfect division of powers between the national and regional governments. Further, the complexity of the federal society and polity makes a perfect division of powers next to impossibility.<sup>xiii</sup> The asymmetry in the economic strengths of territorial groups is reflected in the political domination of powerful regions in the federation. These factors strengthened the institution of national government. It is necessary to mention here that the statesmen of the Third World countries were pragmatically evolving different shades of federal government suitable to their particular federal societies, with least regard for the theoretical aspect of this concept. The deviation from classical federalism was experienced even by matured federal countries like USA, Canada and Australia. The conception of welfare state, made it obligatory for national government to ensure balanced regional development and maintenance of uniform standards in social services across the nation. To shoulder these responsibilities, the national governments should be aided by more legislative and financial powers to direct the regional governments to achieve the desired objectives. This evolution of dominant national government in a federal set up is incongruous with the concept of classical federalism, which tries to ensure regional autonomy as a reflection of diversified nature of the federal nation. A.H. Birsch in an analysis of federal governments of USA, Canada and Australia opined that during the postwar period, “a federal government is not limited to its own sphere when it passes a good deal of legislation relating to matters within the sphere of the state governments, ... the state governments are not in practice independent of the federal government when they derive a considerable proportion of their revenue from federal governments... the fact that the federal government gives a disproportionate amount of aid to the poorer states implies at least a partial acceptance of responsibility by the federal authorities for the maintenance of national minimum standards for some state services”.<sup>xiv</sup>

### CO-OPERATIVE FEDERALISM

The classical federalism is the root of many federal nations in the Third World. The Constitutions of USA and Canada, were widely discussed while new constitutions were framed in these countries. Hence, the essential characteristic of federal government, the two-tier government system – federal and regional government, does exist in all these federations. Another equally important characteristic of federalism, the independence of these two levels of governments ceases to exist.<sup>xv</sup> As already noted, the popularity of planned economic development, asymmetry of socio-economic and political strengths of territorial groups, facilitated the evolution of strong, dominant national government and relatively weak and dependent regional governments. This does not mean that the process will culminate in a unitary state. The involvement of regional governments in the constitutional amendments pertaining to regional subjects, leave scope for the ventilation of regional sentiments. Administratively the national government is dependent on regional governments for the implementation of its socio-economic programmes. Besides, the regional representation in national legislature also makes the national government dependent on regional governments. A careful consideration of these characteristics of federal systems in the newly independent Third World countries led

R.L. Watts to describe these federations as 'Co-operative Federalism'. He said, "Both constitutionally and politically..., the situation has in fact been one of mutual dependence of central and regional governments on each other. This interdependence has found expression in the proliferation of institutions and arrangements for consultations and co-operation between governments in a wide variety of fields, and in the special weight given to regional balance within the institutions of the central government itself. Thus by comparison with the older federations, a distinctive characteristic of the new federations has been the degree to which central and regional governments have been made more interdependent and their relations more flexible". It is easy to designate a nation as federal or non-federal if we use the yardstick of classical federalism. The concept of co-operative federalism highlights the feature of interdependence between national and regional governments. As the degree of this interdependence varies between countries, so are the federal constitutions, arrangements of federal institutions, etc... Hence, the concept of co-operative federalism covers a range of federal nations which differ in the degree of interdependence between national and regional governments.<sup>xvi</sup> K.C. Wheare's classical definition of 'Federal Government' was based on the characteristics of American Federalism. He described most other federations as 'quasi-federal', for example, Canada, Australia and India. He further mentioned that like Canada, though a country may be constitutionally quasi-federal, yet it may remain federal in practice. But the constitutions of almost all federal countries today emphasise interdependence between the two levels of governments. Hence, 'co-operative federalism' is conceptually more suitable than classical federalism in the analysis of present-day federations.

## CONCLUSION

We conclude that the experience of classical federations in the recent past, the characteristics of new federations, formed in the light of these recent experience of classical federations have exhibited three issues. One, the necessity of interdependence between national and regional governments. Two, certain compelling economic issues, result in the creation of a strong national government. Three, the process of evolution of strong national government, affects the regional sentiments in the federal set up. This fuelled the growth of secessionist forces in many federal nations. To encounter these problems in the present-day federations, we need to start from square one, that is, a re-examination of the concept of 'federalism' is essential.

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- v A.V. Dicey: An Introduction to the study of the law of the constitution, 10<sup>th</sup> E.d., 1959, P. 141.
- vi Id at 144
- vii Id at 165-171
- viii History shows many examples of the formation of a confederation. For instance in ancient Greece there were Achaean League, Lycian confederation and confederacy of Delos. In middle ages there was the Hanseatic League. In modern times came in to being the German Confederation of 1815-67 and the American Confederation of 1781-89. The constitution of the United States framed in 1787 declares USA a federation, but it is not so in the strict sense of the term: so the constitution of Switzerland of 1874 declares her a confederation which again is a federation. The USSR is also a federal state, no matter just for the sake of giving recognition to the principles of Marxism-Leninism, the units have been given the right to leave the union in the name of their right to self-determination.
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- x K.C. Wheare defines "It as the method of dividing powers so that the regional and general governments are each within a sphere coordinate and independent". Federal Government, P. 10.
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- xiv See, A.H. Birch, Federalism, Finance & Social Legislation in Canada, Australia and the United States, 1955, Also see M.C.J. Vile, The Structure of American Federalism, 1961.
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