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الفدرالية كمفهوم ديناميكي: دراسة مقارنة للاتحاد الفيدرالي في دساتير الولايات المتحدة الأمريكية والهند والعراق

FEDERALISM A DYNAMIC CONCEPT: COMPARATIVE STUDY OF FEDERALISM IN THE CONSTITUTIONS OF UNITED STATES OF AMERICA, INDIA AND IRAQ

الباحث: الاستاذ المساعد الدكتور علي محمود يحيى

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الملخص: في الاتحادات الفيدرالية الثلاثة الأقدم وهي الولايات المتحدة الأمريكية وكندا وأستراليا ، وفي المراحل التطور ، كان المفهوم العملي السائد هو مفهوم الفيدرالية التنافسية التي تدل على روح المنافسة والتنافس بين المركز والولايات. لذلك ، تميزت المراحل التكوينية بنزاع حكومي دولي ، كانت الولايات مدركة تمامًا لسلطاتها وحقوقها ، وبالتالي ، استاءت من نمو قوى المركز وأي تعدٍ من قبله على مجالها. ولكن مع مرور الوقت ، أفسح مفهوم "الفيدرالية التنافسية" الطريق ببطء إلى الفيدرالية التعاونية. تم تعزيز هذا الاتجاه من خلال ثلاثة عوامل قوية.

النقطة المحورية في الدستور الفيدرالي هي تقسيم السلطات والوظائف بين المركز والولايات. يحتوي الدستور الهندي على مخطط تفصيلي للغاية لتوزيع السلطات والوظائف بين المركز والولايات. الهند منذ بدء الدستور تراقب النظام الفيدرالي التنافسي بين المركز والولايات ، والذي أدى الآن إلى فدرالية تعاونية. وعلى الرغم من الأحكام المتعلقة بالفيدرالية ، لا يزال هناك شرط إشكالي حول مستقبل الفيدرالية في العراق والسبب يعود إلى بعض الابتكارات والغموض في الدستور العراقي وكذلك المشاكل القانونية والسياسية حول الفيدرالية في العراق. يتناول البحث الحالي هذه الالتباسات والابتكارات.

الكلمات المفتاحية: دساتير، فدرالية، المركز، الاقليم، الاختصاصات، العراق، الهند، الولايات المتحدة، السلطات

Abstract:

In the three older Federations of the U.S.A., Canada and Australia, in the formative stages of development, the dominant operative concept was that of competitive federalism which denoted a spirit of competition and rivalry between the center and the states. The formative stages were, therefore, marked by intergovernmental disputed, the units were very conscious of their powers and rights and thus, resented the growth of the center's powers and any encroachment by it on their domain.

With the passage of time, however, the concept of 'competitive federalism' slowly gave way to co-

operative federalism. This trend has been promoted by three powerful factors.

The crux, the pivotal point of a federal constitution is the division of powers and functions between the center and the states.

The Indian constitution contains a very elaborate scheme of distribution of powers and functions between the center and the states. India from commencement of the constitution is observing competitive federalism between center and states, now which resulting in co-operative federalism.

In spite of provisions relating to federalism, there still exists a problematic condition about the future of federalism in Iraq and the reason is due to certain innovations and ambiguities in Iraqi constitution and also legal and political problems about federation in that country. The present article examines these ambiguities and innovations.

It is argued that institutional features of federalism and realities on the ground make Iraq uniquely vulnerable to secessionist pressures.

The purpose of the proposed Research work is to make a comparative study of federalisms of U.S.A. being the oldest federalism, India as largest

democracy possessing federal character and Iraq as recent conflicting federalism to know there working and to suggest necessary improvements if required for better working of federalisms in those countries.

Keywords: constitutions, federalism, center, region, jurisdiction, Iraq, India, the United States, authorities.

INTRODUCTION

It's indeed being a realistic paradigm that a countries sovereign status remains in existent on the sole aspect of co-operation and co-existence from its constituent units in varied socio-economic and political affairs thereat. In this respect, federalism could be considered as a "device by which plural qualities of a society are articulated and protected. It is devised to secure both regional autonomy and national unity. It is a product of historical forces in plural societies. If the forces of national unity very strong in such society, the central government shall have more powers. The strength of these regional and national forces changes from time to time in view of changing social, economic and political conditions and

compulsions. Thus federalism has been reflecting these changing historical conditions and compulsions.(1)

Significantly, it may also be ascertained that the modern western federal systems of U.S.A., Switzerland, Canada and Australia, existing in the present scenario of global socio-economic and political structures; reflects the successful dynamics of progressive federalism influencing other world sovereigns to follow suit.

A federal system can't be considered as an immutable one but that which warrants undergoing analytical re-examination at the periodic intervals; the root aim being not only to readjust but also to reconfirm the strategic regional or domestic equilibriums towards overcoming the emerging global socio-political situations and compulsions for betterment of the constituent units itself . it may further be submitted that "all federal systems, across the world do encounter problems and imbalances in the area of center-state relations, no matter how detailed and elaborate is the distribution of functions and

(١) Patil S. H., *Central Grants and State Autonomy*, Atlantic Publishers, New Delhi, 1995, p. 13

resources between the two levels; the federal process remains being a dynamic one.(1)

To be clearer, federalism does provides constitutional device towards bringing the notion of 'Unity in Diversity', in practice by harmonizing the opposing forces of both centripetal and centrifugal trends toward accomplishing the Common National Goals and objectives for the ultimate betterment of both the nation and the populace at large.

The fathers of the constitutions of U.S.A., Canada, Australia and India as well as Iraq, keeping in view of the linguistic, cultural, and regional diversities, have opted for a novel type of federal governments in their respective constitutions; efficient enough to satisfy the diverse socio - cultural requirements on the one hand and bringing out unity and solidarity on the other. Indeed the working of these federations have proved successfully with some situational bickering now and then. The federating units of these countries often demand for more autonomy; sometimes even raise voices against provision relating to state emergency provision in their Constitution and the offices of the Governor, etc. Keeping in view of these demands, the present study

(1) Maheshwary S. R., *Indian Administration*, VI Edn. Orient Longman Limited, New Delhi, 2001, P. 376

entitled- " **FEDERALISM A DYNAMIC CONCEPT: COMPARATIVE STUDY OF FEDERALISMS OF UNITED STAES OF AMERICA, INDIA AND IRAQ**" is an honest attempt to identify the working of federalism in current scenario from their inception.

I. **Objectives:** The present work is laden with the following objectives:

1) To trace out the meaning and nature of the concept of federalism.

2) To discuss about the nature, organization and functioning of U.S.A., Indian and Iraqi federations.

3) To compare federalisms of U.S.A, India and Iraq to understand their working.

4) To suggest various measures to increase cooperation between the union and the states.

II. Methodology:

In order to collect the relevant data for purpose of research, work methodology is indispensible. Research simply means search for facts, answers to the questions and solutions to problems. Research invariably becomes a systematic, controlled,

empirical and critical owing to the investigation of hypothetical prepositions about the presumed relations amongst the natural phenomena concerned about the same. Hence in order to discover the exact truth the doctrinal method of research has been relied upon. Historical, Documentary and descriptive methods are also relied upon for the research.

III. Plan of the Study:

This research paper has been systematically divided into seven chapters whereby Chapter one deals with the introductory part. It starts with the statement of the problem, objectives of the study, and methodology. Chapter two examines meaning and definition of federation. Chapter three tries to analyse features of federalism. Chapter four studies federal states in the world. Chapter five examines the nature of federalism. Chapter Six deals with comparative study of federalisms of U.S.A., India and Iraq. Chapter seven being the last chapter presents the conclusion, findings of the study and some suggestions for improvements.

I.MEANING AND DEFINATION OF FEDERATION:

The term ‘Federation’ derived from a latin word ‘foedus’, which means ‘agreement’ or ‘treaty’.Literally viewed federation means contract or a treaty among a small states, which eventually

forms a unified single new state with distinct sovereign political status. In other words, federation means a union of several states that are brought about through the instrumentality of treaty or agreement. When analysed from this aspect, two conditions warrants being fulfilled for the formation of any political federation. It includes existence of several states "which desire union but not unity"(1) and a formal statutory treaty or agreement arrives at for the same.

The aim of federation is specifically "to reconcile national unity and power along with securing the maintenance of 'states right'". As such, even though the term 'federation' is generally being used to mean an association of states; yet every kind of such association cannot be brought under the ambit of federation. The United States of America and the Union of India can be ascribed as better examples of association of states, but in contrast to it, the U.N.O being the conglomeration of sovereign states, do not have any claim to the status of a federation.

Pragmatically, the word "federation" could be envisaged depicting multiple meanings with diverse hues and colours. As such, it is indeed difficult to ascertain whether a particular political system is federal in nature since the concept in itself

(1) Dicey A.V, op. cit. p. 141

lacks definitiveness and stable meaning. But as its core, does lay issues pertaining to the devolution of power along with sharing of the authority making decision, on varied issues on national or regional concern, between minimum of the two institutions of governance. However the ambit of the concept remain sufficiently open-ended; capable enough accommodating significantly different issues, structures and institutions within its domain. It invariably includes the 'bottom up' models like those of the U.S.A., with virtually sovereign provincial units ceding power to form a union. The concept even vies including top-down models like the one prevalent under the Indian political system, with a strong unitary structure aimed carving out different federated units for the better management of the sovereign political system of governance prevalent here at. Broadly speaking, there could be the two basic approaches that may abet understanding the meaning of the concept of federation. It includes the traditionalist and the modern one.

Traditionally Prof. K.C. Wheare, defines the federal government as a set up where "the method of dividing powers is so…" that the general and regional governments are each within a sphere

co-ordinate and independent".[1] His definition indeed specifies three important issues that relates to the concept of 'federalism'. Invariably, in respect to such a traditional approach, for Prof. K.C. Wheare, there exists only four federations in the world signifying its true nature and alike. These includes United States of America, Australia, Canada and Switzerland. However, Prof. Wheare has put worlds other existing federations in the category of 'quasi-federations'.

Similarly, J. W. Garner too followed the aforesaid traditional approach and subsequently defined federal government being 'a system in which the totality of governmental powers are divided and distributed by the national constitution between the national government and the governments of individual states'.

In the same vein, B. K. Gokhale has envisaged that 'a government is better known as federal if it has a dual polity'. Another political scientist Montesquieu too has defined the concept as 'a convention by which several similar states agree to become members of a larger one.

It is observed that the increased role of state in nation building, in the Third World Countries, has somehow or rather

(1) Wheare K.C., *Modern Constitutions*, Oxford University Press, London, 1969. p. 13

complicated the problem of perfect division of powers between the national and regional governments. Moreover, the complexity of the federal society and polity also makes a perfect division of powers impossible. As such, the asymmetry in the economic strength of territorial groups gets reflected in the political domination of the powerful regions within the federation itself. These factors eventually abet strengthening the institution of national government. Significantly, it is indeed pertinent mentioning here in that the statesmen of the Third World Countries were pragmatically evolving different shades of federal government that suits requirement to their particular federal societies, with least regard for the theoretical aspect of this concept.

The traditional and classical approach has its own limitations. It does not taken in to consideration the compulsion of changing socio-economic forces of modern times.

Thus on the strict application of the traditional approach, “it is not possible to find a single example of true federation in the world”.(1)

(1) Piyar S. P., *Federalism and Social Change*, Asian Publishing House, Bombay, 1961, pp-28-29.

The modern approach to federalism found its recognition and formulation aftermath of Second World War and writing of eminent scholars like Birch and Vile. Significantly, by emphasizing the idea of interdependence; former had defined federalism by saying that, " 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 co-ordinate each other."(1) However, if this definition is compared with the definition given by Prof. Wheare; then it certainly appear that "whereas Prof. K. C. Wheare insist on granting independent status of the federating states, in the definition of Prof. Birch there is no such pre-requisite for the same'.(2)

On the basis of above it may be submitted that the division of power should be devised in such a manner and proportion that it neither undermine any of the regional identities of the territorial groups nor at the same time, it also don't give any room for the growth of secessionist forces. The later would eventually abet sabotaging any of the progressive initiatives towards ensuring national unity. This could precisely be construed as an idea

(1) Birch A. H., *Federalism, Finance and Legislation*, Oxford University Press, London, 1955 p. 306.
(2) *Ibid*

behind the principles of independent national and regional governments.

I.A.FEATURES OF FEDERALISM:

Based on the views expressed by the experts and luminaries in the arena of political theory and practices; it is worth mentioning here that a genuine federation must possess the following characteristics. These includes:

1) A federal state involves a distinct division of powers between the federal government and its other component units. In fact, such division of powers between the national and regional governments serve as a crucial factor in determining characteristics of federalism in a nation. Moreover, the division of power may also leave two levels of governments either independent of each other or interdependent on one another. Such interdependence invariably facilitate emerging of the highly empowered national or regional governments.

2) The Constitution must almost necessarily be written one defining the specific relations between the central and regional governments. In this respect Prof. Dicey has also argued that "a constitution based upon understandings or conventions would be certain to generate misunderstandings and disagreements".[1]

(1) *Supra* 3 at; 83

3) In the federal system owing to the rigid nature of the constitution, the same is not amended either by the central or state legislatures under their ordinary procedure of law making. In this respect A. V. Dicey has envisaged that the law of the constitution must either be immutable or, else capable of being changed only by some authority above and beyond the ordinary legislative bodies, whether federal or state legislatures existing under the constitution".(1) K. C. Wheare too asserts that "the power of amending the constitution, so far at least as concern to those provisions of the constitution which regulates the status and powers of the general and regional governments, should not be confined exclusively either to the federal government or the regional governments".(2) He also suggest that, "practically it is wise enough to associate both the governments in the process of amending the constitution".(3)

4) Since a division of powers is an essential feature of a federation; it remains quite natural that their may be disputes about ensuing interpretation to the terms of the federation. In this respect J.S.Mill has suggested that "the constitutional limits

(1) *Id*; at 142
(2) Wheare K.C., *The History of Federal Government*, Oxford University Press, London, 1963, p.57
(3) Kapoor A.C., *Principles of Political Science*, S. Chand & Company., New Delhi, 1977 p. 326

of authority of each should be precisely and clearly defined and the power to decide between in any case of dispute should reside in an umpire independent of both".(1)

5) A federal state also derives its power from the constitution itself. Every executive, legislative or judicial power, belonging to the federation or its component states, remain to subordinate to and controlled by the constitution. In this respect K. C. Wheare says that if the government ought to be federal, its constitution must be supreme. In fact, supremacy of the constitution implies that "the terms of the agreement which establishes the general and regional governments and which distributes powers between them must be binding upon the general and regional governments. Such a scenario remains being a logical necessity from the definition of the federal government itself.(2)

6) In any of the federal states, there also exists two governments, namely, federal government and state governments. In this respect federal state construe being a fusion of several states into a single entity in regard to the matters affecting common interest while each component state continues to enjoy autonomy in regard to the other matters. In fact, the

(1) *Id*;at 328
(2) *Supra* 8

component states and the federal governments possess equal status and both derive their authority from the same source viz. the constitution of the land. However, any component of the states has no right to secede from the federation at its will. Indeed such provision do distinguishes the political concept of a federation from the related notion of confederation.

I.B.FEDERAL STATES IN THE WORLD

In the modern period the Constitution of the United States of 1787 could be treated as the first experiment towards establishing a federal system of government. As such, when the United States demonstrated that a federal union could work successfully, many other countries whose situation were similar to followed suit. For instance, federalism as one of the mode of political organization was embodied in the constitutions of Swiss Confederation (1848), the dominion of Canada (1867), and the Commonwealth of Australia (1900). These are the federal unions that are closely patterned on that of the United States of America.

Such trends of increasing appeal of the federal idea are discernible even in the twentieth century inspite of the opinion of some critics like Harold J. Laski that, “the epoch of

federalism is over".(1) In this respect even Prof. K. C. Wheare, a leading exponent of federalism, did 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 1935, Max Bellof noticed that "federalism was enjoying a widespread popularity such as it had never known before".(2)

Today federalism could be considered as a flourishing form of government. A look at the remarkable array of constitutions, enacted and adopted since the end of the World War-II would eventually show how federalism has been taken to as a means to political unity amongst the new nations in the Europe, South America, Asia and Africa.

A.C.NATURE OF FEDERALISM

Strategically viewed 'federalism' could be studied in light of two aspects that signify its static and dynamic nature. Somehow

(1) Watts R. L., op. cit. p.5
(2) M. Bellof, *The Federal Solution in its Application to Europe and Africa, in Political Studies*, Oxford University Press, London, 1935 p. 114

or rather it is both structure vis-a vis a process. It has also been defined as "a method of dividing powers so that the general and regional governments are each within a sphere, co-ordinate and independent".(1)

In this respect, Grozins Morton too state that, "federalism is the device for dividing decisions and functions of government".(2)

It may also be ascertained that even though the idea of division of powers and functions, within the ambit of federalism is of importance; yet the dynamic nature of federal relations also ought not to be ignored. Carl Fredrick has also rightly pointed out:

"federalism is also the process of federalizing a political community, that is to say, the prcess by which a number of separate political communities enter intop arrangements for working out solutions, adopting joint policies, and making joint decisions on joint problems and conversely, is also the process

(1) *Supra* 8 at;11
(2) Grodzins Morton, *The Federal System: Report of the Presidents Commission on National Goals of Americans*, 1960, p. 265

by which a unitary political community becomes differentiated into a federally organized well".(1)

In fact, a federal society may ascribe being characterized by the continuance existence of both centripetal and centrifugal forces; whereby the former tends towards integration and unity, while the later leans for disintegration and disunity.as such, federalism do serves as a constitutional device aimed bringing about unity in diversity by harmonizing those opposing and contradictory forces, within a sovereign, that impedes growth and development towards achievement of common national goals.

In this respect, it may certainly be envisaged that, "Federalism by its very essence a compromise and a pact.it is compromise in the sense that when national consensus on all thing is not desirable or cannot readily obtain, the area of consensus is reduced in order that consensus on some things be reached.it is pact or treaty in the sense that terms of that compromise cannot be changed unilaterally. That is not to say that the terms are the terms are fixed forever, but only that in changing them every effort must be made to not destroy the

(1) Phul Chand, "*Federalism and the Political Parties" Journal of Constitutional and Parliamentary studies,* Vol.-5 No.1, January-March, 1972, p. 147

national government or other state government, and the national government may not dissolve the states. Thus the union is one and inseparable".(1)

Apart from the above, it may be even envisaged that "the essence of federal government is the distribution of powers between the national government and the constituent units. The constitution provides for basic division of powers, but the dynamic nature of federal system is illustrated by the judicial and political interpretation which have made it possible for national problems to be solved by unilateral action on the part of the national government, through the co-operation of the central government and the states, or by co-operation among the states".(2)

However realistically viewed each federation could be found possessing its own way and pattern of distributing powers according to historical conditions, needs of the state and the genus of the people.

Since federal relations are dynamic by nature, in actual practice the inherent instincts by nature of status and self-ego

(1) Barodat, P. L., *Political Ideologies: Their origin and Impact*, Prentice Hall, England, 1984, p. 126.
(2) Hathom, B. Guy, Peuniman R. Howard and Zink. Harrold, *Government and Politics in the United States*, D. Vnnostrand Inc, New York, 1963, p. 147

prevents human being to be ruled by any of the rigid definitions and static patterns forcefully imposed on them. As such, each of the federal societies, being faced with its own peculiar problem, has to works out it own federal scheme, often after bitter and protracted negotiations with the concerned parties.

In this respect, it is worth quoting Livingston, "The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces- social, economic, political, and cultural,-that have made the outward forms of federalism necessary. The essence of federalism lies not in the constitutional or institutional structure, but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected".(1)

Basically federation comes into being when there exists two conditions- a body of countries so closely connected by locality, by history, by race or the like, as to be capable of bearing, in the eyes of their inhabitants and a very peculiar state of sentiments amongst the inhabitants of the countries, which it is proposed to unite.

"They must desire union and must not desire unity", federalism by the establishment of a single political system, helps in achieving a compromise between the concurrent

(1) *Supra* 16 at 148

demands for union and for territorial diversity within a society. But the mere existence of such desire for union could not be considered sufficient enough for ensuing formation of a viable federal state. These desires ought to be activated and energized, and the same depends upon the appearance of capable and dynamic leadership at the appropriate time and moment. As such, the legal framework of any of the federal solutions is hammered out through prolonged and protracted negotiations that eventually reflect the impact of political, economic, social, and historical forces that exists within the country concerned.

II.COMPARATIVE STUDY OF FEDERALISMS OF AMERICA, IRAQ AND INDIA

It is worth pointing out that the framers of Indian constitution has built the fabric of federalism within it on the three pillars, viz. strong center, flexibility and co-operative federalism. Somehow or rather, these concepts are not in any way novel as in varying degrees they have come to be accepted and subsequently translated into practice, in the federations of U.S.A., Canada and Australia. The framers of the Indian constitution have learned a good deal from the experiences along with the problems that were faced and its solutions, so

present within the ambit of these federations. To a large extent their approach to the structuring of Indian federalism was also conditioned in good measure by that knowledge itself. It might therefore be worthwhile to have a brief survey of the trends in these federations as a background to the Indian federalism.

I.A. FEDERALISM IN U.S.A.

In this respect, Larry N. Gerston has asserted in his work that, In the "over the top" drama of twenty-first century communications hyperbole often tramples reality. So when the American federalism described as "the great political experiment" in a representative democracy; it would certainly be easy seeing why such a claim might be dismissed as just another example of the language excesses that commonly sprinkles our daily conversations. But unlike characterization that often exaggerate beyond the pale without any basis or fact. American federalism is a great practical experiment-a nevel design that has resulted in a template for countless other governments throughout the world to emulate over the past two centuries".(1) In fact, American federalism do takes on the different combination of characteristics while depending upon the

(1) Larry N. Gerston, 2006, p.5

circumstances, values and players that are related each of the issues. Basically there are four important characteristics of federalism to be acknowledged, i.e., consensus, co-operation, conflict, and chaos which often interact with values, issues and policymakers in distinct combinations or patterns.(1) There is also a substantive impact of international development on the functioning of all the governments to which United States of America is no exception. The global trade agreement too plyed a vital role while demanding human rights and to fight against international terrorism that are aimed towards increasing pressure on the centralizing responsibilities of the government at large. All of these pressures are indeed destined bringing up new changes into the American federalism which is at the heart of its constitutional structure. Even in American federalism, limited poers and responsibilities are delegated to the federal government while keeping all other powers solely reserved for the states.(2)

II.A. HISTORICAL BACKGROUND

(1) *Ibid*

(2) Ellis Katz., '*The United States of America: A Federal Government of Limited Poers*" inRoul Blinedbather & Abbigail Ostien (eds) Dialogues on Legislative and Executive Governance in Federal Countries, Vol.2 Mc Gill Queen's University Press, Canada, 2003, p-p. 33-35, p.33

Charles K. Burdick, in his article, "The Treaty Making Power", has asserted that before the writing and ratification of the constitution, the original American States were in fact fully constitutional functioning bodies. Two reasons could be assigned for the same. Firstly, the American Federal system could not simply be considered as a decentralized hierarchy. Even the states are not administrative units and exist only to implement the policies that were made by the central government. Rather, these fully pursue the constitutional polities in their own right and are also empowered by the American people for the purpose of a making a wide range of policies for the sake of their own citizens. Secondly, it was also expected by the framers that the states would consrue being the leading policymakers in the federal system. In fact, the powers assigned to the federal government are comparatively few in number which especially deals with the foreign and military affairs and other economic issues of national interest like those that are apparent in the free flow of commerce across state lines. More or less, most of the domestic policy issues were also left to the states for being determined keeping in view their own histories, needs and cultures.

There has been also a concord of views on one point since the days of the Continental Congress where the treaty making powers reside solely in the national government. In this respect, it may be ascertained that even though the Continental Congress had no express power to enter into treaties, yet it, even before the Declaration of Independence, it did not delayed in presuming that it was authorized to exercise this power by implication from its character in its capacity of being the only national organ which was set up to deal with the external affairs, and from its power to subsequently direct the war for independence. It has also chosen a committee on June 12, 1776 for a preparation of plan treaties being proposed to foreign powers and in 1778 treaties of commerce and alliance with France was ratified by the Congress as if without any thought of submitting them to the several states. The exercise of this power by the Congress was later approved by the Supreme Court of the United States. Various other negotiations for treaties were also undertaken by representatives of the Continental Congress though none other came to happen before the adoption of the Articles of Confederation. These Articles proposed in 1777 but not adopted until 1781, authorized the absolute right to the Congress to enter into the treaties. The constitution while following this established precedent, so proposed, by the

Convention of 1787, too granted the treaty making power to the national government, and expressly prohibited its exercise by the states. The making of treaties is traditionally remained being an executive function.(1)

It may also be pointed out that during earlier days treaties were not generally the result of personal negotiations by kings and prices. However, today, in such a constitutional monarchy as that of Great Britain, treaties are still getting negotiated and signed on behalf of the sovereign by the representatives of the government of the day. They do not require the approval of Parliament in order to bind the State, but the practice is still being followed for giving an opportunity to Parliament to discuss the terms of international engagements before they get ratified. Basically, the Continental Congress was indeed a progressive body called together to conduct the struggle for independence that was being carried out by the thirteen states. The functions which it exercised were mainly in executive in nature since it did not attempt to legislate. It also negotiated treaties along with performance of its various other functions. Before the Articles of confederation were adopted, the treaties

(1) Charles K. Burdick, "*The Treaty Making Power*", https//www.foreignaffairs.com/…/ 1932-01-01/ treaty-making-power (accessed on 02-08-2022)

with France were the only ones which became effective after ratified by consistent action of the Continental Congress.(1)

II.B. ROLE OF STATES IN INERNATIONAL AGREEMENTS

It may be envisaged that in 1776, after having independence from the United Kingdom, eleven out of thirteen states had adopted the constitution while discarding their colonial charters. The states were linked together as a confederation under 'Articles of Confederation'. When the international and economic challenges of the post-independence years were not met by the limited union, the states use to send delegates to a constitutional convention to "create a more perfect union". In the United States, customary international laws have also been made applicable by the courts. The United States Supreme Court, while consolidating its earlier decisions, held in the famous case of *Paquete Habana*(2) that "international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their

(1) *Ibid*
(2) *Paquete Habana v. United States*, 127 US 677, 700-21 (1900) at 700

determination". Subsequently, the court for determining and executing has given the following guidelines: "where there is no treaty and no controlling executive or no legislative Act or judicial decision, resort must be had to the customs and usages of civilized nations, as an evidence of these, to the works of jurists and commentators who by years of labor, research, and experience had made themselves peculiarly well acquainted with the subjects of which they treat".(1)

Moreover, Rahamatullah khan, in his article "Implementation of International ans supra-national Law by Sub-national Units" has reaffirmed that the Paquete Habana ruling is more than a century old but it is considered good even today. The respect which is shown by the United States judiciary, for the international law, is often being conditioned by the position that has been given to the treaties in its constitution. In this respect, it may be ascertained that Article II of constitution of United States provides that the President "shall have power, by and with the advice and the consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur". The President of the United States has exercised this power to commit the nation to hundreds of international obligations. The

(1) *Ibid*

President of the United States has even affirmed many additional obligations without going through the process of Article II through the means of executive agreement.(1)

According to Article VI of the Constitution of United States of America, "all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land". The Supreme Court has also held that this supremacy applies only to those treaties which are self-executing. This supremacy clause has interesting impacts on the federal system of the United States. The federal constitution of the United States has given the conduct of the foreign policy to the central government. It clearly provides that the treaty-makers may make supreme law that shall be binding on the states with respects to any subjects, and notion of the states' rights should not be contended as hindrances to the full implementation of the treaty obligations.(2) Such an interpretation of this clause is primarily based on the famous decision of the Supreme Court in which the court had upheld "a migratory bird protection statute as valid

(1) Rahamutullah Khan, "*Implementation of International and Supra-National Law by Sub-national Units"* in Raoul Blindedbacher & Abigail Ostein (eds.), Dialogues on Legislative and Executive Governance in Federal Countries, Vol.2, Mc-Gill Queen's University Press, Canada, 2003 pp.115-128, p.116

(2) *Id*;at 118

implementation of a treaty with Great Britain while dismissing the argument that the statute unconstitutionally interfered with Missouri's rights in violation of the 'Tenth Amendment'. In a statement, that would certainly delight the hearts of today's environmentalists, Justice Holmes observed in 1920 that the treaty in question concerned " a national interest of very nearly the first magnitude" that could be protected "only by national action in concert with that of another power". It is an obligation of the states that they must follow the treaties not because it is required by international law, but because by adopting a treaty, the federal government is engaging in the exercise of the foreign relations power.(1)

The courts of several states held that any of the state's statutes that would be in conflict with the treaty of peace were tantamount being unenforceable. Though statutes in conflict with the treaty will repealed in number of states, the opinion was expressed by Jefferson, when he was Secretary of state, and by others, that this was primarily done only to prevent confusion and to take invalid laws off the books. Further, Globalisation, international terrorism along with the demand from human rights organisations are likely to affect American federalism in as much the same way and with the powers of the federal

(1) *Missouri v. Holland*, 252 US at 435

government increasing; it invariably abet driving towards the notion of co-operative federalism. It is apparent whereby United States is designated being a signatory of both the North American Trade Agreement (NAFTA) and the General Agreement on Tarrifs and Trade (GATT).

It may also be envisaged that these trade agreements are binding on international agreements, which the United States must fulfill irrespective of its internal political arrangements. The progressive nature of the current trade agenda has also aroused a new round of sovereignty debate in the United States, with critics of the international trade deficit in American history and a significant decline in domestic manufacturing jobs. Apart from the above, while most of the current sovereignty debate among United States scholars do focuses either on the nation or the states and even its relation to the world trade system; the relationship between regional and local autonomy and the world trade system largely been ignored. This exclusion is likely based on the assumption that United States federalism in the international field is a dead letter.(1)

(1) Manjhi, Atul Kumar, *Constitutional Provisions Regarding Co-operative Federalism in India and its Impact on the Legal System,* p. 128available at http://hdl.handle.net/10603/316229 (Accessed on 05-11-2022)

However, in present world scenario the traditional concept of sovereignty is changing to include a greater role for regional and local governments in foreign affairs. Equally important, and perhaps incidentally linked to the changing nature of sovereignty, is the continuing development of the federal distribution of powers over foreign affairs, particularly in the United States.

Moreover, the new trade agenda unmistakably involved regional and local autonomy as current and future WTO disciplines reach further and deeper into those areas that are regulated by the sub-federal governmental units. The GATT/WTO agreements do contain multiple specific provision that are aimed addressing the distribution of power in federal systems and subsequently all designed after the general "federal clause" in GATT Article XXIV:12, "which requires each member to employ such "reasonable measures" as "may be available to it" to ensure compliance by regional and local governments with GATT obligations". Article XXIV:12 do contains certain unresolved ambiguities regarding whether and to what extent federal nation/states are obligated to secure compliance by regional and local governments with GATT/WTO obligations. The United States has adopted conflicting positions in separate GATT disputes regarding the

interpretation and application of Article XXIV: 12 and no GATT panel has conclusively interpreted the ambiguous provisions. While the ambiguities may have served the GATT/WTO well during its developmental years, they now mainly serve as probable obstructions to the systems growth.(1)

Therefore the United States Supreme Court could declare any of the states regulations invalid, not merely because they violate the United States Constitution, but also because they violate international agreements.(2) In this respect, most of the observers do suggests that the authority of the states will further be destroyed owing to the policies of the state on such matters like economic development, environmental protection and professional licensing will subsequently be subjected not only to the terms of these international agreements but also to the structures of the U.S. constitution as well. Though these observers are right, but there is yet another aspect of these international agreements that might would enhance the states authority. Under NAFTA, for example, the American states are guaranteed at least a consultative role in implementing the

(1) Edwar T Hayes, "*Changing Notions of Sovereignty and Federalism in the International Economic System: A Reassessment of WTO Regulation of Federal States and the Regional and Local Governments within their Territories*", Northwestern Journal of International Law and Business, Vol. 25, 2004

(2) *Supra* 22 at; 34

agreement. It will certainly be interesting to see how the states that make up the American, Canadian and Mexican federations will be affected by this emerging "federation of federations".(1)

II.C. FEDERALISM IN INDIA

The framers of Indian constitution wanted to build a strong united India. As such, they have adopted the concept and political doctrine of 'federalism' to actualize and uphold the values of national unity, cultural diversity, democracy, regional autonomy and the nations rapid socio-economic transformations that slated being accomplished through collective efforts of constituent units.

The development of the Indian federalism can be traced out as follow:

Primarily, the seeds of Indian federalism were there right from the Regulating Act of 1873 to the Government of India Act, 1935. During this period the form of government, in the British India was unitary. All powers were concentrated in the hands of viceroy, and through him, in the secretary of the state for India and home government as well.

(1) *Supra* 30 at 129

The Government of India Act, 1919, was indeed a new milestone in the political system in British India. The Act blazed a new trial and laid the foundation of Indian Federalism. It has also been described by Wyens as federalism in embryo. The Gandhi-Irwin pact was signed on 5 March 1931, in which Gandhiji agreed to a concept of federation for a country.(1)

Further, the Government of India Act, 1919 gave the terms like, 'dirchy' and 'provincial autonomy' and subsequently injected a dose of autonomy in the Indian political system. In 1929 too, Simon Commission recommended for complete autonomy at the provincial level.

The Nehru Report also envisaged that the constitution of India should be federal in character. In fact, the present Indian constitution could be ascribed being a carbon copy of Government of India Act, 1935. In other words it may be called a 'blue print' of the act. It significantly ascertains that the present constitution has taken most of its statutory elements and features from Government of India Act, 1935 itself.(2)

Though at the time of framing the constitution framers of Indian constitution adopted federal principle, but in practice of it from its commencement described by some scholars India as a quasi-

(1) *Supra* 30 at 57
(2) *Id*;at 58

federal state, and some other even regarded it as more unitary rather than federal one. These are indeed debatable issues.

As Indian constitution possesses federal features in form only, in practice it becomes quasi-federal and in exceptional cases i.e. emergency, it becomes unitary one. This is the true picture of Indian federalism.

Indian federal system has been subjected to severe criticism. It is mainly due to the prominence of the centripetal forces that some critics were not prepared to accept to accept it as a federal constitution.(1)

II.C.١. Cooperative Federalism in India:

Since from the ancient period of our Indian political history itself, kingdoms or empires that have ruled over the Indian subcontinent have somehow or rather practiced federal policies whereby the chieftain and their vassal states were left very much alone in all of the internal civil affairs. Such policy of non - intervention in the local affairs was indeed a practical necessity since the cultural along with the natural diversities of the people, of this subcontinent, were so vast and broad that these could

(1) Sharma M., *Indian Government and Politics*, Navjyoti Press, New Delhi, 1984 p.355

only be made an integral part of a single empire if no or meagre effort be made to impose a common set of beliefs over them.(1)

II.C.2. Development of Cooperative Federalism Post Independence

Basically, the changing dynamics and the varied experiences that the Indian State has undergone with like those of one party rule, the rise of regional parties, formation of coalition Governments, active role of the Judiciary and alike, have shaped the trajectory of federalism herein by swinging the pendulum from cooperative to confrontationist and vice versa.

Significantly, it has continued been a trend in the Indian political history that so long as the central and state governments were ruled by the same political party, the cooperative framework of polity did worked well. But when the different political parties reign in power, either in the center or the states and more recently when the coalition governments are in power, there emerge the signs of discord, stress and tensions in intergovernmental relations between the Centre and the States inter se.(2)

II.C.3. Cooperative in the 50s and 60s-

(1) *Id*;at 31
(2) *Ibid*

It may further be ascertained that in India, the first fifteen years after her independence were marked by a democratically elected regime with a comfortable majority coupled with the doctrine of political idealism and freshness of hope for better future ahead owing to having just gained independence.

II.C.4. Confrontationist from 1960s to 1980s –

During this period, the supremacy of the Centre did break the power of States and established a new balance or rather, imbalance between the Centre and the States.

II.C.5. Cooperative in the 90s-

The decade was marked by the regime of coalition government of both national and the regional parties at the centre itself which could be regarded more or less cooperative in nature. (1)

In the last decade –

The current trends did emphasize cooperation and coordination, rather than demarcation of powers between the different levels of government. The basic themes of today remain being those of interdependence.(2)

(1) *Id*;at32
(2) *Ibid*

Moreove, Sarkaria Commission was set up in 1983 by the central government of India. The Commission's charter was mainly to examine the nature and extent of central - state relationship on various portfolios and subsequently to suggest changes within the framework of Constitution of India. The Commission was so named as it was headed by Justice Ranjit Singh Sarkaria (Chairman of the commission), a retired judge of the Supreme Court of India. The final report of the same did contained 247 specific recommendations. In spite of the large size of its reports; the Commission recommended, by and large, status quo in the Centre - State relations, especially in the areas, relating to those of legislative matters, role of Governors and the viable use of Article 356. It has widely been accepted that to whatever extent the Commission suggest changes; the recommendations were not to be implemented by the government. Altogether the report contained 247 recommendations spreading over the following 19 Chapters.(1)

Paul Appleby too calls the Indian constitution as extremely federal.(2) The so called autonomy of the states appear to be a myth or practically impossible in certain circumstances. It may be submitted herein that the biggest threat to the autonomy of

(1) *Id*;at 33
(2) *Public Administration in India*, Report of Survey (1954), 51

the states is the constitutional provisions like those of article 356.(1) With the advent of regional parties, gaining popularity with their relentless fight against the misrule by central governments ignoring thereby the needs of some states, the demand for more powers to the constituent states increased. The unitary features of the constitution are coming under constant attacks from the states, which are vying for more shares in the arena of tax revenue and many other related legislative powers.

III. FEDERALISM IN IRAQ

After the defeat of the Ottoman Empire in 1919, Iraq became a League of Nations mandate undertemporary British control. Mahmud Barzanji led a Kurdish revolt against the British and in 1922attempted to establish a state in northern Iraq. In 1924 the British defeated Mahmud, and the Mosulregion was incorporated into the Kingdom of Iraq. After the British occupation, Kurdish leaderscontinued to press for autonomy within Iraq. In 1970 the Iraqi government agreed to create

(1) Article 356 of the Indian Constitution, states about State emergency on failure of constitutional machinery. This article misused at various occasions by central governments in India.

theKurdistan Region covering three provinces of northern Iraq.(1)

After the end of the Gulf War in 1991 the Kurdish region rose up against President Saddam Husseinand gained *de facto* independence under the protection of a no fly zone. After the American-ledinvasion of Iraq in 2003, the short-lived Transitional Administrative Law recognised the existing Kurdish regional government and defined Iraq for the first time as a federal country.

Article 118:

Article 118 of the constitution of Iraq provided that no new region may be created before the Iraqi National Assembly has passed a law that provides the procedures for forming the region. This lawwas passed in October 2006 after an agreement was reached with the Iraqi Accord Front to form the constitutional review committee and to defer implementation of the law for 18 months. Legislators from the Iraqi Accord Front, Sadrist Movement and Islamic Virtue Party all opposed the bill.(2)

(1) https://en.m.wikipedia.org/wiki/Federalism_in_Iraq (Accessed on 20-10-2022)
(2) *Ibid*

A number of Iraqi and non-Iraqi researchers have made efforts to justify the introduction of the federal system in Iraq, using arguments and motives that have fallen by a fatal blow in the face of the strong blows dealt to them by the successive Iraqi crises since the introduction of federalism until today.(1)

III.A. DEVELOPMENT AND QUANDARY OF IRQA'S FEDERALISM

The puzzle of Iraq's 2005 constitution is that it introduced a coming-together symmetrical model of federalism rather than building on the clear asymmetrical foundation of the Kurdish safe haven established after the 1991 Gulf War. An examination of the recent history of devolution in Iraq suggests that a holding-together asymmetrical model may better promote stability by serving the interests of all parties.(2)

The genesis of Iraq's new federal system lies in the aftermath of the 1991 Gulf War, when exile groups stepped out from the regime's shadow of fear to plot its demise. They were a motley

(1) https://www.bayancenter.org/en/2022/02/3150/ (Accessed on 25-10-2022)
(2) https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/iraq-s-federalism-quandary (Accessed on 25-10-2022)

collection of secularists and Islamists, Arabs and Kurds, all with their own visions of a post-Saddam Iraq.

The Kurds had long aimed to build on an autonomy agreement negotiated with the Baathists in the 1970s that was never implemented. Motivated by their desire for a Kurdish state and the fresh horrors of a genocidal Iraqi Army campaign against them in the late 1980s, Kurds in the post-Saddam era pushed for something more extensive: an ethnically based confederation that would afford the Kurds maximum autonomy over their own affairs. The Kurds' partners in opposition had not given the idea of federalism much thought, but many agreed.

A central ally to the Kurds in this quest was a party then known as the Supreme Council for the Islamic Revolution in Iraq (SCIRI). SCIRI was a Shia Islamist party established by the Iranians in 1982 during the Iran-Iraq War that was dedicated to overthrowing Saddam's regime. It saw decentralization as both the best guarantee against a return to dictatorship and a good way to protect Shia interests in the new state. In 2007, SCIRI renamed itself the Islamic Supreme Council of Iraq (ISCI),

deemphasizing its historical ties to Iran's revolutionary regime.(1)

ISCI and the Kurds' calculations on federalism were not solely about identity. The Kurds saw in federalism the freedom to develop their local oil assets, which would allow them the ability to run their own affairs without being financially dependent on Baghdad. Meanwhile, the Shia region in southern Iraq that ISCI was to propose was not coincidentally home to the majority of Iraq's vast oil reserves.

The United States, following its overthrow of Saddam's regime in 2003, made no secret of its own preference for a decentralized Iraq, sharing with the opposition the view that this would prevent the return of dictatorship. From the start, the term used was federalism. With their close ties to the Bush administration, the Kurds and certain ISCI leaders returning from exile had a head start that allowed them to leave an outsized imprint on the new state structure. The areas outside the Kurdistan region, which had yet to produce homegrown parties, were not positioned to give strong expression to their populations' wills.(2)

(1) *Ibid*
(2) *Id*; at 5

Yet resistance to federalism began almost right away. Iraqi nationalists, many with links to the former regime, championed the state's paramount unity but struggled to articulate a practical alternative to the previous, now-discredited centralization. They were joined by what remained of Iraq's secular elite and important parts of the Shia clerical leadership. Moreover, some Shia Islamist political leaders outside ISCI, now well on their way to gaining significant power in Baghdad, sought to protect their new domain and began to suggest that Iraqis were not yet ready for federalism.

The 2005 constitution, which prescribes a federal system with two exceptional characteristics: It hollows out the national government through radical devolution to federal regions that can mostly ignore Baghdad on many important matters, including most importantly oil and gas management and revenue sharing. It also provides minimal barriers to prevent the provinces outside of Iraqi Kurdistan from forming new autonomous regions, either standing alone or in conjunction with other provinces, with no limit on their size or number.(1)

From the start, these features raised sharp fears regarding the viability and unity of the new state, prompting a near-unanimous rejection of the new charter by the Sunni Arab community in the October 2005 constitutional referendum. In recent years, the Sunnis have been increasingly joined in their objections by most of the newly empowered Shia Islamist parties, which have grown accustomed to ruling Baghdad. Even ISCI, the principal Arab proponent of Kurdish-style federalism in the rest of Iraq, appears to have shelved its project for a Shia super-region in the face of popular opposition. A Kurdish constitutional veto, however, has so far prevented any meaningful reconsideration of Iraq's new federal architecture.

(1) *Id*;at 6

The stalemate between Baghdad and Erbil has hampered any response to these grievances. The Kurdistan region can veto any reconsideration of Iraq's state structure—and the controversy over the Kurdish model of federalism tars any calls for devolution of authority and greater local control outside Kurdistan as promoting partition. Maliki has pointedly reacted to interest in decentralization, saying that the country is not ready for federalism in its western, central or southern regions and that differences should be addressed through common action on administrative deficits rather than by "division or secession."(1)

Yet in the past year, calls for new regions have grown louder as political disputes in the center contribute to more troubled governance. Meanwhile, a growing sense of political marginalization from Baghdad and victimization by government-controlled security forces continues to amplify interest in decentralization in the country's predominantly Sunni West and Northwest.

A possible asymmetric solution must identify key areas of dispute and recast the debate to affirm the KRG's autonomy without applying the same concept to other provinces and eviscerating Baghdad's sovereignty. An elevated administrative status for the provinces could be negotiated among Arab parties and local leaders. Given the difficulties in wholesale revision of the constitution, this change would come via legislative and political means rather than a constitutional amendment.

This represents a second-best outcome but is realistically as far as the envelope can be pushed under present circumstances. Initial understandings could then be codified in the constitution once circumstances permit. Indeed, any progress must present benefits compelling enough to challenge the status quo. In other words, each of the three levels of government described in the

(1) *Id*;at 9

constitution—provincial, regional and national—would need to see clear benefits from an asymmetrical system for the idea to gain traction.

Yet Iraq is not a set of former colonies or emirates coming together to form a new country. It is a ninety-year-old, historically centralized state that has grappled for decades with the latent Kurdish desire for independence. Moreover, Iraq's oil and gas is geographically distributed in a way that highlights the country's ethnic and sectarian fault lines. In this context, full local control of oil resources—a feature of symmetrical, coming-together federations such as the United States, Canada and the UAE—could be dangerously destabilizing in Iraq, leading to large regional wealth disparities. And radical decentralization is not popular among Iraq's Arab majority—even as Sunni areas chafe under the perceived excesses of the new order.

The incentives generated by the 2005 constitution force Baghdad and Erbil to make a strategic choice. Under the charter's most radical option, Kurdistan would establish some form of self-sufficient autarky. This would be a poor outcome for all involved. The KRG would need to raise capital for export pipelines, persuade hostile neighbors to accept Kurdish hydrocarbon exports and rely on its own comparatively meager revenues to fund its regional administration. In Baghdad, preoccupation with Arab-Kurdish tensions would stunt development of the state. In addition, with Erbil continuing to block constitutional changes, Baghdad could one day be gutted by new autonomy movements in oil-rich Basra or gas-rich Anbar. In contrast, by isolating and containing the dispute between Baghdad and Erbil, an asymmetrical model would reinforce Iraqi unity and free the rest of the country to choose alternative governance arrangements on their own merits. This could at least provide a framework to consider the grievances of provincial leaders and perhaps defuse the potentially grave crisis

sparked by angered Sunnis' symbolic declarations of autonomy.(1)

In short, Iraq is a textbook candidate for a holding-together, asymmetrical model of federalism. Merely elucidating the concept will not lead to its implementation. But doing so may be a basis for reframing the debate to facilitate a workable and lasting solution to Iraq's foundational issues.

If Iraq is to emerge from decades of conflict and create the conditions for a sustainable peace, it needs to first rebuild trust between citizens and state by demonstrating efficient and effective governance. The extent to which federalism is functioning in Iraq should be measured against this standard.(2)

Overall, Iraq's experience with decentralization has been a mixed affair. While there is a far greater appreciation for the legal framework that regulates devolution of powers, few experiences have yielded positive results that can be accounted for by the general public. Though the rationale for decentralization has evolved over the past decade, the country's long-term challenges of rebuilding infrastructure and creating jobs will continue to dictate priorities for sub-national authorities. Most importantly, decentralization should not be viewed in isolation from other key issues, including security sector reform, electoral politics and education, but rather as a crucial component to improving governance and restoring trust between authorities and the people. The nature of Iraq's post-conflict environment – characterized by enhanced security and the growing confidence of federal security forces – means that the imperative of power-sharing as a way to mitigate against forces that undermine the territorial integrity of the state has diminished for the time

(1) *Ibid*

(2) https://blogs.lse.ac.uk/mec/2018/03/11/functioning-federalism-in-iraq-a-critical-perspective/ (Accessed on 27-10-2022)

being. Separatist inclinations in northern Iraq have been put on hold but the challenge is now to ensure that the state can reclaim its legitimacy by demonstrating that it can function effectively at both the federal and local levels.(1)

CONCLUSIONS

The federal system of government conceived by the founding fathers of the American Constitution was primarily designed to bring political 'stability to an "inchoate assemblage of thirteen proud and quarreling sovereignties". The constitution on all its provisions "looked to an indestructible union composed of indestructible states". Although this basic objective has been achieved over the last 200 years through not without civil war, the nature of American federalism today is far more complex than what it were in past. The American federalism today faces a situation in which each level of government ranging from local to the federal ones, has become involved in practically every none-defence activities of the government including those either from the notion of consumer protectionism to that of highways and environmental protection as well. Thus despite the existing rivalries between cities, states and the federal center, in the federal political systemetic structure there is indeed a close partnership with reference to the problems that neither of the aforesaid three levels of governments are capable enough solving alone.

The paramount position of the center in the Indian political system is not only underscored by the constitutional division of powers but also, unlike that of United States. By the power of federal legislature either to create new states or to alter boundaries of existing ones, and even to abolish a state

(1) https://www.arab-reform.net/publication/exploring-the-rationale-for-decentralization-in-iraq-and-its-constraints/ (Accessed on 30-10-2022)

by ordinary legislative procedure, without having any recourse to the statutory process of constitutional amendment. The unique feature of Indian federalism which distinguishes it from those of the American system has been the parliament's power to make laws for the whole or any part of the territory of India with respect to any of the matter enumerated in the State List during the proclamation of emergency. The Indian constitution have vested the Union Government with such formidable powers that not only in the time of war or during the emergency but even in times of peace, if it could, if it so wished, even resort to superintend, direct and control the activities of state governments. In fact in emergency the Government of India virtually assumes the role of either an autocratic or unitary form.

Iraqis have not used the positive experience of other federal systems. There also exist practical problems like geographical-territorial conditions, the problem of contending discourse about the place of Kurdistan in Iraqi political system. The above problems had led to a shaky position for Iraqi federalism and thus federalism is facing several challenges and problems.

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