

**Title: Comparative Study of Indian Cooperative Federalism with
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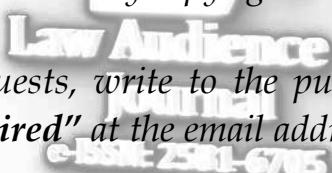
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I. INTRODUCTION:

It is difficult to define the term federation which means different things to different people in different countries. But the most acceptable definition of federation may be that it is a system of government in which there is division of powers and functions between federal government and several regional governments, each of which in its own sphere, coordinates with the others and each of which acts directly on the people through its administrative machinery. Federalism is a general theory of government that recognizes power at both the central level and the state and local level.¹ There is no single ideal federal form. Many variations are possible in the application of the federal idea in general or even within the more specific category of full-fledged federations. For example, in case of United States of America the federalism follows the doctrine of shared sovereignty², the progression of federalism includes dual, state-centred and new federalism. In India the jury is still out on whether the federal structure of the country is '*cooperative*' or '*competitive*'.³ Indian federalism as stated by B.N. Banerjee is '*Federal in form but unitary in spirit*'.⁴ Ultimately, federalism is a pragmatic technique whose applicability depends upon the form in which it is adapted. The applicability of the federal structure in a country is also perceived to be dynamic. The dynamics of the applicability change due to various factors, change in the political structure could be one of the reasons. Federalism is considered efficient from the political angle as well. It provides for a diverse population to come together under the banner of one nation while allowing the constituents to retain their identity and autonomy. Federalism also provides for a platform to democratic values and the civic virtues of people's participation in political processes. In recent years, it is the economic benefits of federalism that have come to the front and sovereign nations are joining together in economic union even while not surrendering their independence. The European Union is a leading example for the same. The art of federalism lies in designing institutions with

¹ P Ramanatha Aiyar: The Major Law Lexicon

² *Alden v. Maine* 527 U.S. 706 (1999).

³ DD Basu, *Commentary on the Constitution of India* (Lexis Nexis, New Delhi, 9 2015).

⁴ *Ibid.*

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appropriate assignment of powers and functions among different orders of government and rules to regulate their relationship especially in the fiscal arena that can strike the right balance among different objectives and resolve tensions⁵. In today's world, we have two broad set of nation- states, first nation-states based on single language, ethnicity, religious affiliation and ethnic socio factors, second nation-states who take pride in being diverse on at the least one of the above stated dimensions or could be on all the dimensions. The main challenge in the second category is to manage the multiplicity of identities of individuals with the requirements of a unified nation. Managing the duality has been one of the factors of political evolution. Federalism has played an instrumental role in safeguarding against regional resentment. It has also played an imperative role in preserving the linguistic, cultural and racial identities. These regional groups are given sufficient autonomy in the federation. Federalism encompasses a principle of reconciliation between two extremities; the common interest of the unified nation made of the territorial units and the need for their local autonomy. Such issues are not solved through complete dependence or independence. The solution lies in the interdependence between both. Federalism has been a governance issue across nations of all types. But federalism as a concept has proved itself effective in managing contradictions among the states. Several plural democracies have been successful only because they sculpted federalism into their institutional mechanism. Multiple models of federal architectures across the world, are trying to allow for diversity to coexist in a larger unified framework; for individual sub-national identities to work in harmony with a larger national identity.⁶ Although, there is a division of functions between the central power and the states power in a federation, yet the governments usually don't act in watertight compartments. As these governments work together in the country with each other, it is inevitable that many types of relations arise amongst them to promote intergovernmental co-operation. In the formative stage of development, the three older

⁵ Amresh Baghchi, "Fifty years of Fiscal Federalism in India", 25 *Journal of Indian Law Institute* 21 (2001).

⁶ Cheryl Saunders, "Options for Decentralizing Power: Federalism to Decentralization", 28 *Australian Law Journal* 30 (2006).

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federations, that is USA, Canada and Australia had the operative concept of 'competitive federalism' which denoted a rivalry between the centre and the units. The units were conscious of losing their local dominion and invariably resented the growth of Centre's power. The units saw this growth of Centre's power as an encroachment on their rights and powers. However, with the passage of time, the concept of 'competitive federalism' gave way to 'cooperative federalism'⁷. **This trend has been promoted by three powerful factors:**

- a) the exigencies of war when for national survival, national effort takes precedence over fine points of Centre-State division of powers.***
- b) technological advances mean making of communication faster.***
- c) the emergence of the concept of a social welfare state in response to public demand for various social services involving huge outlays which the governments of the units could not meet by themselves out of their own resources.***

The concept of '**co-operative federalism**' helps the federal system, with its divided jurisdiction, to act in unison. It minimises friction and promotes co-operation among the various constituent governments of the federal union so that they can pool their resources to achieve certain desired national goals⁸. It is an established fact now that the various governments involved in the federal structure are interdependent. They should not view the other as a competition but should act in co-ordination in order to promote and maximise the public interest. Fiscal division has been one of the factors for the emergence of the concept of co-operative federalism. The Centre has a vast financial capacity and is always in a position to help the units for further development. This interdependency between the Centre and the units brings the two governments together. Thus, in the U.S.A., intergovernmental co-operation has been built mostly around the system of conditional central grants to the States for centrally sponsored schemes.⁹ Canada has also developed some co-operative techniques, such as Central Grants to

⁷ MP Singh, "Federalism, Democracy and Human Rights: Some Reflections", 47 *Journal of Indian Law Institute* 4 2005.

⁸ *Ibid.*

⁹ *Ibid.*

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the Provinces, delegation of power by the Centre and Provinces simultaneously to some subordinate agencies created by one or the other government,¹⁰ referential legislation, etc. The twentieth first century federalism has come to be understood as a dynamic process of co-operation and shared action between the two levels of Government, with increasing inter-dependence and centrist trends. The antiquated concept of dual federalism is nowhere a functional reality in the modern world not even in the so-called classical federal model of the U.S.A. The framers of the Constitution took note of various models of federalism around the world and the emerging trend of co-operative federalism. They realised that power structure in a federalism is not a vertical arrangement rather a horizontal arrangement. The vertical power structure is one where the command runs from centre to state that is a hierarchy is created where the command flows from centre to state. In the case of horizontal arrangement there is no chain of command and the common policies by the governments (*both central and state*) cannot be promoted by dictation rather by a process of discussion, compromise and agreement. When a number of governments with divided jurisdiction function in the same territory, inter-governmental disputes and differences are bound to arise and it is essential that mechanisms be evolved to resolve and reconcile these differences amongst the various governments so that all of them may pool their resources towards the realization of the social and economic objectives for the welfare of the people¹¹. The framers of the Constitution thus, incorporated in the Constitution, a mechanism to promote co operation and co-ordination. Several features and provision are deliberately designed to institutionalise the concept of Centre-State relations. Although, in theory the concept of co-operative federalism is said to be the perfect fit, a comparative analysis is necessary with other countries where the structure of co-operative federalism is operated. The success or failure of a federal model is commonly judged on the parameter of societal stability. Societal stability can be defined as 'absence of secessionist movements among the units. Canada is one of the countries whose federal structure is based

¹⁰ *Ibid.*

¹¹ *Ibid.*

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on Westminster model of federalism but so is India. Canada also has two major regions, Upper Canada (Ontario) also known as English Canada and Quebec, a french speaking state. Canada differs from other federal structures such that it cannot be said to belong to a particular form of federal structure. Thus, in this paper we shall discuss how the model of federalism in India differs from that of Canada and whether such difference could be the reason for more social stability in Canada than India. Thus, the scope of the paper will be limited to the comparative study of the federal structure in Canada and India only in the sense that the various comparative dimensions that are important for maintaining the regional stability in the country.

II. CONSTITUTIONAL STRUCTURE:

In India Federalism is "an indestructible union of destructible states". It was perceived at the floor of the constituent assembly that states must be integral part of India denying any right to secede. Therefore, a need for strong union was anticipated and the constitution gave dominant power to the central government. However, adequate powers were also relegated to the states in order to administer and govern the local government with much efficacy. Such arrangements have been exhibited in the Union, concurrent and state list of seventh schedule. In order to streamline the development process and enhance the progress of all the regions, cooperation between centre and state is utmost necessary. Such form of cooperative federalism is required more so in case of India, due to its vastness, enormity and extreme diversity. India's cooperative federalism, however, has greatly affected by the report of Simon commission and resultant Government of India Act, 1935. Indian constitution has heavily drawn its features from this 1935 act. Cabinet mission, which divided India in Group A, B and C; was another prominent factor enabling India to adopt federalism.

II.I THE INDIAN CONSTITUTION:

When B.R. Ambedkar introduced the constitution to the constituent assembly he proclaimed that "*the draft constitution can be both unitary as well as federal according to the*

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*requirement of time and circumstances*¹² Wheare once stated that “*in practice the government of India like the constitution of India, is quasi federal, not strictly federal*”.¹³

Division of power could be one of the examples that prove India has a quasi-federal structure. The division of power ensures Union supremacy. Article 246¹⁴ empowers parliament to enact legislation with respect to Union and Concurrent powers. Article 249¹⁵ empowers the central government to legislate on matters provided in the State list at times when it is deemed to be in the national interest. Article 256¹⁶ stipulates that the executive power of every state should be exercised in the way that it is in compliance with the laws made by Parliament. The executive power of the Union extends to giving directions to the state for the fulfilling the purpose of article 256. Article 365¹⁷ is an extension of the President’s rule. It empowers the President to dismiss a state government if it has failed to comply with the executive directions of the court. The quasi-federal character of the Indian Constitution is most evident in the emergency provisions. Under Article 352 states that “if the President is satisfied that a grave emergency exists whereby the security of the country is under threat, then the president can take under him the rule of the whole country. In case of ‘**national emergency**’, India can be transformed into a unitary state by executive action. Under article 356, if on the report of the Governor the president is satisfied that the constitutional machinery in the state has broken down, then the president can impose President’s rule, and the state comes under the rule of the central government. This is a relic of colonial regime. In practice, the constitutional machinery of a state is thought to have failed when there is- a political crisis, internal disturbances, physical breakdown or non-compliance with the Union executive.¹⁸ The use of article 356 was employed 8 times between 1950-1964, however this number increased to 67 times between

¹² Constituent Assembly debates, Volume VII, (New Delhi: Government of India, 1950), p. 34.

¹³ K.C. Wheare, Federal Government 10 (4th ed., 1963).

¹⁴ The Constitution of India, art.246.

¹⁵ The Constitution of India, art.249.

¹⁶ The Constitution of India, art.256.

¹⁷ The Constitution of India, art. 365.

¹⁸ H.M. Seervai, 1 Constitutional Law of India 97 (1975).

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1965-1987. The practice was limited only after the Supreme Court established strict guidelines for imposing president's rule in its ruling on the S.R. Bommai vs. Union of India¹⁹, case in 1994. This landmark judgement has helped curtail the widespread misuse of article 356²⁰. The judgement established strict guidelines for imposing president's rule. Subsequent pronouncements by the Supreme Court in Jharkhand and other states have further limited the scope for misuse of Article 356. However, the over deployment of article 356 in the past years has seriously destabilized intergovernmental relations in India. Even after the decision of S.R. Bommai²¹, article 356 is still not a constitutional dead letter. This article in particular demonstrates that state sovereignty in India is seriously undermined. From the above discussion we are not trying to demonstrate that India does not follow the book definition of federalism, which if it exists. The point of the above discussion and in particular the discussion on Article 356 demonstrates that there is lack of state sovereignty provided in India. The constitutional provision focuses mainly on the power or dominion of the Union government. Such lack of sovereignty and dominion of the central government has led to the resentment of the state units which has in turn given rise to nationalist and separatist movements.

II.II THE CANADIAN CONSTITUTION:

Canada is one of the oldest democratic federations. It defines itself as a bilingual, multicultural state²². The official languages of Canada are French and English. Canada has a history of welcoming large number of immigrants, and this has resulted in the increasing of the country's ethnic and cultural diversity. The federation of Canada was created by the ***British North America Act, 1867 which is now known as the Constitution Act, 1867***. The Act established two orders of government and each with considerable arrangement of jurisdiction. One key factor in introducing federalism in Canada was the compromise between various ideologies and visions. The political support of Quebec, a French speaking state was qualified with the

¹⁹ AIR 1994 SC 1918.

²⁰ The Constitution of India, art.356.

²¹ *Id* at 19.

²² Edward Mcwhinney, *constitutional trilogy Quebec and the Constitution*, 1960-1978 (1979)

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condition of creation of federation. At present, there are three communities co-existing in Canada, the Aboriginal, French speaking (*East Canada or Quebec*) and English speaking (*Ontario and other states*). Although Canada in the formative years began with the spirit of a federal character, there are various provisions which violates the federal principle. The Canadian Constitution expressly establishes the autonomy of the two orders of government. It lists the matters in which the orders have autonomy. Sections 91 to 95 allocate legislative authority over various subjects on both executive and legislative authority. Each government is responsible for enforcing its own laws. In many other federations a list of specific subjects is allocated to one order of the government, and the residuary subjects are given to the units. But in Canada, section 91²³ of the constitution contains two lists of matters on which both the orders of the government have separate exclusive jurisdiction. This is also provided in sections 92²⁴ and 93²⁵ of the constitution. A short list of shared jurisdictional power is also provided in sections 92A (3), 94A and 95²⁶. The residuary power in Canadian federal system is given to the federal government. The main objective of the federal parliament is to provide for economic and military needs, therefore the legislative authority over these matters was given to the federal parliament. The federal parliament has jurisdiction over taxation, trade and commerce, banking, legal tender, navigation, militia, military service and defence²⁷. The subject matter for provincial jurisdiction on which they can legislate, within its boundaries are constitution of the province, property and civil rights, education, marriage, administration of justice and all matters of a local or private nature. The provinces are authorized to raise money by direct taxation but only for provincial purposes.²⁸ The federal parliament under the garb of section 92.10.C²⁹ can assume control of "*local works and undertaking*"³⁰ by declaring them to be in

²³ Constitution Act, 1867, s.91.

²⁴ Constitution Act, 1867, s.92.

²⁵ Constitution Act, 1867, s.93.

²⁶ Constitution Act, 1867, ss.92A (3), 94A, 95.

²⁷ Constitution Act, 1867, s.91.

²⁸ Constitution Act, 1867, ss.92,93.

²⁹ Constitution Act, 1867, s.92.10.C.

³⁰ Constitution Act, 1867, s.92.10.

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‘the general advantage of Canada or for the advantage of two or more provinces. This is the declaratory power of the federal government and was employed 472 times by the federal government, mostly in the early years of the confederation. Until the 1940s, the key characteristic of federalism was rendered inoperative due to the overuse of the power of disallowance and reservation. Under disallowance, the central government has the power to disallow provisional legislation. The Lieutenant-Governor of a province has the power to reserve provincial legislation for consideration by the central government. These powers were used extensively between 1867 and 1939. In doing so the sovereignty of the provincial government was hugely compromised. The Judicial committee of the Privy Council in the Local Prohibition Case³¹, Lord Watson ruled to limit the federal government’s ability to encroach upon provincial jurisdictions through the ‘Peace, Order, and Good Government’ clause. It was later interpreted as an emergency provision used only as a last resort. Thus, by the 1940s most of the quasi-federal powers were withered, hence rendering the Canadian Constitution ambiguous.

III. FISCAL STRUCTURE:

III.I FISCAL FEDERALISM IN INDIA:

Finance is considered to be an essential ingredient for the smooth functioning of the government be it unitary or federal. However, the issue of finance in a federal structure is more complex than in unitary structure. In a federal structure power is distributed between two tiers of government, hence both the central and the state government should have independent financial resources so as to enable them to perform their exclusive functions. But in practice it is very difficult to balance the fiscal relations between the centre and the state. The structure of centre-state fiscal relation in India is that the states have insufficient resources to meet their needs. The situation has become so dire that even after devolving more and more taxes to the states, they are forced to borrow from the central government. This has made the states highly

³¹ (1896) UKPC 20.

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indebted to the central government. This is a violation of the principle of federalism. The fiscal subordination of the states has been one of the reasons for strain in the centre-state relations. Fiscal relations between centre and state are enumerated under article 268³² to article 293³³ of the Indian constitution. The government at each level has been given powers to impose taxes on individuals and organisations. The major source of income for central government is income tax, central excise and custom duties. However, states are assigned a long list of taxes such as taxes on agricultural income, property tax and taxes on alcoholic beverages are the few of them. Sales tax is considered to be a major source of revenue for the states.

The basics principles while studying fiscal relations in India are:

1. *There should be no fiscal overlapping. Same tax should not be imposed by the state and the central government. Seventh schedule in the Indian Constitution specifies manner in which taxes are to be imposed.*
2. *The taxation power is assigned keeping in view the impact of the tax geographically. The tax category assigned to centre are broad bases and has impact outside state boundaries.*
3. *The residuary power with respect to taxation remains with the central government.*
4. *Imposition of tax and fixation of tax is a matter of political autonomy.*
5. *Tax base is unevenly distributed across the states.*

To even out tax base and to tackle the problem of inadequate funds of the state government, the centre transfers funds to the states.

There are three modes of transfer of funds from the centre to the states.

1. The centre collects certain taxes and allocates a share of the proceeds to the states in a certain percentage.

Such allocation of funds is streamlined by setting up of a Finance Commission every five years. The finance commission suggests criteria of such sharing between Centre and state or between

³² The Constitution of India, art.268.

³³ The Constitution of India, art.293.

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states as well. So far fifteen Finance Commission have been set up and each one has provided formulae for such devolution of funds. The factors taken into account are poverty, backwardness, tax effort, population etc.

2. Grants and loans extended to states for implementation of development plans.
3. Grants given by central ministries in different states for specified projects.

Article 275³⁴ makes specific provision for grants-in-aid of revenue. Over the fifteen finance commissions, the grant in aids have risen almost 2000 times. State debt to the Union government has increased more than 250 times. In conclusion, we can see that the fiscal position of the states has been declining at an alarming rate and this decline has been reinforcing the quasi-federal structure. The states receive insufficient funds, and the expenditure-revenue gap has been off the charts. Over the seventy years since independence, the states' fiscal dependence on the central government has increased. The formation of **NITI Aayog** has further led to devolution of fiscal power of states and has vastly eroded its states autonomy. The Sarkaria Commission constituted in 1983 was asked to examine and review existing arrangements between centre and states and recommend appropriate changes and measures. The commission finally submitted the report in 1988 and was majorly in support of the status-quo in the centre-state relations. The commission refused to entertain any proposal on the planning process and also rejected all state proposal to transfer some income sources for Union government to the state government. Such strains in the fiscal relation in turn emanates to regional strains within the country.

III.II FISCAL FEDERALISM IN CANADA:

The Canadian fiscal federalism is a classic example of one of the best practices of federalism. It has evolved into one of the most decentralized federations. The provinces have exclusive legislative jurisdiction over social programmes and provincial public goods. The provinces also have the power to manage and impose tax on natural resources. The federal government on the

³⁴ The Constitution of India, art.275.

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other hand is responsible for national wide public goods which includes the field of defence, foreign affairs, trade and foreign aid. About two-third of a federal government's spending is on transfers which includes but is not limited to transfers to persons, transfers to the provinces and social insurance that is the unemployment and pension insurance. This federal spending power and capacity has come to play a crucial role in the federal-provincial relations of the Canadian Federalism. This role has become more significant since the 1940s and 1950s and since Canada became a welfare state. Under the Canadian Constitution, as discussed above the provinces have jurisdiction over subjects which are the key aspects of a welfare state. Public Health, insurance, education and welfare fall under its jurisdiction. However, the federal government has been able to use its spending power to national policies and programmes on these jurisdictional matters.

The two ways in which the federal government may provide funds for the abovementioned schemes are:

1. It may provide funds directly to Canadians in support of certain social policies.

The Millennium Scholarship Fund, introduced in 1988 by the Liberal federal government, is a program by the federal government which provides funding to students in order to reduce the cost of post-secondary education. The subject of post-secondary education falls under exclusive provincial control, even so the federal government uses its spending power to do so.

2. It may fund programmes through the provinces.

Under this approach the federal government transfers funds not directly to the Canadians but to provincial governments. Federal tax and funding transfers to the provinces in support of the provincially approved schemes under its jurisdiction of healthcare, education, childcare and welfare are all examples of the sort of federal action. The federal government defined the term 'spending term' as "*the power of parliament to make payments to people or institutions or governments for purposes on which it (parliament) does not necessarily have the power to*

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*legislate*³⁵. However, it is pertinent to mention here that the federal government does not give money to the provinces without any specific condition. It will almost always use its spending power to gain provincial compliance with federal initiatives. It uses the power to provide funds as a bargaining chip for provinces to adopt federal policies and programmes. Thus, even though the federal government does not have constitutional authority to legislate in provincial jurisdictions, it nevertheless uses its spending power to influence provincial action³⁶. This power was inferred from section 91.3³⁷ “*the power to levy taxes*”, section 91.1.A³⁸ “*to legislate in relation to public property*” and section 106³⁹ “*to appropriate federal funds*”. While the provinces mostly encourage and accept the federal spending in areas of provincial jurisdiction, this relationship has several internal struggles. Provinces that are more financially self-sufficient, take issue with the conditions imposed by the federal government. Such provinces would rather prefer to have complete discretion in how they use the federal funds. Another issue is related to the ‘*fiscal imbalance*’ that exists in federal and provincial financial situations. The proponents of ‘*fiscal imbalance*’ theory argue that the federal financial capacity is hefty in relation to its jurisdictional responsibilities. Alternatively, the financial capacity of provinces is very small in relation to the jurisdictional responsibilities and as such should be allowed to collect greater revenues at the expense of federal government. The province of Quebec has consistently opposed conditional financing. While the federal government allows for ‘opting out’ of the federally funded programmes, the provision is considered nothing more than an illusion for autonomy. Canada’s social welfare programmes have become a part of the Canadian identity⁴⁰. The development of Canadian welfare state post Second World War has resonated deeply with Canadians outside Quebec. The government of Quebec has consistently

³⁵ P.E. Trudeau, Federal-Provincial Grants and the Spending Power of Parliament, p. 4

³⁶ *Supra* note at 22.

³⁷ Constitution Act, 1867, s.91.3.

³⁸ Constitution Act, 1867, s.91.1.A.

³⁹ Constitution Act, 1867, s.106.

⁴⁰ Hamish Telford, “Federalism in multi-dimensional societies: Switzerland, Canada, and India in Comparative Perspective”, in Rekha Saxena, *Mapping Canadian Federalism for India* 52 (Konark Publishers, 2002).

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attempted to defend its sovereignty in social affairs and resisted federal government encroachment in its constitutional domain⁴¹.

IV. PARTY SYSTEM:

IV.I THE CANADIAN PARTY SYSTEM:

Canada's unity crisis has been a battleground for the arena of party politics. The Canadian party system has been remarkably robust and has contained a very divisive political debate. The major Canadian parties are, the Liberals, Conservatives, New Democrats, the Reforms and the Bloc. All the parties exercise high level of organizational coherence and discipline. The formal separation of federal and provincial parties started in 1964 with the separation of Quebec Liberal Party from the Liberal Party of Canada. Although the federal and provincial wing of large political parties have maintained an independent character, the de jure autonomy they now enjoy has allowed them to talk more freely about provincial interest. One of the biggest issues that Canada faces is whether the French speaking province of Quebec should separate from Canada and form its own country. The people who support this idea are known as separatists. The Bloc Quebecois is a leading separatist party. Founded in 1990 by Lucien Bouchard (b. 1938), a former Progressive Conservative cabinet minister, the Bloc was Canada's first national political party to openly support Quebec separation and remained the most popular political party in the province until quite recently. The Bloc only runs candidates in Quebec, and for this reason, it's impossible for it to ever form the government of Canada. But that's not its point — by voting Bloc, Quebecers are expressing their disdain for the Canadian system and essentially opting out of federal politics altogether. The Canadian party system has successfully institutionalized the separatist conflict within its democratic party politics. Such political conflict and its institutionalization have been a remarkable accomplishment.

⁴¹ *Ibid.*

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IV.II THE INDIAN PARTY SYSTEM:

The Indian Party system has exhibited various phases but two of them has to be exceptionally mentioned. The first phase was from 1947 to 1967 which was the era of 'congress hegemony'⁴², it could be termed as quasi-federal at best. The Congress Party won three election back-to-back with comfortable majority. The opposition in this phase was weak and largely disintegrated. In the state level also Congress party won in almost all states with small temporary exceptions in some states and Kashmir. The party system at this time was known simply as the "***Congress system***"⁴³. The Centre-state conflict was resolved within the parameters of Congress Party. The "***Congress System***"⁴⁴, however witnessed a blow in 1967 where it signalled rise multiparty systems especially at the state level. Although Congress came into power at the Centre, in many of the state elections i.e., half a dozen state elections Congress was swept aside. Between 1967 and 1969, there were nine states with parties or coalitions without Congress. However, most of these coalitions were unstable and presidents' rule was applied in states like Punjab, Kerala, Manipur, Karnataka and others. Since a second party system was proliferated at the State level. It led to several inter-governmental conflict. Such conflicts can also be attributed to the fact there was no change in the quasi-federal constitutional framework or in the fiscal arrangement. Several small new governments at state level made demands to renew the federal structure. In 1971, the government of Tamil Nadu led by the ***DMK party*** was the first to take on the question of centre-state relations on a political level. The comprehensive document was prepared by former ***Supreme Court Justice P.V. Rajamannar*** and it called for a substantial restructuring of Indian federalism. Although, CPI(M) operative mainly in Kerela, West Bengal and Tripura between 1967 and 1969 did raise the issue of centre-state relation but the Rajamannar document is the first substantial document which raised the issue of restructuring of the centre-state relations in India. It dealt with the political, financial and economic relations between the centre

⁴² *Id* at 37.

⁴³ Rajani Kothari, "The Congress System in India", 4 *Asian Survey* 12 (1964).

⁴⁴ *Ibid.*

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and state. The Akali Dal in Punjab adopted the Anandpur Sahib resolution in 1973 which demanded for separate nation for Sikhs and called for a major transfer of powers. The enormous increase in coercive power of the central government during emergency and further retaliation from the state governments led to the strain in centre-state relations.

IV.III THE 16TH CONSTITUTIONAL AMENDMENT:

In 1963, The Constitution (Sixteenth Amendment) Bill, 1963 was introduced. Informally known as the '*Anti-Secession Bill*'. It inserted the word 'the sovereignty and integrity of India' in article 19(2)⁴⁵ which created one more exception to the right of free speech and expression given under article 19(1)(a)⁴⁶. The chief target of this amendment was the Southern party DMK, which advocated secession of parts of the south and creation of a separate nation state called '*Dravida Nadu*' or '*Tamilnad*'. However, when this amendment came into action the call for secession in the country had died down. This bill also introduces an oath taken by any person who was elected by or even nominated as a candidate to fill a seat for Lok Sabha, Rajya Sabha or any state legislature. It required to swear that they will "*bear true faith and allegiance to the constitution of India*" and that they will "*uphold the sovereignty and integrity of India*"⁴⁷. The structure and processes of Indian federation was affected by the Congress party system, however after the crumbling of the Old Congress system, a new facet of federalism and multiparty system emerged in India. The party system in India, however remained quasi-federal. The principle of centralism led to the strain in centre-state relations.

V. CONCLUSION:

In this paper, we have examined the relationship between the federal structure of two countries. The federal structure of both Canada and India are very different. However, in practicality we can see that the structure of federalism practiced in Canada is not very different from the

⁴⁵ The Constitution of India, art.19(2).

⁴⁶ The Constitution of India, art.19(1)(a).

⁴⁷ The Constitution of India, art.19.

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federalism practiced in India. Where the Indian Constitution gives power to the Union government to legislate on matters provided in state list also under certain conditions, the central government of Canada also has certain powers under it to reserve certain acts passed by the legislature. For the purpose of this paper, we have compared the federal structure of both the countries on three points. First, the constitution and various provisions in the constitution which are related to the federal structure of the country. From the above discussion we can rightly claim that the several principles of a truly federal structure are not provided in the Indian Constitution. It is a quasi-federal country with a strong centre. On the other hand, Canada also follows federal structure of governance, however, the form of governance in Canada is still ambiguous. Canada in its true sense is not a federal country; however, the structure of federalism provided in the Constitution Act, 1867 is also not quasi-federal. Another dimension on which we compared the countries was on the fiscal federalism practiced by each of them. The structure of fiscal federalism in India and in Canada is quasi-federal. The resources for development with the state or province is very less as compared to the resources available with the Centre. The state or province has to borrow from the Centre which leads to further strain in the centre-state relations. The last dimension for comparison was the party system in both the countries. The party system in India is in simple terms quasi-federal. In India, the change of power structure with congress rule all over India to emergence of regional governments and them winning the elections has also led to strain in the centre-state relations. The party system in Canada is federal in nature. There are several national parties and regional parties. However, all the parties practice coherence and discipline. There was no formal separation of national party and provincial party until 1964, due to the de jure autonomy provided to the regional parties have given them autonomy to talk freely about the provincial interests. The co-relation between federal structure of a country and its federal condition is indicated in **Table 1**.

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Table 1

	<i>Constitution</i>	+	<i>Fiscal Relations</i>	+	<i>Party System</i>	→	<i>Federal Condition</i>
<i>India</i>	Quasi-federal	+	Quasi-federal	+	Quasi-federal	→	unstable
<i>Canada</i>	Ambiguous	+	Quasi-federal	+	Highly Federal	→	Partially Stable

From Table no.1 we can fairly ascertain that the differences in the given dimensions and the difference in the consequence in relation to the social stability (as defined earlier) is a related factor. The separatist movement in India is far worse than in Canada. Even though both the countries almost follow the same concept of federalism, Indian separatist movement has a wider approach than the one in Canada. The central government in India is highly suspicious of any separatist tendencies and has always tried to silence any voice of separatism. The example of insurgency in the state of Jammu and Kashmir can be given here. Although the Kashmir issue is more complex but for the matter of understanding we can say quote this example. The central government from the time Jammu and Kashmir has received a special status has tried to abrogate article 370. There has been voices of separation from Kashmir and people of Kashmir has from time and again demanded for a separate nation. The struggle for a free Kashmir has been going on for more than five decades now. But on fifth August 2019, the government of India through a presidential order abrogated the special status of Kashmir and reduced its status to a Union territory. This is just one of the examples where the government has tried to suppress any separatist movement. As discussed above, the central government through 16th Constitutional amendment inserted 'sovereignty and integrity of India', this amendment was brought to suppress the movements by DMK in Tamil Nadu in 1968. The separatist movement in Canada is nothing in effect as compared to India. The Quebecers in Canada fight a quiet revolution. They only insist upon sovereignty to in their own jurisdiction and sufficient revenue to carry the sovereignty in its true meaning. Although now Quebecers

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reject federalism in favour of independence⁴⁸. The concept of ‘renewed federalism’ has taken a substitute form. The answer to the difference of the separatist movements in Canada and India lies both in the constitution of the respective country and the nature of the party system. In Canada, almost all intergovernmental disagreements are sought through negotiations, they are mostly public confrontations although within the democratic party framework. The Canadian state has had made a distinction between the legitimate forms of democratic forces and armed rebellions. This separation has led to more peaceful democratic separatist movement. However, the condition of India is a complete contrast to that of Canada. As discussed above, the government of India has always tried to repress any separatist movements by completely dissolving the state government. Thus, application of such harsh measures has made the federal structure of India weak and has created reservations in the minds of its citizens. Thus, when a democratic party is not given a space to operate and exercise its democratic right it leads to regional instability and more separatist movements.

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