



CENTRE AND STATES IN FEDERAL FOREIGN AFFAIRS: COMPARISONS BY CONTRAST IN UNITED STATES OF AMERICA AND INDIAN FEDERAL MODEL

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I. U.S and Indian Federal Models:-

In the previous chapters, a combination of approaches in federalism was used to understand and compare the U.S and Indian Federal models. In the process of the study, the institutional approach was used to understand the structural parameters using constitutional outlines and then deciphered how the two levels of government are placed with respect of each other. The political method and developmental approach i.e. the idea of federalism as a bargaining and process were used to understand the stages of crisis in the federal domain.

The broad picture was analyzed using the idea that the federal models under study signify federalism as a normative perspective, not merely comparing and contrasting them, where federalism is essentially a pluralistic political theory; where the monist traditions needs to be dealt in detail before knowing the federal idea.¹ It was an attempt to understand the basic values of a federal idea to be used as a constant in diverse situations in same problem.

The application of federalism in the political system has taken various forms. U.S is a case of federalism in a developed industrial society. India is a federation in a developing society with a remarkable record of accommodating diversities. They emphasize the supremacy of the constitution.² Both the systems have integrated towards supra national governance mechanisms like WTO.

Globalization has produced new challenges and opportunities for sovereign states in the realm of global integration. As federal nations accede to multilateral trade governance treaties, it makes the states and centre in contested realm where it impacts upon areas assigned in the domestic sphere to the states. There are new challenges that have emerged as the federal division of power comes under influence of transnational forces and diminished state sovereignty. The need of the hour is to think along contrasting lines and figure out a common solution.

Distinction between Parliamentary and Presidential System:-

Arend Lijphart uses three variables to distinguish between parliamentary and Presidential system:³ separation and fusion of power, collective/collegial presidential system: executive vs. one-person executive and popular selection vs. selection by legislature. In parliamentary system, the head of government requires the legislature's continued confidence to stay in power; in presidential systems, the head of government stays in power until his term ends. Presidents are popularly elected whereas the parliamentary cabinets are selected by the legislature. Presidents tend to control the executive as an individual with assistance from appointed cabinet members, while parliamentary cabinets tend to share executive power, with individual ministers exerting considerable control over their portfolio.

Classical federal states like United States are managed by federal supremacy, with the background of an independent judiciary to adjudicate relations between the federal and the federated levels. The executive is independent from legislature and thus co-operation is contingent upon the decisions to be co-ordinated between the federal and state legislatures. Whereas in a Parliamentary system like India, the executive usually commands majority in legislature, which makes intra-federal co-operation dispersed.

In the present study, the analysis the Indian federal model can be seen as a hybrid of two models, 1. British: due to presence of parliamentary supremacy and conventions, and 2. American: due to presence of a written constitution, the separation of powers and judicial review. India cannot be compared to any of the classical models. It was never fully British because it adhered to the federal principle, and it could never become totally American because it retained the parliamentary tradition.

U.S. adopted federalism to limit governmental powers, while India made the choice in favour of federalism because it accommodates diversities. What makes federalism as a common thread in these systems is a judicious power sharing device, as opposed to a unitary state.

To compare and contrast the two federal models under study, the idea of Rikerian Federalism is made use of.⁴ The justification for this comes from its methodological approach of quasi-scientific style of classification which gave numerous substantive propositions.⁵ It pointed towards three essential factors:-

- The idea of coming together- where in every federal model is a result of bargain.
- There is an attempt to protect democratic rights against encroachment by a strong central government.
- The states have some constitutional competencies.

Employing the first tenet of coming together, in the America case the bargaining did exist between the states; however this was missing in India's case. Dr. B. R. Ambedkar pointed in the Constituent Assembly, that the Indian Union is a federation not out of an agreement by the states, but the Constituent Assembly. It was the trauma of partition that united all the states under the Union. The idea of coming together was present in American federation, but not in the Indian Case. U.S is a case of federalization by integration, where the pre-existing polities gave up part

of their power in order to set up the federal union. So, they wanted to be guaranteed the new centre will not act authoritatively. These guarantees led to strong representation.

The second tenet of sacrosanct democratic rights is useful to comprehend the debate upon supremacy or sovereignty of legislatures, and the powers of executive. It was in 1921 that James Bryce noticed that the growth of disciplined parties and complexity of policy making shall lead to the decline of legislature and the strengthening of the executive. It is argued that in present times the national parliaments are poorly equipped to grapple with paraphernalia of new issues, like international trade regimes and treaties with several trade agreements and pacts.

The Indian parliament is supreme like U.S. Congress but not sovereign like the British Parliament. The sovereignty of Parliament is not absolute, it is relative. The Constitution is superior to Parliament. Further, it is the people of India, who are superior to the Constitution. The fundamental rights have also been incorporated as sacrosanct where Article 32 of the Indian Constitution empowers the Supreme Court to issue writs in case of violation of fundamental rights.

The mandate of the parliament has been further fractured by the contextual reality. In India, since 1989 there have been five general elections to Lok Sabha, where no single party won the majority in the House. Political stability was absent in this crucial phase where there was serious remaking of the macroeconomic contours of the economy and international trade thereof.

Falling standards of debate, erosion of moral authority and prestige of the supreme law making body of the people have often made experts to look up to the U.S. Congress for legislative deliberation that are rarely on display in parliamentary legislatures. Legislation is a product of process marked by controversy, partisanship and bargaining. No other legislature is as powerful as the U.S. Congress, as it checks the power of the executive also. However, as 'legislative process is easy to dislike', Congress, like any other legislature suffers from low rating with respect to other organs of government.⁶ The Bill of Rights is the series of first ten amendments in the U.S. constitution which gives immunities to every citizen against the tyranny of central government.

This brings us to the last tenet of states constitutional competencies. Federalism by Alfred Stepan⁷ and Robert Dahl has been perceived as non-centralisation, as neither the Centre nor the states can exercise control over the agenda of the government. This overcomes the majoritarianism of the democratic process and allows representation not only on population but on territory as well. The most crucial part of territorial representation which acts to curb centralising tendencies is that within the national legislature the states have the opportunity to participate not only to the legislative process but also the process of amending the constitution.

The interplay of diversities call for interaction. The interactive patterns are based on the structural relationship between the two levels of governments.⁸ A bicameral system is advantageous over a unicameral legislature. The capacity to formally represent diverse constituencies, hindering the passage of flawed legislation and with two legislative bodies, there is enhanced oversight of the executive branch. Both India and U.S. have bicameralism at the national level.

Senate is the Upper Chamber of United State like Rajya Sabha in India. In USA there are fifty states and each state send two members irrespective of size and population. It means total of hundred members are in Senate, while in India on the basis of population members are

represented in Rajya Sabha. The membership of Rajya Sabha is two hundred and fifty which is much more than Senate. Twelve members of Rajya Sabha are nominated by the President while in USA there is no system of nomination.

The term of senator and Rajya Sabha member is six years. In Senate, one-third of the seats are up for election every two years whereas in Rajya Sabha, two-third members retire after every two years. In Senate the system of rotation is such that no more than one-third of Senate is new at any one time, whereas retiring members are eligible for unlimited time in Rajya Sabha. By seventeenth amendment act 1913 election has become direct in Senate, whereas the Rajya Sabha is indirectly elected by the state legislatures.

Senate is the strongest second chamber of the world because of the direct election of the senator, equal legislative powers with house of representative except introduction of the money bill and special powers in relation to ratify the appointment of higher officers. It acts as a tribunal during impeachment of president, electing vice president in case of tie and most important ratification of international treaties by advice and consent process by two-third majority.

In India, the Rajya Sabha is supposed to have a federal character since it represents the units of the federation. It is a permanent House not subject to dissolution like Lok Sabha. Under Article 249, it may by a special majority of two-thirds votes adopt a resolution asking the Parliament to make laws on subjects of the State list in the national interest. It has the exclusive right to initiate a resolution for the removal of the Vice-President. It can take steps to create All India Services by adopting resolutions supported by special majority in the national interest. It may not have the power to reject the bills passed by the Lower House but certainly it can revise and examine the bills with a view to find out the lapses. It can also initiate bills on its part and reduce the burden on the popular chamber.

Lord Bryce held that the second chamber should be subordinate to the lower house and should have no control over exchequer. Rekha Saxena holds that the Council of States is a deformed version of a federal second chamber, which can be called as a 'secondary chamber'. It has not competed with Lok Sabha for powers, and did not create any difficulty in legislation. Yet this is less satisfying explanation to its efficiency and retention with its agenda marred by duplication of efforts, delays in legislation, composition dominated by retired politicians etc.⁹

Sir Henry Maine in his book *Popular Government*, while analysing the House of Lords with U.S. Senate holds that almost any Second Chamber is better than none. The Senate is an example how the American institutions mediate through popular impulses. He argued that popular governments are fragile, and in this scenario the second chamber is not a rival infallibility but an additional security, as four eyes are better than two, especially when a subject may be considered from different standpoints.¹⁰

The Senate is an example of Republican Constitutionalism that was supposed to accommodate inescapable reality of American Confederation. It is looked upon as a platform for democratic accountability that moves along popular demands and Political decisions. With equal powers in one of most robust legislatures, it teases other second chambers which have only symbolic importance.¹¹ Being directly elected, it is feared to create a duplicate, and thus a rival, to the lower house. This also explains why the executive fears to let multilateral trade treaty of WTO not go through the Senate advice and consent process.

The idea of a second chamber is a slow-moving body by design. It is deliberative, providing a slowing effect on legislation that moves through the House at a much faster pace. The need of the hour is to keep a check that 'what should not continue is an assault on the Senate's rules and methods of doing business.'¹² This argument has federal ethos which calls to sensitize the second chamber upon issues that impinge upon state powers and not use means to bypass this deliberation under the guise of adding pace to legislative work.

When the residual powers that are allocated to the states, the centre is constrained. In India, they are with the centre, and in U.S. case though the Tenth Amendment gives it to the states, it has not been significant to come to rescue of states in case of federal-state stand-off in judicial cases.

As we move away from Rikerian ideals, the constitutional framework is invoked that underpins the practices of federalism. The American system is considered highly decentralised, whereas the Indian federation began as a centralized parliamentary federation, but with time it has moved towards being more federalised under rise of new contextual forces.

The U.S. Constitution gives specific enumerated powers to the national government known as delegated powers, while reserving other powers to the states, called as reserved powers. It also contains several potential powers for the national government. These potential powers, also called implied powers, which includes Congress's power under Article 1, Section 8, to make laws that are 'necessary and proper' for carrying out its enumerated powers.

The Eleventh Amendment was the first amendment to the U.S Constitution after the adoption of the Bill of Rights which held the clause of state sovereign immunity implying that a state must consent to be sued in its own court system.¹³ This concept is based on early English law, which provided that the Crown could not be sued in English courts without consent. This doctrine came as an effect that the states that were present at the time of the drafting of the Constitution. However, many cases were filed against states by private citizens with jurisdiction based on federal question rather than diversity. Ultimately, the Congress retains significant powers to influence state behaviour through the Spending Clause and the Supremacy Clause.¹⁴

In Indian federalism, tracing back the arguments made in chapter III, there is constitutional supremacy of the Union over the states, unified citizenship, national administrative bureaucracy, emergency and residuary powers of the Union, prevalence of Union law over state law in concurrent subjects etc. The powers vested with the states are plenary, which are derived from the Constitution and not inherent.

Constant Texts and Changing Contexts:-

Text and context needs to be seen as related to each other, with each defining others parameters. Quentin Skinner argues that context and text needs to be seen complimentary. It needs to be analysed what the authors were writing, and grasping what was the time framework of society for which the text was being made. 'Ideas in Context' is the common phrase used to underline ideas of the Cambridge school of J.C.A. Pocock and Skinner. Pocock held that the text derives its meanings from the paradigm it operates, while Skinner holds that conventional debates form the basis of the meaning of the text.¹⁵

Seen in this regard, when we interpret the Constitutions of American and Indian federal model, they both justify that text and context are related. Looking at the peculiar conditions existing in American and Indian framework at the time of framing the Constitution, the founding fathers of

the law of the land adopted fairly well to the conditions existing that time. The Indian Constitution is one of longest written constitution, with nearly sixty years of working existence whereas the American Constitution is one of the shortest Constitutional texts. The issues are more complex today and the realities are different than what existed at the time of framing the Constitution in both countries.

The liberal democratic norm is to let Constitution be as brief as possible by outlining the general contours of norms and government. Using this liberal yardstick and keeping in mind the new needs of the time to come, brevity has been the soul of the US constitution. A ten page document that survived for more that two hundred and fifty years, with less than forty amendments to it. The Indian Constitution tries to fine tune liberal democracy and social justice, is one of world's detailed constitution that has been amended for more than hundred times.

What is similar in both models under that irrespective of being the shortest and the longest textual constitution, they both responded to the changed circumstances and contexts, without any formal changes in their constitutions. Political actors like the executive, were able to work with the existing political institutions to deal with new global issues in domestic polity, and did actions that responded well to answer the new problems. If ratification of WTO would have been problematic in Indian Parliament or would have been defeated in the Senate, then the incumbent political actors justified their action by defining their actions using the constitutional shield.

Responsive Federalism and Internal Dynamics:-

U.S. is looked upon as a leading player in the current Doha Round of negotiations of WTO. India is looked upon to play a crucial role where it is called to step up negotiations through forming alliances, elimination of blue and amber box measures and take a leading role for the cause of special and differential treatment for developing countries.¹⁶

It's been more than a decade the multilateral trade negotiations have been underway. The year 2011 was looked upon as crucial to trade talks to move forward as per the decision of G20 leaders in Seoul. U.S. shall witness 2012 presidential elections, and it is uncertain that whether Senate and the House allow the executive with fast track.¹⁷ This constraint in negotiating authority came from an assertive Congress to check use of executive power and safeguarding federalism is often cited as a reason for the same. Thus, internal pressures have been at work in U.S. model to ensure that the national agenda to lead trade talks should not be in a way that leads to ousting state participation.

Similarly, India was blamed for inflexible position during Geneva talks in 2006, wherein the talks collapsed. It shows how the central government have been careful of impact of trade liberalisation upon agriculture and moving in a direction to safeguard federal concerns by arguing about subsistence, livelihood, and security of people. India voiced concerns along with 110 other developing countries that industrialised nations do not want to develop agriculture of developing nations.¹⁸ The compulsions of a regionalised-coalition polity ensure that liberalisation of trade should not come at cost of agrarian interests. Federalism in both cases was responsive to internal domestic dynamics.

II. The Federal Deficit in Treaty Making for Multilateral Trade Governance

Mechanisms for Multilateral Trade Agreement of WTO: Constitutionally legitimate, federally insufficient:-

The variables of parliamentarisation and federalisation are essential to understand treaty making by federal nations for trade governance in global era. Parliamentarisation implies taking the international treaties to the legislative floor for discussion and ratification. Federalisation implies states say in treaty making. It is not necessary that both of the variables are enshrined in the law of the land or they are co-linked. The operation of contextual reality makes them complimentary to each other, irrespective of the constitutional contours.

In India, the treaty making power is an executive prerogative where under the federal paradigm the states have very little role in the process of treaty making, particularly given that, constitutionally, no role has been set out for them. The executive power and its functions are incapable of comprehensive definition. It is held that the federal upper chamber should be strengthened to discuss and negotiate states demands. Theorists of comparative federalism like Vamey have argued for legislative federalism which would bring decision-making towards a permanent legislative institution at the centre.¹⁹

The debate on the parliamentarization of the treaty making power and federalization of the polity is complementary is inherent. This encompasses state- level representation through the territorial electoral constituencies that send delegates from states to the lower house Lok Sabha, as well as through the direct role of the states in sending representatives to the upper chamber Rajya Sabha. The forces that affect parliamentarization and federalisation in this case are jointly linked to the rise of coalition era and regionalisation of the Indian politics.

Parliamentarisation and federalization may be seen as interlinked processes. If process of federalization continues, it means that Rajya Sabha will have greater representation from the opposition states in the ongoing multiparty coalition era. The coalition government does not control Rajya Sabha. The constitutional theory sees it as an important chamber because for the legislation, it needs both houses to agree. In case of disagreement over a legislative matter, there is provision of joint sitting, where the Lok Sabha has numerical majority. Not on every legislation a government would be wise to confront the opposition.

On a comparative dimension, India is more diverse and multi-cultural than Canada. The aspect of strong centre has weaned away in both nations. To deliberate upon Varney's idea that whether legislative federalism would be effective in case of treaty making power, it needs to be noted that Rajya Sabha has veto power in constitutional amendment,⁶ but the constitution does not require a treaty to be approved by Rajya Sabha.

In case of America, federalization would have greater chance than case for Parliamentarization in India as the Senate is the most important upper chamber in the world, with equal representation from all states and it shares the treaty making power with the Executive.

In separation of power system, the treaty making power is largely shared, eg: United States, whereas in a parliamentary model like India, it is centralised. In both United States and India, Presidential—congressional and Parliamentary federal model, federalization was present, where in the former model it is sanctioned by the Constitution while in the latter case it has evolved with time.

In the United States, the federal government has legislative competence to implement treaties, even those whose subject matter falls within state jurisdiction, all contrary state law there-after being declared as invalid, whereas in Canada, the federal government lacks legislative competence to implement treaties whose subject matter falls within provincial jurisdiction.²⁰ In case of India, the unilateral act of the treaty making by the national government has been opposed by the states and they have approached the court when it encroaches upon their subjects in the State list.

Parliamentary approval for treaty is not the norm in India. There no new institutional provisions are for parliamentarization of treaty power. Looking at the informal pressures that have come upon treaty making power, as seen in various reform proposals of NCRWC and the Punchhi Commission Reports, this calls to address the issue of input legitimacy, by discussing the treaty with all stake holders (states in our case) before it is ratified, and thereby avoid the federal deficit and indirectly parliamentarize using various IGR mechanisms.

The founders of the U.S constitution believed that the law of nations prohibited the United States from abrogating and approving treaties without cause. Vesting the treaty power in the President and the Senate (with no participation by the House) was in large part intended to achieve that goal. The government's conduct of foreign relations through congressional-executive agreements, which are approved jointly by the President and Congress leads to a thorny debate that whether this be accepted as constitutionally legitimate as treaties. Secondly, with the collapse of the domestic-international distinction, this has created new federalism concerns that should be addressed²¹. The answers to these issues are jointly-related.

The treaty making by the trade authority of the executive was parliamentarized as being approved by a simple majority of the House and the Senate. Though the President was validly exercising the executive power to make treaties with the cooperation of Congress, the Constitution's treaty-making power was circumvented. A simple majority concurrence would be sufficient for a ratification to be constitutionally legitimate, but federally insufficient.

The aspect of sidelining these processes via the trade promotion authority made a case for serious thinking of working of federal balance for global trade integration. This executive authority matched well with the goal of the political elites" to transfer more economic and political power to global arrangements. The situation was similar in India, the executive by the consensus of the government agenda wanted the nation to integrate with the global sphere.²²

The states voice over mechanisms to negotiate trade agreement of WTO, casted a doubt upon the idea of 'national interest' that Realists hold in exclusive terms. The Post-Modern disputes over this meta-narrative was found to be correct, as there can be no definite explanation of national interest. What was seen by the national government as beneficial for nation, may contest the perspective of the state.

The constitutional scholar Edward S. Corwin called the process of drafting and negotiating a treaty a 'presidential monopoly'. The Framers of the Constitution also looked closely at the writings of John Locke, William Blackstone, and Montesquieu, who strongly sided with the view that foreign relations was in its nature executive. The presidents may keep the negotiation of treaties a purely executive matter but it may entail serious costs for presidency. By taking the Senate in confidence, and regular consultation with state stake-holders, a president may obtain important information to guide the drafting of the treaty.²³ This shall imply federalisation of

treaty power beyond the Senate advice and consent process and add a degree of meaningful consultative mechanisms to the delimited delegated legislative ratification.

Realising the ignorance by the Central Government, the states resented in a way of 'spill-over' from the act of national government. The treaties and commitments made by the federal nations impinged upon the powers of the state. The filing petition by the India states upon agriculture in GATT, Canadian provinces opposing incorporation of public education under GATS, states in US opposing procurement policies of WTO, are examples which depict how the territorial units made their voices heard in the international scene.

An alternative idea of explanation, comes in Duchacek's idea of 'me-toosim' is essential to understand state actions.²⁴ It was not just the need to safeguard the constitutional division of power. Under the umbrella of state rights it was an attempt to feel waters of the global economy and oppose any act of isolation in the spree for integrated international political economy. This calls for factoring in interaction and interdependence as features of federal foreign affairs in area of international trade. Therefore, the image of nation speaking with 'one voice' is replaced by multi-vocal federal state. The monopoly of the centre/union remains in picture, but in actual reality it is weakened by these multiple voices.

Functional sectorisation of foreign affairs have also come as factors for grievances of the states. In U.S., commerce is under the Congress jurisdiction but it was delegated to the executive. If WTO is an international treaty, then like other treaties needs to go through Senate's two third advice and consent process but it was by-passed. The degree of consultations with the states was measured against willingness of the Congress. In case of India, the Ministry of External Affairs was neutral throughout, the Ministry of Agriculture had its own vision upon agriculture, while the Ministry of Commerce conducted all trade negotiation diplomacy, with no established mechanism to get states input upon a subject which is their prerogative.

In a famous article written in 1939, Harold Laski concluded that federalism was obsolete, as it interfered with the effective management of an advanced capitalist economy.²⁵ In the current time also when there debated about efficacy of state, theorists like Peter Evans, looking at pressures of economic globalisation in international economy, holds that 'statelessness' in present times is leading the way for a 'leaner and meaner' state which should support transnational capital.²⁶ The international organisations like WTO are seen as insensitive to differences in a world which is guided by integration and rescaling. Irrespective of this, the new world order is fraught with conflicts and the prospect of these organisations providing a platform for settling conflicts, makes them an option to be chosen rather than dispensing them.²⁷

Assimilating into new economic orders generated by current multilateral treaties may be easy for a unitary system, but it gets tough in a federation as the power is shared. Globalization has put pressure on the state to adjust their institution to the new processes. The constitutional provisions play an important role in the way in countries adapted to the process of economic globalization.²⁸ Seen in this light, the methods of signing the multilateral trade agreement of WTO were constitutionally legitimate, yet federally insufficient.

Thus, a similar tome of federal deficit in treaty making which may be under different framework was found in the federal models studied, e.g.: lack of Parliamentary ratification in India, rise of executive- congressional agreements bypassing the advise-consent of Senate under Article II of

the United States Constitution, lack of popular participation in executive federalism in Canada. The domain of morality gives the normative prescription when current practices are deficient.²⁹

This point to ethics as a pragmatic critique of practises of Federal Foreign Affairs apparatus in treaty making, and importance of normative and moral issues of transparency, accountability, compelling us to rethink upon federal-state relations in foreign affairs.

Constituent Diplomacy: A Legitimate Interest:-

There is no federation which is immune from the impact of globalization. There have been studies upon globalization and democracy, this study attempted to extend those studies, to explaining variations in federalism, based upon the Alfred Stephan's idea that federal nations live in liberal democracy or are aspiring to be within it. As the constitutional text remained same, the political bargaining came into play to adapt to new forces of global integration.

Globalisation has affected the power and ability of the national government to act and- control. The rising internationalisation and interdependence leads to functional differentiation in the political economy where regions which are competent in their respective areas needs to be assigned to them.

The study also revealed insights upon the same lines. The federal system in India, has shown resilience to adapt to accommodate the imperatives of national unity with a liberalized market and regionalised polity. States are allowed to introduce innovations in state economy and decentralise power according to their needs.” The idea of dual federalism to watch against political conflict and ensure functional separation amongst independent states, in U.S., has also moved from vertical state-federal dimension, where it was seen in an administrative sense of cooperative federalism with centre and state jointly implementing programs, towards horizontal competitive federalism which compels states to reach out to their citizens, beyond the national government's ambit.³¹The national/union government encouraged sub-national activities as they were seen complimentary to the national agenda.

Ivo Duchoczek observed interesting factors that have made states an important factor of analysis in the international sphere.³² It is held that federal nations speak with regional voices at the international realm in post Cold War scenario. This shows the importance the national government gives to state causes. Instances in this regard are India quoting Kashmir on international terror issues, United States talking about Texas interests in oil diplomacy etc.

The global world made sub—units affected by distant happenings, due to which the Union also allowed them to be prepared to meet all exigencies. In both cases of India and United States, the presence of democratically elected state legislatures at the second tier helped to galvanise states about international issues. The pressure of having the need to face electorate for political survival ensured that states remain vigilant about international issues that affect them. The state of Tamil Nadu raked up Sri Lanka fishermen issue in State Assembly Elections 2011, California talked about climate change as against US global stand on the issue.³³

Geographical contiguity always has an impact on federal foreign relations. Economic globalisation adds to that. The rising economic ties between Canadian provinces and United States' sub units, Indian border states voicing concern over migration and boundary with neighbouring countries were examples in this light that were deliberated in previous chapters.

Culture has also helped to have sub—units have an international voice. Quebec reaches out to all those who accept ethos of a multi—lingual world, rise of Gujju community in U.S. bonding with Gujarat in India, Mallu community in middle- east with Kerala etc. The idea of ‘melting pot’ has displaced divergent identity formations in U.S. If America is a melting pot, then India is dubbed as a thali — a collection of sumptuous dishes in different bowls. Each may not mix with the next, but they combine on the palate to produce a satisfying repast.³⁴

When conflict and cooperation are essence of the federal process in political, social and financial sphere, then John Kincaid aptly asks a question that then why let foreign affairs be out of this range. When states shall compete with each other at the international level also, this shall be a measure of the degree of success of the vitality of federalism as a mechanism.³⁵

After coming to polls in State Assembly Election in 2011, the leading Trinamool Party announced for sops to capitalists to prefer West Bengal over other states for investments.³⁶ Kerala tries to retain its own brand as ‘God’s own country’ to continue to attract revenue from tourism compared to other states.³⁷ Gujarat has been regularly holding ‘Vibrant Gujarat’ summit to attract investors all over from Middle East and China and assures them good returns.³⁸ These are ‘legitimate interests which needs to be accommodated, not neglected’, as Kincaid argues. If states are looking upon the market as a means to cater to their needs, then these conditions have been created by the federal government, under the pressure of contextual global forces.

The most tempting argument to opt for federal model has been its tendency to check the misuse of power by the national government at the expense of the states. From efficiency perspective, the rise of states in hitherto restricted realm, calls for designing policies and modules of better suited to local needs yet with global appeal. Alongside this, we cannot ignore aspects of accountability amongst multiplicity of actors, directions of accountability, de jure and de facto accountability, which are essential to comprehend the dialogue on foreign affairs under the presumption of rise of sub- national units.³⁹

It is held that federalism and globalization share a relation of ‘uneasy partners’, because the latter is pushing pressure for reform in the former.⁴⁰ The present day global scenario cannot exist in vacuum, therefore both orders of government need to contribute towards effective external presence of the nation. The constituent units have greater understanding of nuances of ground realities while the Federal government has greater experience in articulating national interest in international sphere. Their co-operation needs to be enlisted through effective intergovernmental co-operation.⁴¹

Fear associated with the idea that states may contest foreign policy via constituent diplomacy is uncalled for as we need to perceive the threats that can endanger the nation once this constituent diplomacy is not allowed. The processes like economic, job creation, fetching investments, safeguarding culture etc, that have led to the rise of provincial units in foreign affairs are irreversible. Though interdependence is accelerating the role of states and provinces in the international economy yet these developments will not in themselves imperil the existing federal structures as the novelty of federalism as a system as opposed to an authoritarian or unitary system lies in flexibly accommodating the divergent trends by constant negotiations.

What was found common in both the federal models was that the rise of states in foreign affairs that it was not enshrined in the Constitution. The specific international activities of various states were a response to domestic and international factors, which was not guided by any institutional

structure also. It was extraneous and linked to the overall federal bargaining between the centre and states. As states needs shall grow with time, there shall be more examples of states role in foreign affairs. These state interests are justified due to various economic, developmental, cultural needs. The federal polity has to take this input seriously in the future course of action.

III. Converging Agenda of Political Parties

It was observed by William Riker that the behaviour of political parties is important for the integrity of federal systems. Federal politics is the art of balancing the national and regional aspirations. The art of managing the diverse interests is one of what Barry Weinghat says, ‘fundamental dilemmas of federalism’ .

This brings the essence of political parties in the federal set up. There is a general observation that dual federalism has a tendency to have decentralised national parties in their party system. Joint federalism encourages close links between the parties at the central and state levels which leads to centralisation.⁴²

The American founders did not envision any kind of party system and did not anticipate two permanent major parties. Fears of fissiparous tendency of political parties were always present in the Anglo-American political culture. Sartori’s classification of parties based on numbers was good indicator to place the America Party System under the two party systems. It has the strongest and oldest two party system- The Democrats and the Republicans, have always flourished in the American political scene. Though it has all requisite elements for having a functional multi party system- diverse population, economic and social strata, ethnic cleavages, amongst others, yet the presence of two parties has always constrained the rise of new parties.⁴³

It was after 1780 that the two party system got established. It went through changes, yet its structure remained same. 1 Federalists versus the Democratic- Republicans until 1820s; 2. The Democrats versus the Whigs until the pre-Civil War elections; 3. Democrats versus Republicans, with different constituency bases for each party. Since the new deal, there is an attack on this enduring tradition in terms centralizing political power in the federal government and the executive branch.

This two party system has been stable and long enduring, yet there are critiques that it had lead to a certain degree of monopoly. This is not good for free exchange of ideas that limits public debate, as found in multi-party system. Further, the modernization and technological thrust of the rising democratic process requires changes and alternatives for discussion and deliberations.⁴¹

The American political parties are decentralised and relatively non-ideological. The degree of centralization in a federation affects the relative importance of the central and sub—central political arenas. In dual federalism, decentralization increases the demand for policy freedom at state levels of the party. There are nearly three thousand counties in America having county chairman heading the Republican or Democratic Party organization, which have great influence over their party. American political parties have low degree of integration. There are no membership linkages because the American parties are not membership parties. Party’s organizational activities are fragmented and such traditional party activities such as campaigning are candidate-centred and contracted out to professionals. The state electorate plays an important role through primaries, in selection of Presidential candidates. The central party has less control over the state parties. This degree of decentralisation is similar as in Switzerland, where the central party sometimes has no access to the membership lists of the cantonal parties.⁴⁵

The Republican Party has always been a conservative party standing for limited government, with Christian Right, the Business Community namely, the wall street, banking industry, oil industry, pharmaceutical industry, military-industrial complex, insurance industry, and the agri-business lobby, as its main interest group to cater to. The Democrats have been close to issues of labor and support a centrist agenda.

The controversy caused by the programs of the Great Society, which exposed the limits of national administration in a federal system, prompted Republicans for new experiments in the devolution of government power to the states. However, Republican presidents such as Ronald Reagan and George W. Bush used their powers in ways that bolstered their parties and downplayed federalism as an issue.⁴⁶ The strong relation between the executive and the ruling party is a feature of Parliamentary model like India. This has also been prevailing in the American political system in recent years. With the rise of new democratic administration, it is hoped that President Obama shall avoid administrative aggrandizement which shall usher new rays of hopes for federalism.⁴⁷

India is a federation that has common electoral law, but however there are variances in party system, running from national party to state party, regional party. Not only do party systems and alliances differ across the states, but the number of parties competitive in state elections also varies within a state. In India, like other parliamentary federation e.g. Canada, the first past the post system, makes it difficult for minor parties to win seats in Parliament, the system rewards smaller parties with strongly concentrated support in specific geographic areas.

The phase after independence saw domination by single party — Congress I, in government and politics. In the Indian scenario, there was fusion of the power; the party leader was usually the prime ministerial candidate during the single party dominant phase. The period post 1990s, witnessed the rise of other parties at the government level. Similarly, in Canada, the liberal party dominated all the time, that the party men did not fight elections to propagate party agenda, but under the aura of party dominance. Later, there was rise of partisan politics as the 1993 elections saw emergence of other parties.⁴⁸ In India, seen at ideological level, the Congress agenda was akin to that of Democrats, while the BJP was centred along the agenda of the Republicans.

With the rise of co-alit ion era, Indian party system under the influence of money and muscle power needs a lot of streamlining and functional congruence. There is a degree of discordant bicameralism, where the Lok Sabha is dominated by the ruling co-alition, and Rajya Sabha dominated by opposition. Bi—partisan consensus is needed for any procedural changes in the working of federation via the amendment of the Constitution. The Government is being run along the informal logic of separation of power system, where governmental authority is systematically divided and segmented. India is no longer a majoritarian democracy as in Nehru, Indira and Rajiv Gandhi parliamentary days, but more akin to U.S. model.

When no single party controls a majority of seats, bargain and compromise with regional players come forward. The deeper the cleavages in the social demography, the more regional parties are likely to develop. India justifies this stand, there is a party in India for every cause (excluding green agenda).e.g.: BSP

- Dalits, TRS- separate region of Telangana. The social fabric of United States is also varied, yet the party system has moved along two party lines. The Indian case resembles that of Spain and Belgium where regionalisation of politics was a cause of federalisation. Regional parties in

Catalonia, Basque Country were crucial to the survival of national minority governments between 1993 and 2000.⁴⁹ In Belgium, territorial representation within the Senate is very weak, yet regional players made use of Federalism within the political system to change the locus of power to shift from a centralised to a federalised realm.⁵⁰

Anthony Downs holds that under the two-party systems, there cannot be stability of government unless there is convergence upon issues. Parties in a two-party system deliberately change their platforms so that they resemble one another; whereas parties in a multi-party system try to remain as ideologically distinct from each other as possible.⁵¹ Analysis by Rogowski shows that in present times governments need more trade, where there is rising demand and a reduced supply, which can come by greater openness. Therefore, Parliamentary system and multi-party system should foster centrist tendencies for pro—free trade policies among all parties.⁵² The scenario that emerges from these discussions is that party systems in both the federal models have a status quo upon integration with the global sphere. They may dispute one or other clause to factor in their constituency interests and manoeuvre through the democratic game yet on the larger agenda, there exists no differences.

In U.S. model, both the parties may dispute over pros and cons of WTO, yet successive regimes have made efforts to make the nation as main player in trade parleys. The Democrats which is the main party of platform for labour issues was the party when NAFTA and WTO were ratified. The TPA powers have been employed by both Republican and Democrat presidents to get trade pacts through Congress.

In India, the case remains the same, though Congress is pro-labour, and BJP is pro-industrial class, yet both parties are in nuanced recognition that there can be no roll back in terms of integration with the global economy. The NDA and UPA both evaded the responsibility of carrying out its commitment in the contentious political situation. Till today, there has been no attempt by the legislature to discipline the treaty making power of the executive. The globalization process, even with its current inequities, is seen by parties like BSP, TDP, DMK, and AIADMK as they attempt to seize power through a democratic process, a potential instrument for socio-economic transformation of their constituency.

Voters continue to distinguish parties in terms of left-right-centre. In the electoral arena, political parties become prisoners of the inevitability of global forces. An example can be drawn from Australia, where in the national elections, a trend is seen that all three major parties—labour, liberal, and Democrats are converging on same agendas.⁵³

To add to this notion of converging agenda, there is also inherent distrust and fear associated with political parties. In India, political parties are seen as the plague of Indian democracy. There is disillusionment with their working and same package is offered by most of them in their promises. D.L. Sheth opines that the grass-roots movements have confronted with the political parties and presented a critique of the prevalent macro-structures of political representations.⁴ Similarly both major political parties in U.S. are pro-WTO, both try to make promises upon what suits their group interests but the overall deal remains the same. In a recent CNN poll, people expressed their dissatisfaction at the state of economy, with 44% blaming the Republicans of the Bush era and 35% targeting the Democrats. Cumulatively, it showed nearly 70% of the U.S. citizens were discontent with the two parties.⁵⁵

Globalization is eroding differences in parties across various countries about trade issues. Supranational organisations like the European Union have seen rise of trans-national federal parties like the Euro-parties which impact the ideological strands by politicisation of EU polity and they offer bipartisan linkages within EU institutions.⁵⁶ The WTO, however, does not have any such trans-national parties. Geoffrey Garrett holds that globalisation needs to be problematised, as giving more incentives to centre-left wing parties to assert themselves in the political arena with their issues over redistribution and realignment of terms between roll back of state and rise of market.⁵⁷ E.g: The only dissenting voice that came upon issue of democratic accountability in ratification of WTO was from the Left wing parties in India which strived to amend the Constitution to make legislative sanctions compulsory for any international treaty.⁵⁸

IV. Judiciary and Federal Foreign Affairs

Judges are not mere phonographic recorders but empirical scientists and interpreters of the social context of democracy in which they work to articulate the Constitutional goal.⁵⁹ Diversities call for conflict management as new designs of federal polity are chalked out. This brings forward the need for institutions. Usual institution for conflict management like judiciary have been seen to be used in U.S. and India.

All federal states are facing the challenges and opportunities of globalization. With the inevitable integration with the global system, there is rise in signing and implementation of treaties. The international trade has a broad agenda which, makes the scope of treaty to impinge upon the issues of domestic politics.⁶⁰ States are required coordinate policies to manage interdependence in areas such as investor rights, controls on procurement, technical standards, overlapping areas of agriculture, services etc.

The treaty-powers can be analysed along two points: treaty-making and treaty- implementation. Australia, like Canada, is a parliamentary federalism and the treaty-power are centralized along treaty making and treaty implementation axis. However, the Canadian treaty-power is more decentralized, where the federal governments cannot enter into treaties on areas of provinces and also ensure that subunits will comply with a treaty's provisions prior to its ratification. Belgium and Switzerland give role to their sub—units, as they can conclude treaties in their areas of jurisdiction. India is a peculiar case of centralized federation where states have no role in treaties. The United States gives role to the states Via the Senate advice and consent process.

To get a treaty in force, self executing nature of treaty is an essential component. However, with changing dynamics of treaties in international trade in foreign affairs, the enforcement becomes complex as it creates rights within the domestic space. The Courts take no role in treaty making or enforcement, but have played an important role as federal cases reach them. The judiciary limits itself to indirect enforcement through interpretative presumptions about constitutional legalism.

The Constitution of India gives the power to enter into international treaties to the executive and the Parliament has the sole prerogative to enforce these laws in India. Time again the decision of the Government to enter into such treaties has been challenged but at all times this has been repelled by the judiciary.

A Division Bench of the Delhi High Court deliberated upon the writ petition filed on the 7th April, 1994 by Vandana Shiva, which sought a writ of mandamus restraining the Union of India

from signing/ratifying the existing version of GATT Treaty. The issue before that came up was in exercise of its powers under Article 226 of the Constitution of India, can it intervene or restrain the Union of India from entering into treaty obligations.⁶¹ The Court dismissed the writ petition holding that it was beyond the realms of the judiciary to sit in judgment over the executive's decision to enter into an international treaty. The court relied upon the Supreme Court judgement under the Bench of Justice P. N. Bhagwati, made in another judgement that the Court must, while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or play in the joints to the executive.⁶²

What the federalist saw that the judiciary would be least harmful organ in a federation, the U.S. model have seen the contrasting picture with the judges literally re-writing the Constitution, under the pretence of interpreting it, without any constitutional mandate. As judges tried to safeguard the Constitution schema of action above anything, this worked in a combination of positive and negative manner. In the American case, as Phyllis Schafly notes this has led to tyranny of judges with judicial supremacy growing like a cancer.⁶³ The Supreme Court in U.S. has been reluctant to go give positive interpretations to the cases of foreign affairs foray of the state. It has upheld the Supremacy Clause and the executive power as a shield for Constitutional legalism.

Judicial Review is an important feature of the U.S. Constitution, which Indian Constitution also embraces. The government in India is run by the damage control exercise of the judiciary termed as judicial activism. However, as seen in previous pages, the judicial stand in both cases was safeguarding the aspect of strong 'one voice' in foreign affairs.

Looking at the replacement of the treaty-making process by the emerging congressional executive agreements in U.S, or Courts refusing to listen to PILs over unilateral act of treaty making in India, the judiciary in both cases stuck to the constitutional contours. This indirectly justified the prevailing practices. Thus, the judicial stand has been marked by conservatism. This is at odds, as compared to its approach in other areas of governance. The ray of hope lies that when in future, the judiciary sees and deliberates that whether such deviations are unwarranted violations of federalism.

V. Intergovernmental Relations in U.S. and Indian Federal Model

Intergovernmental relations (IGR) are essential to discuss interaction in federal systems:⁶⁴ They can be classified as:-

1. Legislative Federalism: It is found in Presidential-Congressional models, where principle of separation of powers and checks and balances are hallmarks. E.g.: United States. Hence constitutional recognition of federal second chamber is imperative.
2. Executive Federalism: It is characteristic of Parliamentary-Federal form of government, where executive and legislative powers are fused. E.g.: India, Canada.

There are two features of IGR in present times:-⁶⁵

1. Complexity: The IGR framework is large and differentiated, ranging from formal to informal and;
2. Inter-dependence: As government stand and perspective on policy issues is amalgamated under the plurality of present times, the responsibility is being shared within a single policy

arena. The situation has developed in response to internal and external factors- roll back of states, rise in demand for services, international issues casting a spell over local affairs etc.

The older federations like the United States, Canada were born in era of limited government. Their founders saw little need for formal mechanisms to manage co- operation between the two levels of government. In present era of complexity, interdependence grows and demands IGR mechanism to avoid duplicity and instill co-operation.

U.S. is an example of dual federalism of separation of powers where each government is responsible for both law-making and implementation for a defined list of responsibilities. With equal representation in a Senate appointed by the states, this arrangement appeared to envisage Congress as the primary site for managing intergovernmental relationships. This role diminished following the constitutional amendment to require direct election of Senators. The constitution requires states within the United States have to respect for the public acts, records, and judicial proceedings of other states.⁶⁶ Just as the European Council of the European Union where the members are E.U. state governments with equal representations, the U.S. Senate is distinctly international, with the members having equal suffrage as per international law, regardless of the states' populations and territories.⁶⁷

The common intergovernmental relationships are informal and ad-hoc, varying widely among policy fields or what is called as picket fence federalism. IGR have been primarily a matter of administrative co-ordination. With relatively homogeneous national identities, the primary political influence is likely to lie with the central government. With the decentralised nature of party system, accommodation between centre and state takes place in the course of party politics and in the national political arena also.⁶⁸

There are a number of permanent bodies, such as the National Governors' Association for centre-state policy co-ordination. In the past, the executive took the initiative to establish a commission on Intergovernmental affairs but it lost its capacity soon after its inception in 19503. Usually Congress is reluctant to create permanent commissions. Advisory Commission on Intergovernmental Relations in 1990s did get into action but paucity of funds lead to its termination in 104th Congress.⁶⁹

There is lack of clarity owing to constitutional ambiguity about areas of centre and state jurisdiction. The Commerce clause gives power to the national government and the Supreme Court interpreted the Constitution to give power to the national government Using efficiency as guideline, theorists have tried to underline inter-governmental yardsticks like federal government role is distributive, while states role is developmental. The novelty of American federalism, as Daniel Elazar observed that it has been marked by high degree of intergovernmental co-operation where all policy avenues were a shared arena.⁷⁰

Joseph Zimmerman highlights that until 1965, Congress intruded into traditional areas of state fields as it exercised its power of pre-emption in a new regulated way. This accretion of political power also reduced citizen participation. Centre- state co-operation took place through reciprocity statutes, administrative agreements, and meetings of federal-state officials.⁷¹ The Court inhibiting decisions and an aggressive Congress took powers away from the states.⁷² The ideas of New Federalism talked about devolution, and the period following that saw state level initiatives with state governments as leaders in social welfare, workmen's compensation, vocational education, minimum wage, and administrative efficiency. As against aspects of race

to- bottom, it was argued that states can do better than the federal government as creators, managers and financiers of certain programs.

Political process, access and communication have been affected by changes in technology, finance and organisation. The emerging challenges are widely distributed. Resources needed to solve them are not the preserve of any single level of government. The new scenario tests the capability, flexibility and adaptability of the federal system. Further, the institutional capacity of intergovernmental monitoring is weak as each level of government forfeited its capacity to measure costs. The management of programs across borders needs to be factored in IGR communications.⁷³

Rekha Saxena points that Canada in 1867 and India in 1950 adopted constitutions broadly similar in principle to the Westminster model that was prevalent in England. They modified it and added on to a parliamentary framework of a federal component. This feature of the governments in the two countries required mechanisms of intergovernmental relations for negotiations, policy formulation, and political settlement of intergovernmental disputes. Initially, the centre-state relations were less problematic. With time, the federal-provincial relations in Canada and union-state relations in India have become increasingly important with the growing federalization/regionalization in Canada since the post-World War II era and in India since the 1980s, especially 1990s.⁷⁴

In Canada, the instruments/mechanisms of intergovernmental relations are informal and are not part of the Constitution or any statute. They have developed on an ad hoc basis, in response to the needs of the time and have been forums for the exchange of information, negotiation and persuasion. The Canadian political parties do not act as a common thread uniting the two orders of government.

The First Ministers Conferences or Meetings (FMMS) bring important leaders at federal, provincial and territorial level. Looking at rising bilateral and multilateral issues, there were other ministerial meetings also.⁷⁵ Later, CICS- Canadian Intergovernmental Conference Secretariat was created in 1973 by the First Ministers, which is an agency of the federal and provincial governments and is supported by these two orders of government.⁷⁶ The concept of Executive Federalism was coined in this reference by the Canadian political scientist Donald Smiley referring to inter-governmental negotiations dominated by executives at different levels. This combines federalism and Westminster-style cabinet government.⁷⁷

Experts like Alan Trench, point out that since about 1993 Canadian intergovernmental relations has been dominated by issues of practical policy rather than debates about the nature of Canadian federalism. E.g.: The Federal Government committed itself to Kyoto Protocol on Climate Change, but provinces like Alberta raised reservations as its government has excessive reliance upon oil. This was managed by informal IGR.⁷⁸ In the same light it is pointed that executive federalism has not been displaced, but re-invented with new practices of 'collaborative federalism', which are characterized more by the principle of co- determination of broad national policies rather than by the more traditional pattern of federal-Leadership.⁷⁹

The Indian case also corresponds with the Canadian case. Rajya Sabha like Canadian Senate has never played its role of articulating regional interests at the central level. The aspect of ministerial solidarity and party discipline via the anti- defection law, curtails the case for federalism. State delegations in Rajya Sabha cannot claim to represent the state governments per

se as the members of the German *Bundesrat*, for example, can who are either provincial chancellors or ministers themselves or their nominees. Although Rajya Sabha shares equal legislative powers with the Lok Sabha, except for money bills, but in a joint sitting with Lok Sabha, where legislative disputes between the two chambers are resolved by vote, Rajya Sabha suffers from smaller numbers (233) as compared to the Lok Sabha (545).

Inter-State Council (ISC) was provided for in the Constitution under Article 263, right from the beginning but it was first set up in 1990. Even after setting up, it has been a failure. National Development Council (NDC) for Union-State clearance of Five Year Plans and to look into related issues of economic development in the country was set up by a parliamentary statute in 1952. A Chief Ministers' conference excluding the federal government has probably never happened in India. It is usually along lines of Prime Ministers Conference or in Planning Commission, Finance Commission, that Indian federation goes to explore intergovernmental dimensions. Rekha Saxena points out that the continued existence of two separate bodies has meant an active NDC in the more salient area of economic federalism and the eclipse of ISC in the political domain. Any case of politics cannot be viewed in isolation from economic contours, therefore there are suggestions put forward NDC's entrenchment in the Constitution and the merger of the NDC and the ISC as the key apex inter- governmental agency.⁸⁰

There are several larger and more pervasive political and administrative structures that have exercised a large degree of influence on IGR in India. The principal among them are the party system and uniquely Indian administration structure called Indian Administrative Service (IAS). In the era of one- party dominance, the Indian National Congress (INC) ruled in all or subsequently in most of the states. During that phase, the Congress Working Committee and Congress Parliamentary Board were forums at which IGR policies and relations were conducted. The Congress CPB comprising most powerful ministers and chief ministers was mandated to oversee the working of the union as well as the state governments.

In the era of the multi-party system, political parties in India are in disarray. In this new party system features national parties that have declined or have not grown beyond a certain point or state regional parties that have become more powerful than ever. During this phase, universally larger coalition cabinets including parties ranging from over half a dozen to nearly two dozen have become direct site for contestation for points of views of regional or state parties. This has a profound impact on eclipsing the IGR forums but not totally elbowing out the IGR forums per se.

The neo-liberal policy reforms accelerated in 1991 opened up Indian economy to private capital both national and multinational. In relative terms, the state sector is still quite large but the opportunities offered to capitalist enterprise is transforming India beyond recognition. IGR in India must now accommodate not only the state, but also the civil society institutions like national and international NGO's, community organizations and the corporate sector. Public-private partnership in practically all policy areas is a new and growing trend to involve the corporate sector in the development of infrastructure as well as social sector.

New ways and means are being explored how to make IGR more interactive, inclusive as well as accountable. One major problem with IGR not only in India but elsewhere as well has been the lack of inclusion, transparency and accountability. Even the traditional mechanism like parties and legislative accountability of inter governmental decisions has been very weak and inadequately functional.⁸¹

There is a general observation amongst scholars, that there is marked tendency towards centralisation in both developed and developing countries, juxtaposed with the weakening of the centre. Centralisation, differentiation and creeping tendencies towards in both developed and developing countries co-exist uneasily. The extent to which federalism may be used as yardstick in this arrangement is unclear.⁸²

Conclusion:-

Change, as the character of relationships is ubiquitous. The texture of foreign affairs, never remains same, but depends upon the context within which they exist.⁸³ The discourse on foreign affairs which was hitherto seen in crude realist discourse is being changed. Today neo-liberal post modern paradigm in the realm of International relations refuses to adhere to crude domestic—international distinction, and concedes to the existence of multiple realities. This has put onus on the policies of the nation to respond to the demands of changed times.

There have been traditional concerns about the impact of international law on national sovereignty. With the nations expanding their participation in multilateral agreements that touch on subjects traditionally considered to be purely domestic makes treaty making a polemical realm. As the nation becomes increasingly amenable to international norms, the treaty power serves as the primary channel for incorporating those norms into law.

State sovereignty is becoming porous in a constant process of interaction, whereas federalism can be analyzed under the paradigm of pluralistic democracy as the two sets of government are independent yet jointly linked. This engagement with the new processes has contributed to a corresponding process of re- institutionalization of the nation and debate of federalism as a process.

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