

A Comparative Analysis of Legislative Relations: Insights from India, USA, Australia, and Canada

***Babu K A, **Dr N Krishna Kumar**
*Research Scholar, **Research Supervisor
Department of Law
Himalayan University,
Itanagar, Arunachal Pradesh

¹Received: 19 October 2023; Accepted: 08 December 2023; Published: 18 December 2023

ABSTRACT

This study compares the federal systems of the United States, Australia, and Canada as it looks at the development and dynamics of legislative relations in India. It examines the ramifications of India's distinctive constitutional framework for center-state legislative conflicts and examines how the country's powers are distributed among three separate Lists. The study clarifies the intricacies of federal governance and emphasizes the procedures for settling jurisdictional conflicts through a comparative perspective.

Keywords: *Center-state tensions; residuary powers; legislative relations; federalism; India; the United States; Australia; Canada; constitutional framework*

INTRODUCTION

The operation of democratic government in federal systems is critically dependent on the legislative relationship. In India, the division of legislative authority between the federal and state governments is codified in a special constitutional structure that includes three lists and provisions for residual authority. This essay examines how legislative relations have changed over time in India and contrasts it with federal systems in the US, Australia, and Canada. It looks at power distribution and dispute resolution procedures to disentangle the complexity of federal governance systems and how they affect center-state dynamics.

LEGISLATIVE RELATIONS' DEVELOPMENT IN INDIA

The legislative powers in Indian politics are divided into three lists: federal, provincial, and concurrent. The Governor-General was granted the remaining powers at his discretion. ²

Neither American nor Canadian methods of power allocation were used. The political climate in India at that time made it necessary, regarding the distribution of residuary rights of Hindus and Muslims held significantly different views in the three Round Table Conferences that preceded the Act of 1935. Whereas the Muslims favoured strong provinces and asked that residuary powers go to them, the Hindus, who supported a strong centre, insisted that residuary powers go to it. The strategy used to resolve their competing claims was to enumerate all of the Center's and the Provinces' exclusive rights to decrease the remaining amount to such a tiny amount that any concerns held by either party are unfounded. ³

¹ How to cite the article: Babu K A, Kumar N.K.; (December 2023); A Comparative Analysis of Legislative Relations: Insights from India, USA, Australia, and Canada; *International Journal of Development in Social Sciences and Humanities*; Vol 16, 76-80

2. The Government of India Act, 1935, Section 104.
3. Joint Parliamentary Committee Report (1932), p.29.

The necessity of maintaining a concurrent list was elucidated by the Joint Parliamentary Committee. Experience has demonstrated, both in India and abroad, that some issues cannot be resolved solely by a Provincial Legislature or a Central Legislature. For these issues, while it is frequently preferable for Provincial Legislatures to make provisions, it is also necessary for the Central Legislature to have legislative authority to enable it to occasionally secure national uniformity in the fundamental legal principles, to direct and support provincial efforts, and to offer remedies for issues that arise in the province but that extend or are likely to extend beyond the borders of a single province.

The Government of India Act, of 1935 and the Constitution of India both essentially codify the same power structure and distribution. Three subject classes were recognized by the Act.

1. Solely federal; containing 59 matters of national significance, such as foreign policy and defence.
2. Provincial, with 54 articles about law and order, public health, police, education, etc.
3. 36 issues, such as marriage and divorce, criminal law and criminal procedure, are listed concurrently.⁴

Due to the triple enumeration of subjects in the 7th schedule, the Indian Constitution's system of dividing legislative powers between the Union and State Legislatures is distinct. This system is distinguished by several exceptional features.⁵

- a) It strives to exhaustion by listing as many topics as possible in the three lists, reducing the likelihood of litigation over jurisdictional conflicts between a State Legislature and the Union Parliament.
- b) Secondly, in order to provide the federal system a solid central foundation, the Constitution has granted the Union jurisdiction precedence over other jurisdictions wherever a disagreement could be expected. Consequently:

1. According to the Government of India Act, of 1935, the Union Legislature has been granted precedence when an issue overlaps among the three lists. As a result, the State Legislature's ability to enact laws pertaining to items on the State List is now subject to the Union Parliament's ability to enact laws subjected to items on the Union and Concurrent List⁶, and the State List's entries must be interpreted accordingly.
2. When two State laws on the same topic conflict in the concurrent domain, the Union legislation takes precedence. If a state law was set aside for the President's assent and has been granted, the state law will take precedence over any repugnancy; however, Parliament retains the authority to overrule the state law through subsequent legislation.⁷
3. The Constitution's allocation of residual authority adheres to the Canadian model in that it is granted to the Union rather than the States (as in the USA and Australia). The Indian Constitution grants the union Legislature the residuary power, or the authority to enact laws about any subject not covered by one of the three lists. However, the Apex Court has the last say on whether a given issue falls under the residuary power.⁸

In addition to the Central base in the ordinary division of powers, the Constitution contains a few extraordinary provisions that allow the federal government to expand its authority in times of emergency or other pressing national interest, rather than relying solely on judicial interpretation as in the United States, Australia, or Canada. Therefore, these clauses add to the already existing restrictions on the authority of State Legislatures. These extraordinary situations include the national interest; the enactment of treaties; the proclamation of emergency legislation by a state; and the imposition of presidential authority.

However, it may not be assumed that the Indian Constitution gives the State Legislatures any authority or places of restrictions on federal power. The Supreme Court has defined a space for state legislation, even in situations where there appears to overlap, once it is decided that a subject belongs to the exclusive state jurisdiction. This has been accomplished by applying the "Doctrine of Pith and Substance" and liberally interpreting both the Union and State Lists. Any legislation passed by the Union Parliament that goes against this must be given away; nevertheless, there aren't many examples of this.⁹

⁴. Anuradh Prasad, *Centre State Relations in India* (1978), p.36.

⁵. It is from India that the later Constitution of Malaysia, 1957 has adopted the pattern of three lists.

⁶. *Subramanyan v. Muthuswami, A.* 1941 F.C 47; See also *ITC v. State of Karnataka* (1985) Supp SCC 476; *Sudhin v. WTO A.* 1969 S.C 59.

⁷. Art. 254(2) of the Constitution of India

⁸. D.D. Basu, *Comparative Federalism*, (1983) pp.267-268.

⁹. K.C Wheare, *Federal Government*, 3rd ed. (1978) p.2.

COMPARATIVE STUDY OF LEGISLATIVE RELATIONS**United States of America**

On September 17, 1787, the Constitutional Convention in Philadelphia, Pennsylvania, established the United States Constitution. Subsequently, state conventions in the names of the people ratified the document. The American legal system and political culture are centered around the Constitution. Indeed, the American Constitution contains no mention of the terms "federal" or "federalism." It is, nevertheless, still referred to as the Federal Constitution, and today's world views the United States as an exemplar of a federal government.¹⁰

A thorough examination of the Constitution reveals that it establishes an association of states in such a way that powers are split between a general government, in some cases (like treaty-making and money-creation), is independent of the governments of associated states, and state governments, which, in some cases, are independent of the general government. There are inevitable ramifications to this, including the fact that every citizen is subject to two governments and that both national and local governments directly affect the people. Declaring what topics to be under the purview of the national and local governments is not always simple. Article 4 of the United States Constitution lists the relationships between the states and the federal government as well as between the states themselves.

When the power structures for legislation in the United States and India are examined, we see that the former has a single list, while the latter has three lists. In America, the States retain residual power and there is no contemporaneous field; only the exclusive powers of the Center are defined. In India, the states' and the federal government's exclusive rights are clearly defined; there is a sizable overlap, and the federal government retains all remaining authority. The power attributed to the center in India is far greater than that of the center in the United States, both in terms of quantity and scope. Defense and foreign policy are important topics in both nations, although India has more influence in these areas than the United States does. In the USA, it only applies to treaty duties, while in India, it also covers non-obligatory international gatherings. Unlike the USA, India requires legislation to carry out its treaty responsibilities, thus all treaties must be implemented there. The American courts have contributed to the centre's development as a potent institution. Unlike America, though, the Indian Constitution itself grants the Center a position of power.

Australia

Another appropriate example of a federal constitution in its original form is the Commonwealth of Australia's 1900 Constitution. The Australian Constitution established a national government that, within certain bounds, could exercise its powers independently of state governments, while state governments, within certain bounds, may act independently of the Commonwealth government. According to the Constitution, neither the state government nor the Commonwealth Government could change the extent of another party's power on their own. The Commonwealth and State Parliaments were to have separate powers from one another. Although they were to work in tandem with one another, they were to answer to the constitution.¹¹

The Commonwealth was established on July 1st, 1901. The federal government was granted significant powers under the Constitution. The federating states were left in charge of the residual powers. There are two categories of power that the state has withdrawn: Exclusive and Concurrent. All those removed from state jurisdiction and put exclusively within the Federal Parliament's purview fell under the former.¹²

These include the ability to enact laws about defence, currency, customs and excise, and bounties on the import or export of products. In the event of a conflict or repugnancy between federal and state laws of a given subject, the federal law takes precedence and the state law is declared invalid to the extent of its inconsistency. This applies to both the State Parliament and the federal Parliament's exercise of their concurrent powers. Australia's High Court resolves disputes about the authority of specific Acts passed by Federal or State Parliaments. The Australian High Court has extensive authority because of its constitutional right to interpret the balance between federal and state power. Upon closer examination, Australia's Australian Constitution Act 1900 was modeled after the federal system

¹⁰. U.K. Hicks, F.G. Carnell and Others, *Federalism and Economic Growth in Under Developed Countries* (1963), p.53.

¹¹. K.C Wheare, *Federal Government*, 3rd ed. (1978) p.2.

¹². U.K. Hicks, F.G. Carnell and Others, *Federalism and Economic Growth in Under Developed Countries* (1963), p.53.

of the United States, which grants the union enumerated authorities, residuary powers to the states, and judicial review to uphold this power divide.¹³

There are a number of fascinating power comparison points. The Union list's enumeration of powers is far more comprehensive in both Australia and India, but it is substantially longer in India. Both nations have concurrent lists, with the center holding supremacy; but, in India, state laws might remain inconsistent, in contrast to Australia. In Australia, each state's authority is listed and not defined in the state and concurrent list. In Australia, the states hold the remaining power, unlike in India, the central government does. The centre controls defence in both nations. In both nations, the center has considerable influence over exterior affairs.

Canada

The British North America Act 1867's section 91 grants the Centre the authority to enact laws for the peace, order, and good government of Canada concerning subjects that are not solely the provinces' purview. However, for the purpose of clarity and without impairing the generality of the aforementioned provision, thirty specific heads of power are mentioned in the section itself. Furthermore, it is stated that nothing included in this enumeration can be considered to be a part of the subjects included in the Provincial List. Defence, postal service, money and coinage, taxes, criminal law, trade and commerce regulation, unemployment, and insurance are a few of these categories. The provinces are only permitted to enact laws on sixteen subjects under Section 92.

The evolution of American federalism has been remarkably different from that of Canadian federalism. The US Center, which was intended to have restricted authority, has expanded into a massive entity. However, in Canada, the strong center that was intended to address the socio-economic issues of a rapidly rising economy has shown to be inadequate.¹⁴

Many similarities and differences between the Canadian and Indian systems of power allocation are discovered.

1. Both the Indian and Canadian centers have exclusive fields listed in section 91 of the BNA Act, but the Canadian center's Union List is longer and more comprehensive.

2. The provinces of Canada have a field all their own. The Indian states have also done so; however, the list of states is once again more comprehensive.

3. There is a little concurrent field in Canada that only covers three subjects; in contrast, India has a far wider concurrent area.¹⁵

4. The centre has residuary power in both nations, but due to the judicial interpretation of the property and civil rights articles during peacetime in Canada, there aren't many residuary powers left.

5. The emergency clauses of the Indian Constitution can be likened to the growing conception of the centre's general power in Canada. Restrictive interpretation makes the general power of the Centre considerably more meaningful in times of emergency in Canada. In India, the Center has the authority to pass laws pertaining to any topics on the state list when an emergency is proclaimed.

6. One other significant difference between the two nations is that, in Canada, the center is somewhat constrained in its authority, whereas in India the center has complete authority to implement treaties and may enact laws even when the subject matter is covered by the state list.¹⁶

As a result, it is more evident from the comparative study that India has a more complex and precise system of dividing up legislative functions than any other federation in the world. By dividing the legislative powers into three lists, the issue of legislative authority overlap is resolved, which in turn lessens the likelihood of conflicts in the legislative branch. However, the Union and concurrent list power distribution, residuary legislative authority, and emergency powers point to a strong centralizing tendency in the Indian federal system, which is occasionally the underlying reason for centre-state legislative confrontations in India.

¹³. K.C Wheare, *Federal Government*, 3rd ed. (1978) p.2.

¹⁴. Bora Laskin, *Canadian Constitutional Law* (1975), pp. 202-900

¹⁵. K.C Wheare, *Federal Government*, 3rd ed. (1978) p.2.

¹⁶ M.P Jain, *Indian Constitutional Law* (2000) p.561.

CONCLUSION

Finally, the comparison of legislative relations in Canada, the US, Australia, and India reveals both similarities and differences in federal governance. While other federal models show varied degrees of distribution and balance between central and regional authorities, India's constitutional architecture exhibits a rigorous enumeration of functions and a strong centralizing tendency. The frequency of centre-state confrontations emphasizes how important it is to have strong dispute settlement procedures and cooperative federalism. Comparative research can provide valuable insights for policy interventions targeted at maintaining democratic governance principles and promoting amicable relations between states and federal systems as they continue to develop.