

## Re-Examination of Federal Theories: Prospect and Challenges

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### Abstract

Literally and historically federalism is the result of an agreement. It is when two or more sovereign States resolve to surrender a part of their sovereignty and join hands to constitute a new nation, a federal polity is born. It is a union without the constituting units losing their own identities (Kashyap, 2012). Irrespective of any variant of federal polity, federalism is relevant only in a situation where the pluralism is territorially based, where particular groups are concentrated in separate territorial units or where the societal diversities are territorially identifiable, definable and separable. It is an arrangement between separate territorial entities to come together or to avoid break-up and stay united by sharing power through free democratic will. In fact, in large nations with multiplicity of diversities, federalism is the only way to democracy. It is also generally understood that the actual functioning of the federal system in any country does not depend on the nature of the constitution or the general legal framework but on the various factors that influence the political processes in the country. The paper aims to analyze and highlight the recent challenges faced by various federal systems all over the world. The changing circumstances like economic crisis, global war, globalization and international terrorism and launching of functional federalism provide a strong input on the subject for a re-examination of various approaches to make it more effective, purposeful and development-oriented.

**Key words:** Federalism; Classical; Modern; Challenges and globalisation

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### 1. THEORIES OF MODERN FEDERALISM

Conceptually, there are three categories of theories of federalism, namely-classical theory of federalism, origin theory of federalism and functional theory of federalism. In the modern period, the Constitution of the United States, of 1787, is treated as the first experiment in establishing a federal system of government. Hereafter federalism as a mode of political organisation was embodied in the constitution of Switzerland, the Dominion of Canada and the Commonwealth of Australia and India. However, K. C. Wheare, a leading exponent of federalism conceded in 1945 that under the pressure of war and economic crises the trend in existing federations was towards a concentration of central powers sufficient in some cases to threaten the federal principle. But in 1953, Max Beloff noticed that federalism was enjoying “a widespread popularity such as it had never known before” (Palekar, 2006). The traditional practice of upholding the American federalism as the ideal one had become obsolete.

### 2. CLASSICAL THEORY

The classical theory of federalism tries to explain first what federalism is. In line, Lord Bryce, K. C. Wheare gave a traditional concept of federalism. In order to assess whether a constitution is federal or not. He applied the test as follows:

The test which I apply for Federal Government is then simply this. Does a system of government embody prominently a division of power between general and regional authorities, each

of which, in its own sphere, is coordinated with the other's and independent of them? If so, that government is federal. (Wheare, 1963)

The other outstanding exponents of the classical theory were Dicey, Harrison Moore, Jethrow Brown, Robert Garran. An eminent Australian scholar Robert Garran, while defined federalism as "a form of government in which sovereignty or political power is divided between the central and local governments, so that each of them within its own sphere is independent of the other." (Garren, 1929). Lord Bryce added further, "the system was like a great factory where in two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, yet each set doing its own work without touching or hampering the other" (Grodzins, 1967). In order to make the independence of each government real and secure, the classical theorists enunciate the following conditions for a federal system: (a) a written constitution, (b) the constitution is to be rigid, (c) there is to be an independent judiciary, (d) Both levels of government directly operate on the life of the citizens; and (c) there should be allocation of adequate sources of revenue for the government at each level, general and regional.

Traditionally the study of federal systems has been focused upon the constitutional and legislative framework within which the two sets of government, one central and the other of component units, operate together. It attempts to explain federalism in juristic terms. Further it enables us to distinguish a federal polity from a unitary state where the constituent governments exercise their powers in subordination to the will and discretion of the general or central government of the whole country. The theory of classical federalism is a static notion which takes the relationship between the national government and the states as something fixed for all times. The critics of classical theory also raise objections about the use of the term "independent" to represent the relationship between the general government and the regional governments in a federal political system. "Independence", they apprehend, might mean isolation. But if a federal polity is to be a working system, neither the general government nor the regional government can operate in isolation from the other. For a more appropriate expression of the relationship between the general government and regional governments in a federation, some modern federalists have preferred the words like "potentiality and indivisibility", "coordinate" and "autonomy" to "independence". To avoid the particular term Professor Livingston had redefined the federal government as a

form of political and constitutional organisation that unites into a single polity a number of diversified groups or component politics so that the personality and individuality of component parts are largely preserved while creating in the new totality a separate and distinct political and constitutional unit. (Livingston, 1956)

### 3. ORIGIN THEORY

The original theory of federalism explains the circumstances favourable to the establishment of a federal system and which thereby seeks to define the federalism in terms of the circumstantial factors and forces. As such it includes three categories of definitions: (a) the sociological theory, (b) the multiple-factor theory, and (c) the political theory. William S. Livingston is recognised to be the first exponent of the sociological theory. The central thesis of the sociological theory is that it is the federal nature of society that gives birth to the federal political system. According to him a federal society is one which contains within its fold elements of diversity. Usually, diversity is caused by differences of economic interests, religion, race, nationality, language, separation by great distances, differences in historical background, previous existence as independent states or separate colonies and dissimilarity in social and political institutions. Another sociological approach was applied by Wildavsky who distinguish "social federalism from structural federalism". He cites the Commonwealth of Australia as an example of structural federalism, a framework devised and adopted to retain the unity of the Australian people as a nation. To him the United States serves as a good example of "social federalism" adopted because of the social make-up of territorial, religious and other diversities located in distinct geographical areas, corresponding roughly to boundaries of the states which united under the constitution of 1787 to form the federation of the United States.

However, the sociological view of Livingston and Wildavsky and others has not been spared of critical scrutiny. The critics have pointed out that it has merely narrated various kinds of diversity but he has not explained the factors which generate the desire among the diversities for establishing a general government within a federal framework. The chief drawback of the sociological theory is the absence of definite indices and criteria by which a federal society can be distinguished from a non-federal society. On account of its paradoxical claims Venkatragaiya therefore, considers the theory as unsatisfactory and concludes that "the idea of federal society on which the sociological theory rests is vague and full of ambiguities, each scholar interpreting it and its bearing on federalism in his own way" (Venkatrangaiya, 1971).

The multiple-factor theory was mainly enunciated by K. C. Wheare and Karl Deutsch in order to explain the origin of modern federations. It takes into account the necessary as well as the sufficient conditions of the birth of federal systems. For this type of federalism, Wheare lays stress on (a) the desire for union and the desire for establishing independent general governments, and (b) the capacity to give reality to the desire. Among the factors that together produce the desire for union the most noteworthy are a sense of military insecurity and

the need for common defence, a desire to be independent of a foreign regime, a hope for economic advantage, geographical neighbourhood, similarity of political institutions, and previous political associations in a loose treaty system or confederal union. The desire for union must be coupled with a similar desire for independence of regional governments. The desire for regional government is also motivated by several factors namely, previous existence as separate and distinct states or colonies, a divergence of economic interests, geographical factors favouring regional consciousness, dissimilarity of social institutions and so forth. However given both the desires, the desire for union as well as the desire for regional independence and identity, a right kind of leadership with the foresight and vision of statesmen would be necessary, as Wheare maintained, to devise a federal system for accommodating both the tendencies.

But in the multiple-factor theory Wheare lays down no criteria to determine capacity and perhaps it meant the capacity of the regional governments to raise the financial resources needed to maintain their autonomy. Although the theory lays emphasis on a combination of several factors that give birth to federalism but it does not adequately explain the creation of federal systems by the process of devolution or disaggregation. In the situation it is necessary to turn to the political theory of federalism which seeks to explain the origin of federal systems formed by aggregation and those established by disaggregation.

The political theory of federalism recognised that political motives play a dominant role in the origin of federal systems. The principal thesis of the political theory is that federalism is a solution to what is essentially and primarily a political problem. The solution is political because it centres around power and stands for the division of political power. The theory finds a forceful exposition of William H. Riker's book, *Federalism: Origin, Operation and Significance*. In the book Riker puts forward the thesis that federalism is one way of solving the problem of government in expanding societies. According to him federalism provides for an enlarged political community without the use of coercive and aggressive methods of imperialism. As a political solution, federalism is the result of a political bargain in the situation which follows either the collapse of an empire, or which seeks to strengthen the enlarged political community while respecting and protecting the autonomy of the constituent units. It reflects a bargain between those political leaders who desire to expand this territorial control over the whole area of the empire that collapses in order to meet military or diplomatic threat and are unable to extend their control by conquest, and those who stand for the independence of the constituent provinces to whom concessions are offered. This, according to him, constitutes the essence of the federal bargain.

The political theory of federalism is very useful as it represents federalism as essentially a political solution to different situations that involve the potency of a political bargain. It successfully explains the origin of older federations like that of the United States, Switzerland, Canada and Australia as well as the formation of the new federations since 1945, such as, India, Pakistan, Malaysia, Nigeria, West Indies etc.. The significance of the theory lies in the fact that it explains the origin of federations formed either by aggregation or by disaggregation. It, however, tries to explain the causes responsible for the creation and sustenance of a federal system of government, but it fails to point out how federalism, despite its extinction, tries to persist in the face of new challenges that have raised their heads in the present century.

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#### 4. FUNCTIONAL THEORY

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In line, the functional theory of federalism took its substance from the classical definition of federalism. It is based on the concept of "dual federalism" and acknowledges the existence of two coordinate and independent levels of government. The advocates of "dual federalism" claim that in a truly federal system the central and regional governments must have their respective demarcated spheres of activity in which each can operate independently of the other, and that the functional division between the two levels of government is the key to the maintenance of a genuine federal system. However, against the theory of "dual federalism", it is argued that in spite of constitutionally guaranteed demarcation of the spheres of functions and powers between them the two levels of government in a federal system are no longer substantially independent of each other. In fact, the emphasis has gradually shifted to their partnership, interaction, and interdependence in the performance of functions allocated to each of them. Even in context of American federal system the theory of "dual federalism" has been rejected by M. J. C. Vile and D. J. Elazar who suggested that the traditional conception of federalism as involving a sharp demarcation of responsibilities between two independent sets of sovereignties has never worked in practice in the United States.

Since the First World War the alterations in the working of the federalism in the old federations like the United States, Canada and Australia have been profound. The older constitutions of these federations have been adopted to fit the needs of the present time by the development of extra-constitutional devices such as administrative cooperation between governments, the coordination of state policies by conditional grants from the federal government, and the purchase of federal monopoly of the taxation of incomes and profits (Birch, 1955). The new constitutions, in general, included provisions for these

practices, and also for other means of securing flexibility. Thus, the reality has moved far away from what is called “classic federalism” and has given birth to the new phase of federalism in which the coordinate governments no longer work in isolation from one another. This view was also held by R. L. Watts who considered interdependence and cooperation between the two levels of government as a characteristic feature. An empirical study made by Watts of six new federal constitutions of India, Pakistan, Malaysia, Rhodesia and Nyasaland, Nigeria and the West Indies shows that “cooperative federalism” became the inevitable trend in their systems. However, in “cooperative federalism” financial dependence of the regional governments partially depends upon the general government and the administrative dependence of the latter is based upon the former.

## 5. FEDERALISM AND GLOBALISATION

In the current phase of global political economy or globalisation the federal systems of the developing countries has become market-oriented. Earlier, writers like Milton Friedman Keith Joseph in 1970s and Hayek in 1940s, criticised the Keynesian State as a paranoia to the market forces as it causes slow growth and recession consequent upon deficit budgeting and inflationary policies. Further factors like oil price fluctuations and the Multi National Corporations (MNCs) also began to assert in the direction of market-preserving federalism. This new phase of economic practices was entirely aimed at rolling back the State from its interventionist role in the economy. In coming years the movement had revitalised the concept of limited government (McGarry, 2002). Initial background for this was prepared by the concept of liberal democracy in the late medieval period which promised liberation from feudalism. On the other the modern democratic states also face their own crises of legitimacy due to a fulsome transition from the welfare state to *laissez faire*. The protagonists of globalisation rightly understood the situation and therefore tried to justify the transition by citing economic exigencies resulting from the “inefficiency” of the welfare state vis-a-vis the emergent new international political economy. Their argument is, indeed, that the Nation State has become too big for small problems and too small for big problems given the complex demands of the populace and multiple compulsions from the ever enlarging international political economy (Biju, 2007). Hence, the State restructuring programme of globalisation, right from the beginning, has been portrayed to be pro-people and pro-development.

On the other a critical reading of the inherent view of globalisation has also been made which falsify both the justification for globalisation and the supposed benefits it promises for the entire humanity. At the very outset, it should be noted that globalisation is a natural

outcome of the structural contradictions of the capitalist mode of production and is, therefore, part of its survival strategy. Globalisation today is also a by-product of the structural contradictions of western capitalism. The only difference is that unlike the earlier epoch, the new agenda of imperialism now gets support from the ruling class of the third world countries. It seems to be a “natural process” as far as its inner dynamics - adoption of privatization of national wealth and liberalisation of trade and capital flows is concerned. However, the real fact is that it is deliberately planned at the initial phase with utmost political calculation, economic management and ideological masquerading. The basic impetus to such a programme in the developing countries is from external sources—the MNCs, Multilateral Agencies for Aid and Development viz., World Bank and IMF and the developed capitalist states which have a comparative advantage in the open economic competition at the international level.

As a result of the asserted demand for opening the national economies, both the federal and unitary States have to ensure meaningful structural changes. Compared to other forms of State organisations and their governing institutions, the influence of globalisation on a federal State and its institutions is unique. The permeation of free market mechanism into a federation has to tackle the multiple level governmental institutions and State structures, which requires a special strategy. In the circumstances, each level of the government has to be accommodative to the permeation process. Pursuing the new strategy the centre undergoes a change in character to become market friendly and, thereafter, it devolves its powers to the units for following the same. It ultimately forces the centre to intervene arbitrarily in the affairs of the states. In addition, the concept of globalisation also redefines the relationship between market and State at each level of the federal structure in favour of the former. A primary analysis shows that the centre devolves to the units only that power which is essential for the purpose of market facilitation. Thus federal systems, due to their unique institutional features and theoretical lenience towards the liberal view of the State, provide much scope for globalisation on many counts.

In the process of initiating a market facilitating and later for sustaining it, each institution and policy having specific statutory role in deciding inter-governmental relations need overhauling (Miliband, 1979). Initiatives in this regard usually begin with changing the macro-economic policies in which the central government has a commanding power. The new macro-economic policies appear multiple compulsions upon the federating units and in turn cause problems to them as the units are responsible for maintaining the micro-economy. Under it, the structural adjustment means a re-modification of policy and readjustment of the institutional framework. Surely this alters the institutional frame of federal

governance. The policy change is more telling on those institutions which act as intermediaries between the centre and state governments—for instance agencies which allot central grants, apportion tax revenue and grant loans—as they have to reflect the term and conditions of the macro economic policies. These new criteria together with a drastic reduction in the federal grants in the name of promoting symmetry in developmental and/or consequent upon the general macro economic policies, cause practical difficulties for the federating units in micro economic management. All these trends further weaken regional political structures against the market. Since the market manages micro-economic affairs in accordance with the free play of demand/supply mechanism, the marginalised humanity finds no solace in the States' social security schemes. The emphasis is always to provide concessions to the ruling class at the cost of the poor rather than the other way round, bringing in its wake severe resource crunch.

## CONCLUSION

The initiation and further strengthening of globalisation, one of the fundamentals of the federal idea-autonomy of the units-also collapses in this era. At a time when national sovereignty itself is at a discount, the territorial authority and jurisdiction of the units would be conspicuous by their absence. Instead their authority is progressively eroded by the intervention of the omnipotent and constitutionally unfettered international market and the market facilitating national government. In the situation of the market preserving federalism reflects a unique power relation of the political economy. Theoretically, the emerging federal structure takes the form of an omnipotent, politically uncontrolled and, therefore, undemocratic international market at the top level; Nation States as market facilitators at the intermediary level; and federating units as obedient followers of the market facilitation policies at the bottom.

Thus, the emerging federal set up is full of theoretical contradictions. It poses certain practical constraints to pursue developmental policies due to the deprivation of a democratic role for the State in accordance with the majoritarian will. Besides these political and economic dimensions, cultural and linguistic differences have also contributed to the emergence of a new kind of environment which had its impact on the general nature of federalism. In particular the emergence of coalition politics has brought forward a new power equation in

which smaller states have found important position in the federal governance.

Above all, it needs to be remembered that only the spirit of “cooperative federalism” and not an attitude of dominance or superiority—can preserve the balance between the Union and the States and promote the good of the people. Under our constitutional system, no single entity can claim superiority. Sovereignty does not lie in anyone institution or in any one wing of the government. The power of governance is distributed in several organs and institutions for good governance. Thus, the element of cooperation, of seeking friendly counsel with each other and of ever keeping the larger end in view, is of paramount importance.

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