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Authored By: Mr. Raja Faisal Zahoor (LL.M), School of Law, University of Kashmir, Srinagar, India,
Email Id: faisalrimmyalik@gmail.com.***



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ABSTRACT:

“This paper seeks to explore how federalism develops within the social fabric of the United States, how federalism aims to harmonize the concepts of unity alongside diversity, centralization paired with decentralization, and nationalism combined with localism. What makes the federal system distinctive is the simultaneous concentration and division of power, and the United States serves as a classic exemplar of this concept. It involves the concentration of administrative and legislative authority in specific domains while also allowing for decentralization in other areas. In a federal constitution, a dual polity is established, consisting of two tiers of government: a central government with authority over the entire nation in certain matters and state governments, each governing within clearly defined regional boundaries. In a federal nation, citizens are subject to the regulations of both levels of government”.

I. INTRODUCTION:

Federalism isn't about states' rights. It's about dividing power to better protect individual liberty.

....Prof. Elizabeth Price Foley¹

The term ‘federalism’ has been used in a variety of contexts. Indeed, the extent of terminological and conceptual abuse has obscured its meaning. However, the term “Federalism” can be traced from the Latin word *foedus*, meaning treaty, pact or covenant and the first known use of term federalism was in 1787. It includes the interrelationships between the states as well as between the states and the federal government. In the words of KC

¹ Professor Elizabeth Price is a prominent legal theorist hailing from the conservative spectrum in the United States. Her expertise lies in the domains of constitutional law, bioethics, and healthcare law. She currently holds the position of Professor of Law at Florida International University College of Law, which is a publicly funded institution situated in Miami, Florida. Additionally, she fulfills the role of Counsel at the Washington, D.C. branch of Baker Hostetler, LLP, where her legal practice predominantly centers around constitutional law, appellate law, and matters related to food and drug regulation.

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Where's, the federal principle is the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.²

II. DEFINING FEDERALISM:

1. **K. C. Wheare**, An authority on federalism collects it as, "In a federal constitution the powers of government are divided between a government for the whole country and governments for parts of the country in such a way that each government is legally independent within its own sphere."³
2. **According to Birch**, "A federal system of government is one in which there is a division of powers between one general and several regional authorities each of which, in its own sphere is coordinate with the others, and each of which acts directly on the people through its own administrative agencies."⁴
3. **"Black's Law Dictionary"**:⁵
The legal relationship and distribution of power between the national and regional governments within a federal system of government.
4. **"Webster's New World Law Dictionary"**:⁶
Generally, the allocation of authority and responsibility to the different levels of government in a federal system.
5. **"Merriam-Webster's Dictionary of Law"**:⁷
The distribution of power in a federation between the central authority and the constituent units (as states) involves esp. the allocation of significant lawmaking powers to those constituent units.
6. **"The Essential Law Dictionary"**:⁸

² K.C.Wheare, "Federal Government", 1963 edn. at page 10.

³ Wheare, K. C., Modern Constitutions, Oxford University Press, London, 1958.

⁴ Awasthy, S. S., Indian Government and Politics., Har-Anand Publication, New Delhi, 1999, Pp, 118-119.

⁵Blacks law dictionary, Ninth Edition, page 687.

⁶ Webster's New World Law Dictionary, Wiley, Hoboken, NJ (2006), Page no. 142.

⁷ Merriam-Websters Dictionary of Law (2011) Page No. 2027.

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The federal system of government, including a division of power between a central government and individual states, in which states handle local affairs and the central government handles matters that affect the entire nation.

7. ***“Encyclopedia Britannica defines federalism as”:***⁹

"Federalism, mode of political organization that unites separate states or other polities within an overarching political system in such a way as to allow each to maintain its own fundamental political integrity. Federal systems do this by requiring that basic policies be made and implemented through negotiation in some form, so that all the members can share in making and executing decisions. The political principles that animate federal systems emphasize the primacy of bargaining and negotiated coordination among several power center's, they stress the virtues of dispersed power center's as a means for safeguarding individual and local liberties."

III. “U.S. CONSTITUTION AND FEDERALISM”:

In the annals of political history, the earliest form of governance was primarily unitary rather than federal. The concept of federalism emerged because of accumulated experience from political experiments, recognizing that not only defense but also various other aspects, including the management of foreign affairs, interstate, and foreign trade, import and export regulations, and similar matters, fall under the purview of national interest and thus require oversight by a centralized national authority. In contrast, certain issues like maintaining public order, public health, and local services such as fire, water, and electricity supply, pertain to the specific needs of a particular geographic area and are best managed by representatives from that local community, who are well-attuned to the unique challenges of their region.¹⁰ Johannes Althusius, in 1603, was the first to recognize that federalism primarily

⁸ The Essential Law Dictionary, Sphinx Publishing, 1st Edition (2008) Page 188.

⁹ Government of NCT of Delhi vs. Union of India & Another, Civil Appeal no. 2357 of 2017, p. 81.

¹⁰ D.D.Basu, “Comparative Federalism”, Chapter 2, Origin of Federalism page 3.

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addresses issues related to the unity of a nation. He is hailed as the true progenitor of contemporary federal theory. Althusis associated federalism with the concept of popular sovereignty and made a clear distinction between federalism and other forms of governance like alliances, multi-monarchies, and confederations. Federalism represents a intricate system of governance for a nation, unifying various autonomous, distinct, separate, and diverse entities or administrative units into a single political union. It seeks to draw a balance between the forces working in favour of concentration of power at a central point and the forces which favour a dispersal of the power in a number of units. However, it is with the adoption of the Constitution of the U.S.A. in 1787 that the concept of a federal state emerged in a definite shape.¹¹ Federalism is a type of governance in which the political power is divided into various units. These units are the Centre/Union, States and Municipalities. Traditional jurists like Prof. K.C. Wheare lay emphasis on the independent functioning of different governing units and, thus, define federalism as a method of dividing powers so that the general/central and regional governments are each within a sphere coordinate and independent. As per Prof. Wheare "the systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is coordinating with the other independent as of them, and if so is that Government federal?"¹² Within the United States, the constitution has created a framework of "dual sovereignty," in which states have ceded certain powers to the federal government while still retaining a degree of their own sovereignty. Instances of this dual sovereignty concept are delineated within the U.S. Constitution. Article VI of the U.S. Constitution¹³ contains the supremacy clause, which reads, "This constitution, and the laws of the united states which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United states, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary

¹¹ Ibid at page 4.

¹² Prof. K.C. Wheare, Federal Government, 1963 Edn. at page 33

¹³ The constitution of the United States of America (Article VI)

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notwithstanding.” This effectively means that when the laws of the federal government are in conflict with the laws of a state’s government, the federal law will supersede the state law. Article I, Section 8 of the constitution describes specific powers which belong to the federal government. These powers are referred to as enumerated powers. The Tenth Amendment preserves authority for the states, as long as these powers have not been transferred to the federal government. These reserved powers encompass various responsibilities such as establishing educational systems, supervising state courts, developing public safety measures, regulating intrastate commerce, and governing local authorities. These powers are commonly known as "reserved powers," while those powers held jointly by both the federal government and state governments are termed "concurrent powers." Among the concurrent powers are the ability to levy taxes, construct roads, and establish lower courts.

IV. “CHANGING CONTOURS OF FEDERALISM”: TYPES & PATTERN:

i. “Dual Federalism” (layer cake federalism 1789-1945):

Dual federalism, commonly referred to as layer-cake federalism or divided sovereignty, is a political system where authority is distinctly separated between the federal and state governments, each exercising their designated powers without encroachment from the other. The term “dual federalism” was a coinage of the early twentieth-century constitutional Scholar Edward S. Corwin.¹⁴ Almost as soon as Corwin coined this phrase, he authored a well-established legal article cautioning about its impending obsolescence. Dual federalism or divided sovereignty is a political framework where power is distinctly partitioned between the federal and state governments, with the state governments wielding their designated powers free from federal government intervention. Dual federalism stands in contrast to

¹⁴ Edward S. Corwin, Congress’s Power to Prohibit Commerce: A Crucial Constitutional Issue, 18 CORNELL L.Q. 477, 481 (1933)

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cooperative federalism, where the federal and state governments work together on policy matters. Corwin's work embodied the dominance of the concept of dual sovereignty, where, according to his perspective, authority within the United States was divided exclusively between the federal government and state governments, creating a zero-sum dynamic between them. However, lurking on the periphery of Corwin's argument were suggestions that this division had not been an eternal truth and that alternative claims to a form of sovereignty might exist.

ii. **“Cooperative Federalism” (marble cake federalism 1945-1961):**

Geoffrey Sawer¹⁵ suggests that cooperative federalism can be identified through the presence of the following attributes: Each party involved in the agreement enjoys a considerable level of independence, possesses the ability to negotiate the terms of collaboration, and, under sufficient pressure, can opt not to participate. The term "cooperative federalism" was first coined in the 1930s, its foundations trace back to the era of Thomas Jefferson's administration. Throughout the 19th century, the federal government employed land grants to bolster various state-level initiatives, including those related to higher education, veterans' benefits, and transportation infrastructure. A prominent illustration of this approach can be seen in the Swamp Lands Acts of 1849, 1850, and 1860. K.C. Wheare rightly visualizes that if each regional government "keeps completely to itself many matters will suffer from diversity of regulation and government itself be less efficient because the experience of other states will have been neglected.¹⁶ Hence some agencies of intergovernmental co-operation have been devised in various federal systems of the world. Taking the case of the Australian Federal System, we find Inter-Provincial Conference and Premiers Conference. The Governors Conference in United States and Dominion Provincial Conference in Canada are other cases of similar institutions for federal co-operation. Granville Austin maintains that the

¹⁵ Geoffrey Sawer, *Modern Federalism* (Pitman Australia, 1976), 1.

¹⁶ K.C. Wheare, *Modern Constitutions* (London, 1966), p.227

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Constituent Assembly of India was the pioneering body to embrace, right from its inception, the notion referred to as "Cooperative Federalism." This concept diverges from the idea of federalism espoused by Wheare, who stipulates that "the central and regional governments of a nation should operate independently within their respective domains." In contrast, Cooperative Federalism entails a robust central government, without implying the weakening of provincial governments. According to Austin,¹⁷ provincial governments are largely administrative agencies for central policies. He quotes A.H.Birch, who defines Co-operative Federalism as the practice of administrative co-operation between general and regional governments, the practical dependence of the regional governments upon payments from the general governments and the fact that the general governments by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions.¹⁸ The constitutional underpinnings of the cooperative federalism model consist of three key elements. Initially, proponents of cooperative federalism hinge on an expansive interpretation of the Supremacy Clause (Article VI) in the Constitution. Secondly, they argue that the Necessary and Proper Clause (Article 1, Section 8), commonly referred to as the Elastic Clause, grants the federal government the authority to enact laws necessary for executing its inherent powers. Lastly, they embrace a restricted interpretation of the Tenth Amendment.

iii. "Creative Federalism" (1960-1968):¹⁹

Commencing in the late 1950s and extending into the late 1960s, federalism entered a period of innovation marked by a surge in new programs and a heightened interconnectedness between federal, state, and local governments. This era of innovation reached its pinnacle during the presidency of Lyndon Johnson (1963–1969), who popularized the term during a

¹⁷ Granville Austin, "The Indian Constitution: Cornerstone of a Nation", (Oxford: Clarendon Press, 1966), pp.57-58.

¹⁸ A.H. Birch, "Federalism, Finance and Social Legislation in Canada, Australia and the United States" in Granville Austin *ibid.*, p.59.

¹⁹ Notes from Center for the study of Federalism, U.S.A.

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memorable commencement address at the University of Michigan in 1964. In essence, this era of innovation is closely associated with Johnson's Great Society initiatives and policies, as well as his administration's approach to intergovernmental relations, emphasizing increased collaboration between government levels, an enhanced role for local governments and citizens, and the exploration of inventive, or "creative," strategies to address policy challenges, particularly those related to poverty and racial injustice. In summary, throughout the 1960s, the federal system, as articulated by David Walker, expanded in terms of financial resources and the scope of governmental functions impacted, became more intricate in relation to grant conditions, and saw a growing number of local governments and nonprofit organizations participating in program implementation. Another significant aspect of the innovative period revolved around the heightened involvement of citizens and interest groups within the federal system. Numerous Great Society initiatives aimed to facilitate extensive citizen engagement at the grassroots level, with a specific focus on enhancing opportunities for minorities and the poor to influence their governance. Notably, many of the categorical grants introduced during the creative phase circumvented state governments, instead providing direct assistance to local governments to empower those in closest proximity to the citizenry. To illustrate, certain newly established federal programs encouraged or even mandated state and local governments to incorporate program beneficiaries in their operation and decision-making processes, both administratively and in shaping policies. The advancement of community action agencies in the War on Poverty, which aimed to empower local residents and advocates to take a more active role in their own affairs, epitomized this approach.

iv. “Collaborative federalism” (1969- 1989):

Corwin,²⁰ an eminent thinker, in the context of the United States, coined the term 'Collaborative Federalism' and defined it as:

²⁰ Edward S. Corwin, The Passing of Dual Federalism, 36 VA.L.REV. 1, 4 (1950) 41301 U.S. 495, 525 – 26 (1937)

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"...the National Government and the States are mutually complementary parts of a single governmental mechanism all of whose powers are intended to realize the current purposes of government".

Cameron and Simeon²¹ described "collaborative federalism," as:

"The process by which national goals are achieved, not by the federal government acting alone or by the federal government shaping provincial behavior through the exercise of its spending power, but by some or all of the governments and the territories acting collectively."

The Union and State Governments should consistently strive for cooperation, sidestepping any constitutional conflicts. In this collaborative effort, they can effectively bring the national vision outlined in the Preamble to our Constitution to fruition. The constitutional objectives embedded in the Constitution should serve as their guiding principles, leading them towards a path of peaceful coexistence and mutual reliance. These are the fundamental principles of cooperative federalism, essential for upholding the constitutional functionalism within a Welfare State. In a Welfare State, there is a great necessity of collaborative federalism. Martin Painter,²² a leading Australian proponent of collaborative federalism, lays more stress on negotiations for achieving common goals amongst different levels of governments and, thus, says: -

"The practical exigencies in fulfilling constitutionally sanctioned functions should bring all governments from different levels together as equal partners based on negotiated cooperation for achieving the common aims and resolving the outstanding problems."

Prof. Nicholas Aroney²³, has said:"

²¹ Cameron, D. and Simeon, R. 2002. Intergovernmental relations in Canada: The emergence of collaborative federalism. *Publius*, 32(2):49–72.

²² Martin Painter, *Collaborative federalism: Economic reform in Australia in the 1990s*. Cambridge University Press, 2009.

²³ Prof. Nicholas Aroney, *The Constitution of a Federal Commonwealth: The Making and Meaning of the Australian Constitution*, 2009

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Rather than displaying a strictly defined distribution of responsibility between two or more “coordinate” levels of government, federal systems tend in practice to resemble something more like a “marble cake”, in which governmental functions are shared between various governmental actors within the context of an ever-shifting set of parameters shaped by processes of negotiation, compromise and, at times, cooperation.” Within the framework of collaborative federalism, both the Union and State Governments should demonstrate their willingness to pursue a shared goal and collaborate in its realization. The concept of cooperative or collaborative federalism is not a novel idea in India either. ***M.P. Jain²⁴ in his book, in a different manner, sets forth the perception thus: -***

“Though the Constitution provides adequate powers to the Centre to fulfill its role, yet, in actual practice, the Centre can maintain its dynamism and initiative not through a show of its powers which should be exercised only as a last resort in a demonstrable necessity but on the cooperation of the States secured through the process of discussion, persuasion and compromises. All governments have to appreciate the essential point that they are not independent but interdependent, that they should act not at cross-purposes but in union for the maximization of the common good.”

In ***State of Rajasthan and others v. Union of India***, the Court took cognizance of the concept of cooperative federalism as perceived by G. Austin and A.H Birch when it observed: “Mr. Austin thought that our system, if it could be called federal, could be described as “cooperative federalism.” This term was used by another author, Mr. A.H. Birch²⁵ describe a system in which: “the practice of administrative cooperation between general and regional governments, the partial dependence of the regional governments upon payments from the general governments and the fact that the general governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions.”

²⁴ M.P. Jain, Some aspects of Indian federalism, 1968

²⁵ A.H. Birch, Federalism, Finance and Social Legislation in Canada, Australia and the United States p. 305

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v. "Coercive Federalism" (1989-1993):²⁶

It is marked by significant expansion in the authority of the federal government compared to the states and its capacity to supersede state powers and enforce policies upon them. This concept pertains to the prevailing pattern of federal-state interactions, particularly in policy development, while still acknowledging the presence of cooperative and dual federalism elements within the federal system. Coercive federalism is a fluid state that mirrors the ever-changing interplay between the federal government and individual states. It's crucial to recognize that American federalism experiences phases of cooperative federalism and dual federalism, in which power and responsibilities are more equitably distributed between the federal and state levels. The emergence of coercive federalism is often a reaction to urgent national concerns, sparking discussions about the appropriate allocation of authority within the American federal system. One example of coercive federalism in the United States is the implementation of the *Affordable Care Act (ACA)*²⁷ or "*Obamacare*." The ACA aimed to reform the healthcare system and expand access to healthcare for millions of Americans. While it included various provisions for states to voluntarily participate, it also employed coercive measures to encourage compliance.

vi. "Modern Federalism":

President Ronald Reagan's suggested changes to overhaul the United States' federal system stood apart from the federalism proposals of those who came before him. While not all of his proposals found success in being adopted and implemented, they left a lasting and transformative impact on the United States' federal system. These proposals represented an early endeavor to shift the tide of nationalization, seeking to reestablish the states' influence in policy domains that had previously been assumed by the federal government. The essence

²⁶ Notes from Center for the study of Federalism, U.S.A.

²⁷ The Patient Protection and Affordable Care Act (PPACA), commonly referred to as the Affordable Care Act (ACA) or Obamacare, is a historic piece of federal legislation. It was passed by the 111th United States Congress and signed into law by President Barack Obama on March 23, 2010. When combined with the Health Care and Education Reconciliation Act of 2010, this legislation stands as the most substantial revamp and expansion of the U.S. healthcare system since the introduction of Medicare and Medicaid in 1965

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of New Federalism lies in the belief that policy decentralization can enhance administrative effectiveness, lower total public expenditure, and yield better policy results. The uniqueness of the modern federal system lies in the simultaneous concentration and division of power. It involves the centralization of administration and legislation in specific domains, while also decentralizing authority in others. A federal constitution establishes a dual polity, consisting of two levels of government: a central government with nationwide jurisdiction in certain areas, and state governments, each with authority within defined regional boundaries. In a federal nation, a citizen is subject to the regulations of both these governments. The entirety of governmental powers and responsibilities is distributed between the central and state levels, and each operates within its designated sphere. However, these governments are not isolated entities; they intersect at various points, giving rise to a multitude of intergovernmental relations in a federal country. The dynamics of these relations are not static; they continually adapt to maintain equilibrium in response to the centripetal and centrifugal forces at play in the nation. On the contrary, Sawyer's 'federal principles'²⁸ reiterate this concept of federal balance when he states: ***“Power of the centre is limited, in theory at least, to those matters which concern the nation. The regions are intended to be as free as possible to pursue their own local interest.”*** The principle of federal balance which is entrenched in our Constitution has been reiterated in several instances holding that the Centre and the States must act within their own spheres. The constitutional principle of federal balance has been reaffirmed on numerous occasions, emphasizing that both the central government and state governments must operate within their designated domains.

V. CONCLUSION:

In conclusion, the dynamic transformations in the federalism structure of the United States underscore the nation's capacity to adjust and accommodate the changing landscape of governance. Commencing as a more centralized system with limited state authority, evolving

²⁸ Geoffrey Sawyer (1910–1996), lawyer, academic, magistrate, and journalist, *Federalism Under Strain* (1977)

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into a cooperative federalism model during the New Deal era, and eventually adopting a more competitive form of federalism, the U.S. federal system has consistently adapted to address the country's evolving challenges and demands. These fluctuations in federalism patterns mirror the continuously shifting political, economic, and social environment within the United States. Although the power equilibrium between the federal government and individual states has fluctuated throughout history, the fundamental tenets of federalism, such as the division of powers and the co-sovereignty of state and federal governments, remain the bedrock of American governance. The 21st century has ushered in a new set of challenges, encompassing debates on healthcare, immigration, environmental regulations, and more. These issues have precipitated fresh dynamics in federalism, as both states and the federal government grapple with how to tackle intricate, interrelated problems. Collaborative federalism approaches, emphasizing cooperation between both government tiers, have become increasingly pivotal in addressing these challenges. Overall, the shifting patterns of federalism reflect the ability of the U.S. political system to adapt and respond to changing circumstances, while preserving the fundamental principles of democracy and the rule of law. The continued evolution of federalism will be a key aspect of American governance as the nation faces new challenges and opportunities in the years ahead.