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The spirit of federalism in the US constitution

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Abstract
The unique aspect of a Federal Constitution, which is pertinent in the current context, is that it must be written because it must enumerate and limit the separate powers of two governments: federal and state. According to Where, "the Constitution of India is not federal, it is quasi-federal. He said that any constitution will be federal if it is similar to USA Constitution. But I would like to say that the American Constitution in itself is not federal. The basic feature of federalism is not satisfied by the USA Constitution." The paper deals with the federal structure of the United States of America and some of the opinions which are expressed by the different scholars on the concept of Federalism. And it will also discuss some important characteristics of Federal structure. 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." For the systematic research, the researcher has reviewed various international instrument and articles, and the researcher relied upon the secondary source of data. The research has been conducted through the doctrinal research methodology.

Keywords: Federal, federalism, quasi federalism, and U.S constitution

Introduction
In a federal structure, there is a division of the power between Union and state. In the USA every state has its own government and the president is the head of the country for healthy federalism the separation of power must exist in the federal country because it provides the check and balance system in the organs of the government. "The United States federal government (US federal government) is the national government of the United States, a federal republic in North America made up of 50 states, a federal district, five main self-governing territories, and a number of island possessions. The legislative, executive and judicial departments of the federal government are separated by the United States Constitution, which vests legislative, executive, and judicial authority in Congress, the president, and the federal courts, respectively. Acts of Congress further define the powers and responsibilities of these branches, including the creation of executive departments and inferior courts to the Supreme Court."
Federalism is a "method of dividing powers so that the central and regional governments are each within a sphere, co-ordinate and independent. To be clearer, federalism provides a constitutional device for bringing unity in diversity by harmonizing the opposing forces of centripetal and centrifugal trends in the country for the achievement of common national goals"
The American federal system consists of four components:
1. "State sovereignty and constitutional limitations on state power"
2. "The powers of the federal government."
3. "The relationship between the federal government and the states."
4. "The relationship between the states."

State sovereignty and constitutional limitations on state power
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 [1]." Each state has its own government, legal system, and courts, as well as the capacity to regulate and tax itself.

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The Constitution limits state sovereignty over domestic concerns in terms of power distribution. It provides that "certain powers, very 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 "cannot be exercised by the states without the consent of Congress, such as the power to impose a duty of tonnage 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. 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 the research, the Supreme Court has never explicitly said that particular power is an exclusive federal power by implication. 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 right to declare bankruptcy does not belong only to the federal government. *Sturges v. Crowinshield,* [4]. The authority over copyright is not solely vested in the federal government. 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 over 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 Court held that a "treaty between an Indian tribe and the federal government providing for Indian rights to hunt, fish, and gather on state land was not incompatible with a state's sovereignty over its natural resources, and so the treaty was not invalidated upon the state's entrance to the union." The state's capacity to regulate and tax interstate and foreign commerce is the most fundamental constitutional restraint on state sovereignty in terms of federalism [9]. The Supreme Court has long held that Congress' affirmative grant of commerce power has a negative or latent consequence, limiting the states' capacity to regulate and tax interstate trade in some significant but precisely defined ways. 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 powers of the Federal government

The Constitution grants numerous powers to Congress. Enumerated in Article I, Section 8, "these include the powers to levy and collect taxes; to coin money and regulate its value; provide for punishment for counterfeiting; establish post offices and roads, issue patents, create federal courts inferior to the Supreme Court, combat piracies and felonies, declare war, raise and support armies, provide and maintain a navy, make rules for the regulation of land and naval forces, provide for, arm and discipline the militia, exercise exclusive legislation in the District of Columbia, and to make laws necessary to properly execute powers." Many disagreements have arisen regarding the federal government's powers in the two centuries since the United States was founded. These disagreements have frequently resulted in cases that have been decided by the United States Supreme Court.

In the classic case of *McCulloch v. Maryland* [11], that Congress can employ a mix of authorities to conduct something that isn't authorized by anyone's power under the necessary and proper clause. "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 [12]*",* the Supreme Court recognized Congress' jurisdiction to pass legislation enhancing the rights of injured seafarers. Congress had the "right to create rules for admiralty and marine cases and make those rules binding on the states, based on the giving of jurisdiction to the federal courts in admiralty proceedings."

In *Gonzales v. Raich* [13], The Supreme Court ruled in a 6:3 decision that Congress has the authority to enforce the Controlled Substances Act [14]. It would make it illegal to grow and consume marijuana for medical purposes on a municipal level, despite state law allowing it.

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.

The Constitution limits each sovereign's capacity to interfere with the operations of the other because the federal government and the states are both sovereigns in the American constitutional system. "However, the concept of intergovernmental immunity operates in relation to the principle of federal supremacy. What this means, in the final analysis, is that the states cannot in any way interfere with the operations of the federal government, but that the federal government may, to a very considerable degree, apply its laws to the states as states." Even with federal supremacy, the federal government's capacity to apply its laws to the states is limited by the Constitution.

McCulloch v. Maryland [15] 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 [16]*"* the "principles of federal supremacy do not preclude the states from imposing a non-discriminatory income tax on federal employees."

Helvering v. Gerhardt [17], 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* [18]*"* the Court held that a "Michigan taxation scheme that 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. They usually establish a bill of rights, an executive branch led 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, and are often modeled after the federal Constitution (a few states have two high courts, one for civil cases, the other for criminal cases). They also establish a broad governmental framework for what each branch is responsible for and how it should carry out its responsibilities." Many other provisions may be inserted as well. Unlike the federal constitution, many state constitutions begin with a prayer to God.

Essential Feature of Federal constitution

The following are typical characteristics of a federal constitution.

1. Distribution of Powers- Power distribution is an important component of federalism. Federalism refers to the division of the state's functions among a number of co-ordinate entities, each of which has its origins in and is governed by the constitution [19]. The fundamental principle of such power allocation is that in matters of national importance, where a uniform policy is necessary for the interests of the units, authority is handed to the union, while local concerns are left to the states.
2. Supremacy of the constitution- A federal structure derives its existence from the constitution, just as a company does from the grant that establishes it. "As a result, the constitution subordinates and controls all executive, legislative, and judicial powers, whether they belong to the national government or to individual states." The constitution is the supreme law of the land in a federal state. Prof. Where 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 [20]."
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 [21].
4. Rigidity – The rigidity of a written constitution is a natural corollary. The supreme law of the land, the constitution, must be rigid as well. 'The process of amending a stiff constitution is extremely complicated and difficult. This isn't to say 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. A country's constitution is regarded as a permanent document. It is the highest and final law of the land. The constitution's supremacy can only be maintained if the mechanism of the amendment is strict [22]."
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 [23].

Conclusion

The American constitution is universally regarded as the federal constitution. 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 crucial aspect of the federal constitution is that it must be written. Because of the written constitution, there is less risk of the state and federal governments colliding. The constitution is rigorous in the federal system. The legislature cannot change the provisions of the constitution in a straightforward manner or according to the political desire. With the passage of time, some wants and desires should be recognized; if such needs are justified in the light of the law and must be within the framework of the constitution, some constitutional provisions may be altered. 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.

References

1. Robert Sedler A. United States: Constitutional Law, international encyclopedia of laws (Kluwer Law International) 2005, 99-100.
2. US Constitution, 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. U.S. Constitution. 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. 17 U.S. (4 Wheat.) 316 (1819).
12. 264 U.S. 375 (1924)
13. 545 U.S. 1 (2005).
14. 21 U.S.C. secs. 801 et seq,
15. 17 U.S. 316 (1819).
16. 306 U.S. 466 (1938).
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18. 489 U.S. 803 (1989)
19. A.V. Dicey, Introduction to the study of the law of the constitution 1985, 157 (Palgrave Macmillan, UK, 10th edn).
20. K.C Where, *federal* Government 1963, 56 (Oxford University Press, UK, 4th edn).
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22. Pandey JN. Constitutional law of India 18 (Central Law Agency, Allahabad, 53rd edn., 2016.
23. *Ibid.*, at 19.