

## UNITARY FORM OF GOVERNMENT - A CONSTITUTIONAL AND COMPARATIVE CRITIQUE

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### ABSTRACT

*Unitary form of government commonly known as the unitary state is a sovereign state governed as a single entity in which the central government is the supreme authority or as Jean Bodin would refer to 'summum imperium'.<sup>1</sup> Before understanding what this article is about, let me define a thought that forms the core of this somewhat political, constitutional and legal discourse, the 'State'. The State is an abstract concept that is governed by an administrative apparatus called the government that includes sovereignty, territory and population. This article strives to delve into a detailed account of unitary states analyzing different aspects of the same. But before contemplating unitary states in detail it is essential to know about the diametrically opposite state which is the federal form of government. In a federal state, political authority is divided among two sets of governments, one working at the Centre and the other operating on a regional base. Both governments are representatives of the people, work for the people and are instituted by the people who in the modern sense are elected democratically. In a federal government, states divided on a regional basis have plenipotentiary yet not full sovereign powers but are constitutionally competent to govern their regions by enacting and enforcing laws. But the Union/Federal government has a supervisory role in regulating their affairs. Federalism, unlike unitary states, does not have a universal appeal. Roughly, only 25 countries out of the 193 countries recognized by the United Nations (UN) have a federal structure including large democracies like India, the United States, Brazil, Mexico etc.<sup>2</sup> But to concur with my opinion that federal states reflect democracy in its truest, purest and best form, one has to logically conclude that unitary forms of government do not illustrate modern democracy in the best way.*

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<sup>1</sup>Shingo Akimoto, 'The juridicization of politics in Bodin, heir to Machiavelli' (2018) 102 *Revue des sciences philosophiques et théologiques* 235, 249

<sup>2</sup>Forum of Federations, <https://forumfed.org/countries/> (accessed June 25, 2023 6:00 PM)

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## **INTRODUCTION- DEFINITION OF UNITARY GOVERNMENT**

Unitary government in its structure, essence and functioning can be aligned with Austin's maxim 'command of the sovereign'. It is a form of government in which all powers of administration and governance are vested with a single authority. It means that the Central government has 'unitary' powers to confer, invade, abolish and even decentralize governmental controls to other government bodies. The unitary government system is based on consistency, unity and identity because of which centralization and concentration of power is a top priority.

A unitary form of state may include separation of powers horizontally i.e., separation of executive, legislative and judicial powers within a political unit. But it may not include the separation of powers vertically i.e., between political units and subunits. This is to say that a unitary state may confer separation of powers but not distribution of power.

### **Here are some scholarly definitions of a unitary form of government -**

Renowned constitutional scholar and jurist A.V Dicey has termed a unitary state as the habitual exercise of the supreme legislative authority of one central power. Here Dicey who has given the concept of an immutable constitution has recognized the supremacy and primacy of the central legislature as a core feature of a unitary state. This definition is in accordance with the early unitary trends of the United Kingdom after the Glorious Revolution where legislative authority bound in the tenets of the Constitution was a phenomenon.

J.W Garner, an American political theorist however focuses on the centralization and concentration of executive power as a prerequisite for a unitary state when he states that a unitary form of government is where the whole power of the government is conferred by the Constitution upon one single, central order.

Unlike Dicey, who doesn't specify the constitutional requirements in a unitary state thus leaving room for the assumption that parliamentary sovereignty is within the constitutional framework, Prof. Garner establishes through his definition that the unitary power is beyond the ambit of the Constitution.

## MERITS OF UNITARY GOVERNMENT

Before addressing the demerits or inadequacies of the unitary form of government, it is necessary to enumerate some merits of the system before countering them as this article aims to do. Here are three merits of the unitary form of government - <sup>3</sup>

**Easy decision-making** - One of the most direct and primary merits of a unitary state is that the executive has fewer authorities to consult in the decision-making process including the implementation of laws and governance of the nation. This essentially means that the execution process saves time, unlike a federal state where regionally competent authorities have to be consulted and included in the process. For e.g.- For passing a constitutional amendment in India, the Government has to obtain the assent of a 2/3<sup>rd</sup> majority in the Parliament as well as the affirmative applications of 2/3<sup>rd</sup> of State legislatures.

**Absence of constitutional friction** - In a unitary form of government, as a single government administers the functioning of the State with no role of regional parts, there is the absence of constitutional conflict between the states and the Centre where often disputes arise as to how the powers should be exercised. For e.g.- We often witness disagreement and demarcation between the Centre and states from the opposition political party where the states' appeal to inefficient development in their regions is raised.

**Prevention of waste of human resources** - It is argued that having a unitary government with concentrated power facilitates the allocation and utilization of natural and human resources more efficiently and productively. Whereas having regional blocs with varied priorities and systems may only complicate the allocation and may even lead to wastage.

## DEMERITS OF UNITARY FORM OF GOVERNMENT

This part of the article aims to logically refute the merits of a unitary government stated above and lay a framework to analyze the constitutional machinery of 4 countries namely India, the UK, the United States and the People's Republic of China. Basically, it indicates how and why federal states are functionally better than unitary states. Here are 3 demerits of unitary states -

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<sup>3</sup> Eden Samuel Chukwuemeka APMC, 'Merits and Demerits of Unitary Form of Government' (BScholarly, 17 May 2020) <https://bscholarly.com/merits-demerits-unitary-system-government/> accessed June 25, 2023 6:00 PM

**Absence of consensus and inclusivity** - Since almost 3/4<sup>th</sup> of the unitary governments have recognized themselves as democracies, let's consider that as the premise to suggest how a unitary system is undemocratic in nature. Democracy reckons that State affairs should be participatory and responsive in nature not only horizontally i.e., executive, legislature and judiciary but also vertically. This requires equal recognition of all the local government bodies or at least the main regional bodies in the decision-making process that leads to holistic development. For e.g.- the 73<sup>rd</sup> constitutional amendment recognized the local self-government bodies giving them constitutional status and allowing absolute decentralization of power within.

**Unequal growth and development** - A unitary state already burdened with all the powers and duties of governing a country cannot focus on every region systematically without sharing its powers. If we scrutinize this from a different perspective, the constitutional friction and the regional government act as a pressure group that influences the Central government to equitably manage its attention towards all the states. In its absence, unequal growth and development can also lead to chaos and crisis in the country.

**Slow growth and development** - Unitary system of government usually causes slow economic growth and development in the country, especially in a heterogeneous economy. This is because only one central government cannot possibly bring about development in a country with different tribes and religions. But if the powers are shared between different units, each government will be able to focus and ensure rapid growth. For this reason, many scholars are of the view that; rapid economic development is more feasible in a federal system of government than in a unitary system of government.

## **COMPARATIVE STUDY OF FOUR COUNTRIES VIZ A VIZ UNITARY FORM OF GOVERNMENT**

After expounding the merits and demerits of a unitary form of government, it is essential to ascertain by doing a comparative analysis whether the countries subjected to constitutional examination are unitary states or not. The four countries studied are the UK, the United States, India and the People's Republic of China. Two of them i.e., India and China are relatively newer constitutional entities while the UK and the US are historically enriched polities and have witnessed a lot of developments viz a viz the form of governmental structure.

## THE UNITED KINGDOM

Terming the UK's constitutional Statehood schematic as unitary would be far too simplistic an observation. For understanding the details behind this statement, it is necessary to know the scheme of the Constitution of the United Kingdom. The notion that UK's Constitution is unwritten is anachronistic. It is an amalgamation of the Magna Carta, 1215, the Bill of Rights, 1689 and the Claim of Right Act, 1689.<sup>4</sup> The fact that it's uncoded into a single document is true. Originally, or let's say till 1998, the United Kingdom was a centralized unitary State. It acknowledged the legitimacy of regional and local government bodies to regulate but vested with the central executive, the authority to define, clarify and control that legitimacy which could be consolidated or even abolished as the Centre wished. But under Tony Blair's Labor Party administration, Devolution laws were passed by the Parliament in 1998 that conferred varying amounts of decision-making powers to Scotland, Ireland, Wales and a Mayor and Assembly in London.<sup>5</sup> With a series of Acts namely the Scotland Act<sup>6</sup>, Northern Ireland Act<sup>7</sup> and Wales Act<sup>8</sup>, the UK established an exhaustive legislative, governmental and judicial framework for all of them. This necessitates a federal mechanism where the powers of these three bodies are unambiguous. The Scottish, Irish and Welsh Parliaments led by their first ministers have autonomy to decide on certain matters but being a part of the UK, are even bound by the matters in which the UK Parliament holds primacy. As far as England is concerned, there's only a London Assembly that's subordinate to the UK Parliament but still has legislative competency in a balanced way. Peter Leyland, a legendary commentator on the Constitution of the United Kingdom has opined that the EU played an influential role in the devolution process of the UK and had encouraged its members about the advantages of devolved governments.<sup>9</sup> So categorically speaking, the UK is no longer a unitary state but follows the 'cooperative federalism' that shall be catered to while discussing the United States.

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<sup>4</sup> Political and Constitutional Reform Committee, House of Commons, *The UK Constitution- A Summary with options to reform* (2015)

<sup>5</sup> Government of United Kingdom, 'Devolution to Powers of Scotland, Wales and Northern Ireland' (18 February 2013) <https://www.gov.uk/guidance/devolution-of-powers-to-scotland-wales-and-northern-ireland> accessed June 25 2023 6:00 PM

<sup>6</sup> Scotland Act, 1998, s 1

<sup>7</sup> Northern Ireland Act, 1998, s 3

<sup>8</sup> Government of Wales Act, 1998, s 1

<sup>9</sup> Peter Leyland, *The Constitution of United Kingdom* (first published 2007, Hart Publishing)

## THE UNITED STATES OF AMERICA

The United States has always displayed and depicted federalism as a form of government in its constitutional journey. It has the uniqueness and distinction of being one of the very few Constitutions that was formulated ‘by the States’ collectively.<sup>10</sup> So, the spirit of federalism forms the core of the US Constitution. James Madison, the father of US constitutionalism writes in his ‘Federalist Papers’- “If Men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and the next place, oblige it to control itself.”<sup>11</sup> Thomas Jefferson, a founding father known for his Declaration of Independence said, “But every difference of opinion is not a difference of principle. We have been called by different names brethren of the same principle. We are all Republicans; we are all Federalists.” So, the states had a pivotal role to play in the constitutional constructions. Federalism was highly developed during Chief Justice John Marshall’s time and eventually culminated in the 10<sup>th</sup> Amendment being passed in 1961. It stated that the rights which were not vested in the United States by the Constitution are hereby validated to be those of the states and the people.<sup>12</sup> This was an attempt to consolidate states’ excessive ‘reserved power’ which is best explained by the theory of ‘dual federalism’. It can also be referred to as ‘layer-caked federalism’. One of the landmark Supreme Court cases which runs antithetical to dual federalism is *McCulloch vs Maryland* which established the scope of the ‘Necessary and proper clause’ in the United States Constitution as extending to the supremacy of the federal government over state laws unless necessary and proper jurisdiction of the states prevails.<sup>13</sup> It was hearing a legality of a tax imposed by the state of Maryland on a national bank. From here roots the theory of ‘cooperative federalism’ is metaphorically known as marble-cake federalism which holds a flexible relationship between the United States and the federations in which both work together on various issues. Significant in this aspect were the 16<sup>th</sup> and 17<sup>th</sup> Amendments. The 16<sup>th</sup> Amendment allowed Congress to collect and lay taxes on income without apportionment among several States.<sup>14</sup>

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<sup>10</sup> City University New York, US Government and Politics in Principle and Practice, ch 5

<sup>11</sup> James Madison and Alexander Hamilton, The Federalist Papers (first published 1788), Federalist No. 51

<sup>12</sup> U.S. Const., Tenth Amendment

<sup>13</sup> *McCullough vs Maryland* (1819) 17 U.S. 316

<sup>14</sup> U.S. Const., Sixteenth Amendment

And the 17<sup>th</sup> Amendment accorded the citizens the right to vote for their Senators directly.<sup>15</sup> So, without disturbing the federal fabric, these amendments restored the foremost status of the United States.

## PEOPLE'S REPUBLIC OF CHINA

The Constitution of the People's Republic of China was enacted and adopted in the year 1954 by the Mao Zedong administration. It has been subsequently repealed and re-enacted 3 times with the current version i.e., the 1982 Constitution in operation. The present Constitution has also been amended 5 times most draconianly by Mr. Xi Jinping in 2018 which enables him to rule China indefinitely as the amendment expunged the Presidential term limits.<sup>16</sup> One of the most pertinent criticisms of the Constitution is that it centers around and is limited to the Communist China Party (CCP) and hence appeals to the same. It is said that with the latest ultra vires amendment of 2018, the Constitution of China explicitly ignores the fundamentals of governance to be adhered to by the State so as to give leeway to the CCP to misuse and abuse the governance outside the constitutional tenets.<sup>17</sup> As a concrete case of concentration of power, this criticism can also be seen in the vertical separation of powers in Chinese governance. This doesn't mean that China is not divided into administrative and regional blocs to govern the regions. Due to its high population and large geographical area, China has 31 provinces and 5 autonomous regions for practical purposes. But these regions don't have any legislative and executive authorities to formulate laws that are region-specific. Every province is regulated by a governmental official appointed by the ruling party which essentially allows the Centre to establish its hegemony. Article 89 of the Chinese Constitution subsumes all the power to curtail or recognize the sovereignty of local/regional governments to the State Council.<sup>18</sup> Article 85 offers considerable discretion to the State Council to decide these matters which is led by the Premier who is in turn appointed by the President.<sup>19</sup> So, basically, all the exercise of power is delimited by the President.

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<sup>15</sup> U.S. Const., Seventeenth Amendment

<sup>16</sup> Library of the Congress, China: 2018 Constitutional Amendment Adopted, [https://www.loc.gov/item/global-legal-monitor/2018-05-18/china-2018-constitutional-amendment-adopted/#:~:text=Highlights%20of%20the%202018%20Amendment,%E2%80%9D%20\(Wei%2C%20supra\)](https://www.loc.gov/item/global-legal-monitor/2018-05-18/china-2018-constitutional-amendment-adopted/#:~:text=Highlights%20of%20the%202018%20Amendment,%E2%80%9D%20(Wei%2C%20supra)) accessed June 26, 2023 6:00 PM

<sup>17</sup> Ling Li and Wenzhang Zou, 'Governing the Constitutional Vacuum- Federalism, Rule of Law and Politburo Politics in China' (China Society Law Review, 21 November 2019) [https://brill.com/view/journals/clsr/4/1/article-p1\\_1.xml?ebody=Abstract%2FExcerpt](https://brill.com/view/journals/clsr/4/1/article-p1_1.xml?ebody=Abstract%2FExcerpt)

<sup>18</sup> Constitution of the People's Republic of China, Art 89

<sup>19</sup> Constitution of the People's Republic of China, Art 85, 86, 87

## THE REPUBLIC OF INDIA

“India that is Bharat shall be a Union of States. The States and territories thereof shall be specified in the First Schedule.”<sup>20</sup> Article 1 of the Constitution of India defines the Republic of India as a Union of States. Nani Palkhivala, an eminent jurist and a courtroom genius has interesting insights as to why India is federal in structure but with a unitary tilt in reality. Palkhivala stipulated that the Constitution Assembly incorporated the word Union over Centre to alienate itself from adopting a centralized unitary form of government where the states are dominated.<sup>21</sup> ‘Centre’ itself has a narrow scope which is constitutionally inconsistent as far as India is concerned. The word ‘Union’ however has a broader purview that inherits ‘cooperative federalism’ operational in the United States. Nehru’s famous ‘Objective Resolution’ speech that laid down the foundation of India’s unique model of federalism is a prerequisite. Nehru said,

“On this occasion, when the representatives of the Indian States are not present, I desire to make it clear how this Resolution will affect the Indian States. It has also been suggested, and the suggestion may take the form of an amendment laying down that since certain sections of the House are not present, the consideration of the Resolution may be postponed. In my opinion, such an amendment is not in keeping with the spirit of the times, because if we do not approve the first objective that we are placing before ourselves, before our country and before the world at large, our deliberations will become meaningless and lifeless, and the people will have no interest in our work. Our intention regarding the States must be early understood. We do desire that all sections of India should willingly participate in the future Indian Union but in what way and with what sort of government rests with them. The Resolution does not go into these details. It contains only the fundamentals. It imposes nothing on the States against their will. But for that, the States must understand their responsibilities.”

Pandit Nehru was a proponent of cooperative federalism that facilitated political stability. To comprehend India’s unitary tilt, we have to cognize what Dr. Durga Das Basu, India’s greatest constitutional commentator has written. He argues that Union has preeminence over

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<sup>20</sup> Constitution of India, 1950, Art 1

<sup>21</sup> Nani Palkhivala, *We the People* (first published 1984, UBS Publishers and Distributors Ltd. 1999)



the State legislature in normal times and even during the Proclamation of Emergency.<sup>22</sup> The Union can formulate legislation contained in the State list if it is convinced that doing so is in the 'national interest'. During the emergency, the Union has arbitrary powers to amend the State and Concurrent lists to include them in the Union list. But Dr. Basu refers to this as a 'tilt' because these provisions have been methodically drafted to even cater to exceptions. In the first case, the Union has to obtain a 2/3<sup>rd</sup> majority of the Council of States to move such motion and in the latter case, such a decision of the Parliament ceases to exist when the Proclamation is revoked. This indicates that the Indian Constitution was promulgated by the founders of the States.

## CONCLUSION

Democracy has a universal appeal in the modern world. The inference of this article would entail ascertaining whether the classic unitary form of government (not partly federal, partly unitary) fulfills the objectives of a democratic State. Democracy is established on the principle of the will of the people. A decentralized government machinery that ensures the will of the people and their personal liberties is imperative in a democratic status. In the case of concentrated power, there is a potential risk of what Lord Acton said, "Power corrupts and absolute power corrupts absolutely." State accountability and constitutionalism which enables limitations on the sovereignty of the State are better observed when the administrative apparatus is devolved in nature. Hence Nani Palkhivala's famous claim that States are not vassals of the Union and they will awaken to reclaim their status as envisaged by the Constitution expands the validity of federalism.

But at the same time, to ensure and facilitate the integration in governance, administration and resource-orientation, federal States must recognize the primacy of their Central legislature. Among all the countries whose comparative scrutiny has been done in this article, only India right from the beginning of its constitutional journey has adopted the model of co-operative federalism. This is evident from Dr. Ambedkar's quote- "The Constitution avoids a tight mold of federalism and could be both unitary and federal according to the requirements of time and circumstances.

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<sup>22</sup> Dr. Durga Das Basu, Introduction to the Constitution of India (first published 1960, Lexis Nexis 2015) 361-367