

# Comparative Study of Federalism in Two Democracies: India & Canada

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## **Abstract:-**

*This article discusses one of the most important federalism structures of two oldest democracies in modern world i.e. India and Canada. From comparative perspectives federalism of these two democracies can be seen as progressive and prosperous but some issues need to be address in respective of federalism such as separation of power, governance, and devolution of power. Specifically, we look at four fundamental outcomes: Evolution of Federalism in two countries, Scheme of separation of power, understanding centralization and decentralization of power, Constitutional Provisions. We conclude by discussing the current challenges to federalism in both the countries. Competitive, bargaining, co-operative federalism.*

**Keywords:** *Federalism, separation of power, power, politics, Administration, Governance, constitution, centralization, de-centralisation.*

## **Introduction:-**

In today's world of democracy, India considered as temple of democracy among world countries. Where citizen rights depends on federal structures. We will discuss on evolution of federalism.

## **Evolution of Federalism in two countries:**

### **Evolution of Canadian federalism:-**

The foundations of Canadian federalism were laid at the Quebec Conference of 1864. The Quebec Resolutions were a compromise between those who wanted sovereignty vested in the federal government and those who wanted it vested in the provinces. The compromise based the federation on the constitution of the British Empire, under which the legal sovereignty of imperial power was modified by the conventions of colonial responsible government, making colonies of settlement self-governing in domestic affairs. The Province of Canada had been established in 1841 following the Act of Union which amalgamated two hitherto separate colonies, Lower Canada and Upper Canada, which had their own elected legislative assemblies that enabled them to make certain respective domestic political choices. After the union of 1841, it proved virtually impossible for a single government to ensure political stability, despite measures designed to preserve the specificity of each of the communities. Those measures included:

- two prime ministers, one for the Francophone section (Canada East) and one for the Anglophone section (Canada West), located on either side of the Ottawa River;
- two attorneys-general (the common law remained in force in Canada West and the civil law in Canada East);
- Some laws applied to only one of the sections, so that such matters as education could be governed differently.

It was proposed that the Province of Canada be divided into two entities united within a federation. The powers would be shared between two orders of government, which would ensure unity (federal order) while allowing for the

expression of diversity (provincial order). The possibility of the other British North American colonies being a part of that federal union was also considered because of the advantages that an expanded union would bring.

### 1914–1960

During World War I, the federal Crown's power was extended with the introduction of income taxes and passage of the *War Measures Act*, the scope of which was determined by several court cases.<sup>[b]</sup> The constitution's restrictions of parliamentary power were affirmed in 1919 when, in the *Initiatives and Referendums Reference*, a Manitoba act providing for direct legislation by way of initiatives and referendums was ruled unconstitutional by the Privy Council on the grounds that a provincial viceroy (even one advised by responsible ministers) could not permit "the abrogation of any power which the Crown possesses through a person directly representing it". Social and technological changes also worked their way into constitutional authority; the *Radio Reference* found that federal jurisdiction extended to broadcasting, and the *Aeronautics Reference* found the same for aeronautics. Dominion-Provincial Conference, 1927 In 1926, the King–Byng Affair resulted in a constitutional crisis which was the impetus for changes in the relationship between the governor general and the prime minister. Although its key aspects were political in nature, its constitutional aspects continue to be debated.<sup>[8]</sup> One result was the Balfour Declaration issued later that year, whose principles were eventually codified in the Statute of Westminster 1931. It, and the repeal of the *Colonial Laws Validity Act 1865*, gave the federal parliament the ability to make extraterritorial laws and abolish appeals to the Judicial Committee of the Privy Council. Criminal appeals were abolished in 1933, but civil appeals continued until 1949. The last Privy Council ruling of constitutional significance occurred in 1954, in *Winner v. S.M.T. (Eastern) Limited*. After that, the Supreme Court of Canada became the final court of appeal. In 1937, Lieutenant Governor of Alberta John C. Bowen refused to give Royal Assent to three Legislative Assembly of Alberta bills. Two would have put the province's banks under the control of the provincial government; the third, the *Accurate News and Information Act*, would have forced newspapers to print government rebuttals to stories the provincial cabinet considered "inaccurate". All three bills were later declared unconstitutional by the Supreme Court of Canada in *Reference re Alberta Statutes*, which was upheld by the Judicial Committee of the Privy Council. World War II's broader scope required passage of the *National Resources Mobilization Act* to supplement the powers in the *War Measures Act* to pursue the national war effort. The extent to which wartime federal power could expand was further clarified in the *Chemicals Reference* (which held that Orders in Council under the *War Measures Act* were equivalent to acts of parliament) and the *Wartime Leasehold Regulations Reference*, which held that wartime regulations could displace provincial jurisdiction for the duration of an emergency. Additional measures were required in order to secure control of the economy during that time. Jurisdiction over unemployment insurance was transferred permanently to the federal sphere; the provinces surrendered their power to levy succession duties and personal and corporate income taxes for the duration of the war (and for one year afterwards) under the Wartime Tax Rental Agreement;<sup>[9]</sup> and labour relations were centralized under federal control with the Wartime Labour Relations Regulations (lasting until 1948), in which the provinces ceded their jurisdiction over all labour issues. Canada emerged from the war with better cooperation between the federal and provincial governments. This led to a welfare state, a government-funded health care system and the adoption of Keynesian economics. In 1951 section 94A was added to the *British North America Act, 1867* to allow the Canadian parliament to provide for pensions. This was extended in 1964 to allow supplementary benefits, including disability and survivors' benefits. The era saw an increase in First Ministers' Conferences to resolve federal-provincial issues. The Supreme Court of Canada became the court of final appeal after the 1949 abolition of appeals to the Judicial Committee of the Privy Council and the federal parliament received the power to amend the constitution, limited to non-provincial matters and subject to other constraints.

### 1960–1982

1961 saw the last instance of a lieutenant governor reserving a bill passed by a provincial legislature. Frank Lindsay Bastedo, Lieutenant Governor of Saskatchewan, withheld Royal Assent and reserved Bill 5, *An Act to Provide for the Alteration of Certain Mineral Contracts*, to the Governor-in-Council for review. According to Bastedo, "this is a very important bill affecting hundreds of mineral contracts. It raises implications which throw grave doubts of the legislation being in the public interest. There is grave doubt as to its validity". The act was upheld in an Order in Council by the federal government. Parliament passed the *Canadian Bill of Rights*, the first codification of rights by the federal government. Prime Minister Lester Pearson obtained passage of major social programs, including universal health care (a federal-provincial cost-sharing program), the Canada Pension Plan and Canada Student

Loans. Quebec's Quiet Revolution encouraged increased administrative decentralization in Canada, with Quebec often opting out of federal initiatives and instituting its own (such as the Quebec Pension Plan). The Quebec sovereignty movement led to the victory of the Parti Québécois in the 1976 Quebec election, prompting consideration of further loosening ties with the rest of Canada; this was rejected in a 1980 referendum. During the premiership of Pierre Trudeau, the federal government became more centralist. Canada experienced "conflictual federalism" from 1970 to 1984, generating tensions with Quebec and other provinces. The National Energy Program and other petroleum disputes sparked bitterness in Alberta, Saskatchewan and Newfoundland toward the federal government.

### **Patriation**

Although Canada achieved full status as a sovereign nation in the Statute of Westminster 1931, there was no consensus about how to amend the constitution; attempts such as the 1965 Fulton–Favreau formula and the 1971 Victoria Charter failed to receive unanimous approval from both levels of government. When negotiations with the provinces again stalled in 1980, Trudeau threatened to take the case for patriation to the British parliament "bothering to ask one premier". According to the federal cabinet and Crown counsel, if the British Crown exercised sovereignty over Canada, it would do so only at the request of the federal ministers. Manitoba, Newfoundland and Quebec posed reference questions to their respective courts of appeal, in which five other provinces intervened in support. In his ruling, Justice Joseph O'Sullivan of the Manitoba Court of Appeal held that the federal government's position was incorrect; the constitutionally-entrenched principle of responsible government meant that "Canada had not one responsible government but eleven." Officials in the United Kingdom indicated that the British parliament was under no obligation to fulfill a request for legal changes desired by Trudeau, particularly if Canadian convention was not followed. All rulings were appealed to the Supreme Court of Canada. In a decision later known as the *Patriation Reference*, the court ruled that such a convention existed but did not prevent the federal parliament from attempting to amend the constitution without provincial consent and it was not the role of the courts to enforce constitutional conventions. The Canadian parliament asked the British parliament to approve the *Constitution Act, 1982*, which it did in passage of the *Canada Act 1982*. This resulted in the introduction of the *Canadian Charter of Rights and Freedoms*, the transfer of constitutional amendment to a Canadian framework and the addition of section 92A to the *Constitution Act, 1867*, giving the provinces more jurisdictions over their natural resources.

### **After 1982**

The Progressive Conservative Party under Joe Clark and Brian Mulroney favored the devolution of power to the provinces, culminating in the failed Meech Lake and Charlottetown accords. After merging in 2003 with the heavily devolutionist Canadian Alliance, the Conservative Party under Stephen Harper has maintained the same stance. When Harper was appointed prime minister in 2006, the frequency of First Ministers' conferences declined significantly; inter-provincial cooperation increased with meetings of the Council of the Federation, established by the provincial premiers, in 2003. After the 1995 Quebec referendum on sovereignty, Prime Minister Jean Chrétien limited the ability of the federal government to spend money in areas under provincial jurisdiction. In 1999 the federal government and all provincial governments except Quebec's agreed to the Social Union Framework Agreement, which promoted common standards for social programmes across Canada. Former Prime Minister Paul Martin used the phrase "asymmetrical federalism" to describe this arrangement. The Supreme Court upholds the concepts of flexible federalism (where jurisdictions overlap) and cooperative federalism (where they can favorably interact),<sup>[18]</sup> as noted in *Reference re Securities Act*.

### **Evolution of Indian federalism:-**

Government of India Act 1935

The genesis of the present federal system in India lies in the Simon Report of May 1930 which supported the idea of a federal government in India. This support for the federal form of government for the India of the future was further

affirmed in the in the First Round Table Conference of 1930. Mr. Ramsay Mac Donald, the then Prime Minister of Great Britain, speaking at the final plenary session of that Second Round Table Conference said:

*“There is still difference of opinion, for instance as to the composition and powers of the Federal Legislature, and I regret that owing to the absence of a settlement of the key questions of how to safeguard the Minorities under a responsible Central Government, the Conference has been unable to discuss effectively the nature of the Federal Executive and its relationship with the Legislature”.*

After the Third Round Table also flopped significantly, the British Government issued a White Paper in March 1933, which proposed a new Indian Constitution with an accountable government in the provinces and the principle of dyarchy at the Centre. As a result of the publication of the White Paper, a Joint Select Committee of both Houses of Parliament was appointed by His Majesty’s Government in April 1933 to evaluate and survey the proposals of the White Papers. These proposals were enacted into law and received the assent of the British Crown and became ultimately the basis for the Government of India Act of 1935. The significance of the Act of 1935 lies in the fact that the provinces were endowed with a legal personality under a national scheme, and that the character of the national scheme was ultimately a federal system. This meant the abolition of the principle of dyarchy at the provincial level and its retention at the Centre. But the federal construction that India follows today is poles apart from what the British came to us with. The biggest hint of federalism in India lies in the history of its foundation in 1947 when after the Partition of Pakistan from the Indian subcontinent all the provinces, presidencies, and princely states were united under an instrument of accession that signifies that all these previously sovereign or reliant states came together to be called one nation-state. The development and the journey of India as a federal country can be broadly understood by dividing it into two parts: The constitutional/legal provisions and the face of federalist India brought in by the Judiciary.

### **Characteristics and features –**

\*\*\*The Canadian Constitution encompasses a wide set of principles and values that govern key political relations in the Canadian society.

### **Salient Features**

- **Constitutional Monarchy**

1. It is the central component of Canada’s constitutional framework.
2. The Constitution Act, 1867 states that executive government and authority in Canada is vested in the Canadian Monarchy (which Canada shares with Great Britain and some other former British colonies).
3. The British Queen is the formal head of the state. The Act further provides for the offices of the Governor General of Canada (at the federal level) and Lieutenant Governors (at the provincial level), recognized as the Monarch’s representatives in Canada.

It is important to note, however, that while the written constitution explicitly places executive authority in the hands of the Monarch and his/her representatives, the unwritten constitutional convention holds that this authority is actually exercised by the Prime Minister and his/her Cabinet.

### **Parliamentary Government**

The Canadian Constitution also provides for a Parliamentary system of government. Features of Parliamentary Government as given in Constitution Act, 1867:

1. The Act established a federal Parliament, consisting of the Monarchy and two legislative chambers, the House of Commons (or Lower House) and the Senate (or Upper House).
2. The Act further states that the powers and authority of these legislative chambers are to be modeled upon those found in the British Parliament.

Further, the Act also established legislative chambers at the provincial level. In addition to the written provisions of the Act, there also exist several unwritten constitution conventions that are fundamental to the operation of Canada's parliamentary system. These include executive dominance by the Prime Minister and the Cabinet (at the federal level) and by the Premier and the Cabinet (at the provincial level), as well as the practice of responsible government.

- **The House of Commons**

In the Canadian political system, the lower chamber is the House of Commons, which takes its name from the lower house in the British political system. The Commons consists of 308 members known as – like their British counterparts – Members of Parliament (MPs).

- **Manner of Election**

Members are elected by the first-past-the-post system (as in Britain) in each of the country's electoral districts, which are colloquially known as ridings (known as 'constituencies' in Britain). Seats in the House of Commons are distributed roughly in proportion to the population of each province and territory, but some ridings are more populous than others and the Canadian constitution contains some special provisions regarding provincial representation.

- **Term and Tenure**

The maximum term of MPs is four years, but it is common for a general election to be called earlier.

- **Powers**

As in the British political model, the House of Commons is much the more powerful of the two chambers. Although all legislation has to be approved by both chambers, in practice the will of the elected House usually prevails over that of the appointed Senate. The processes and conventions of the Commons reflect very much those of its British namesake.

- **The Senate**

In the Canadian political system, the upper chamber is the Senate, which takes its name from the upper house in the American political system. The Senate consists of 105 members, appointed by the Governor-General on the advice of the Prime Minister. Seats are assigned on a regional basis, with each of the four major regions receiving 24 seats, and the remaining nine seats being assigned to smaller regions.

## **Federalism**

The Constitution also provides for a federal system in Canada, meaning there are two key levels of government: the federal (or national) government and the provincial (or regional) governments. Canada is a federation with a strong Centre, wherein residuary powers lie with the Centre. The Constitution Act, 1867 outlines specific powers and jurisdictions for each of these levels of government, such as what public policy fields each may legislate in, as well as how each level of the government may raise revenue. Over the years, these constitutional provisions have been further clarified and evolved by judicial decisions (first by the British Judicial Committee of the Privy Council, and later by the Supreme Court of Canada).

## **Changes in the nature of Canadian Federalism**

There have also been several constitutional amendments that have had significant consequences for Canada's federal system. Over the years there has been a shift towards giving greater powers to the states. For example, the Constitution Act, 1930, transferred ownership of natural resources in Western Canada from the federal government

to the Western provinces. Another significant amendment was the Constitution Act, 1982, which committed the federal government and provinces to ensuring some level of economic and social equality between Canadian regions. This, in turn, has led to the development of the Equalization Program and the sharing of public funds between governments.

### **Judiciary**

The Supreme Court of Canada is the highest court and final authority on civil, criminal and constitutional matters. The court's nine members are appointed by the Governor-General on the advice of the Prime Minister and the Minister of Justice. They serve until the age of 75. Each province operates its own individual court system. The country's legal system is based mainly on English common law, but in the province of Québec, it is modeled on French civil law.

### **Rights**

The Canadian Charter of Rights and Freedoms is a bill of rights entrenched in the Constitution of Canada, which forms the first part of the Constitution Act, 1982. The Charter guarantees certain political rights to Canadian citizens and civil rights of everyone in Canada.

The Charter applies to government laws and actions (including the laws and actions of federal, provincial, and municipal governments and public school boards), and sometimes to the common law, but not to private activity. The courts, when confronted with violations of Charter rights, have struck down as unconstitutional, federal and provincial statutes and regulations in whole or in part.

### **Salient Features of Canadian Constitution (In short)**

1. Constitutional Monarchy
  - As per the Constitution Act of 1867, the Canadian Monarchy is vested with the authority in Canada.
  - The formal head of the state is the British queen.
  - At the central level, there is an office of Governor-General of Canada.
  - At the provincial level, there is an office of Lieutenant Governors.
  - Note: As per the unwritten constitutional convention, Prime Minister and his/her cabinet exercise the executive authority.
2. Parliamentary Government
  - There are a monarchy and two federal chambers.
  - The two federal chambers are called House of Commons and Senate.
  - House of Commons is the lower house and the Senate is the upper house.
  - At the provincial level, there are legislative chambers.
  - There are 308 members in the lower house.
  - Elections Process
    - The election process of Canada used the first-past-the-post system.
    - Constituencies are commonly called as ridings.
    - The seats are in proportion to the population of each territory.
  - Term of Member of Parliament
    - The term is for four years.
  - There are 105 members in the Senate.
  - Governor-General appoints the members in the senate on the prime minister's advice.
3. Federalism
  - The national government is called the federal government.
  - Regional governments are called provincial governments.
  - Residuary powers lie with the centre.
4. Judiciary

- The highest court in Canada, just like in India, is the Supreme Court.
- There are nine members in Canada's Supreme Court.

### **Indian Chara...**

The constitution of India is unique with respect to its extreme detail and substance. The uniqueness of the Indian constitution is also in the fact that although it is federal in character, it declares India to be a union of states. The constitution provides for a single citizenship like the United Kingdom and unlike the United States America that provides for dual citizenship. Single citizenship gives the constitution a unitary facet where all citizens are united under one identity as an "Indian". The constitution of India establishes a dual polity with the jurisdiction of making laws on different subject matters is divided between union and the state governments. The distinguishing feature here is that the residual powers lie in the hands of the central government. This attribute which is different than other countries takes makes the Indian federalism a bit intricate to fathom. Another feature that marks India to be a federal country in nature is the written constitution. Indian constitution is the lengthiest and the bulkiest constitution in the world which clearly defines everything from rights to remedies. This strengthens the federal nature of the country and assures security to the state and citizens. The powers in the country are split amongst the three pillars of democracy: the Legislature, the Executive, and the Judiciary. All these three props are complementary and supplementary to each other with an independent judiciary which is the upholder of the supremacy of the constitution and get to the bottom of disagreements flanked by center and states or between 2 states. This guarantees a stringent remedial system. But is that sufficient? The judiciary although independent is an integrated institution and thus gives the essence of unitary government to the constitution. Other terms of the same constitution provide for the president to appoint the constitutional heads of all states i.e. governors and they hold their office to the desire of the president. Doesn't that mean that the heads of the state are appointed to the pleasure of the central government? One may wonder. The constitution of India is both stern and elastic at the same time. The rigidity of the constitution is an indispensable feature of federalism. But the same rigid constitution has hit a century of amendments in less than 75 years of Independence. The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha is the stand-in for the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to conserve the federal stability by protecting the interests of the states against the uncalled-for interference of the Centre. Other than the aforesaid provisions the following provisions of the constitution clash with the federal nature of it:

- Union has the power to make new states or alter the boundaries of existing states.
- Union has the power to make laws on state matters and if both state and union adjudicate on a certain matter, the latter will prevail.
- The emergency articles of the constitution when conjured up, give a unitary character.

### **Judicial Character of Federalism in India**

The Indian judiciary has time and again heard a number of cases involving the issue of the federal character of the Indian constitution. To understand what it had to say I have collected a few cases in a chronological order that will help in understanding the judiciary's take on this.

#### **State of West Bengal v. Union of India:**

*"The Constitution of India is not truly Federal in character. The basis of the distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union."*

**State of Rajasthan v. Union of India**

*“In a sense, the Indian Union is federal. But the extent of federalism in it is largely watered-down by the needs of progress and development of the country which has to be nationally integrated, politically and economically co-ordinated and socially, intellectually and spiritually uplifted. With such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government*

**State of Karnataka v. Union of India**

*“The Indian Constitution is not federal in character but has been characterized as quasi-federal in nature. Even though the executive and legislative functions of the Centre and States have been defined and distributed, there runs through it all a thread or rein in the hands of the Centre in both the fields. “*

**Kesavananda Bharati v. State of Kerala**

Some of the judges, in this case, held federalism to be a part of the basic structure of the constitution which means it can't be tampered with.

**S.R. Bommai v. Union of India**

In this case, 4 different opinions were given by judges

**1. Justice Ahmadi:** Because of no mention of the words like 'federal' he declared it to be a quasi-federal constitution.

**2. Justice Sawant & Kuldip Singh:** Federalism is an essential feature of the constitution.

**3. Justice Ramaswamy:** Declared India to be an “Organic Federation” designed to suit the needs of the parliament.

**4. Justice Jeevan Reddy and Justice Agarwal:** Federalism in the constitution has a different meaning in accordance with the context. This case posed restrictions on the arbitrary use of article 356.

**Scheme of Separation of Power-****Canada**

There is an explicit system of division of power in Canada. The Constitution Act, 1867, is the primary source of division of powers in Canadian federation. Under sections 91 and 92(10) of the Constitution, the federal government has the power to make laws on items of 'national' interest such as national defense, foreign affairs, employment insurance, banking, federal taxes, the post offices, fisheries, shipping, railways, telephones and pipelines, Indigenous lands and rights, and criminal law. Similarly, under sections 92, 92(A) and 93, the provincial governments can make laws on 'local' items like direct taxes, hospitals, prisons, education, marriage, property and civil rights. In the Concurrent list, the Canadian constitution enumerates items like agriculture, old-age pensions, and immigration. In case of inconsistency, under section 95, the federal law will prevail on agriculture and immigration, while under section 94A; provincial laws will prevail in the case of the old-age pension. The residual powers rest with the federal Parliament. It implies that powers not listed in the province list will go to the federal Parliament

**India:**

The scheme of division of powers in the Indian federation is presented in the Seventh Schedule of the Constitution of India. The constitution has three lists for dividing the powers between the centre and states, Union, State and Concurrent lists. The Union list has 100 subjects over which the central government has exclusive jurisdiction. The State list has 61 subjects. The Concurrent list initially had 47 subjects over which both the central and state can

legislate. The Concurrent list has been enlarged to 52 subjects, with the 42<sup>nd</sup> Amendment of 1976 transferring five subjects from the State List to the Concurrent List. As in most constitutions, when there is conflict between central and state governments 'laws, the centre's law prevails over the state laws. The residual powers rest with the Centre. Understanding the deconcentration and decentralization in both countries. Like other federal states, Canada has two levels of government called federal and provincial. The Lieutenant-Governor acts as Crown's representative. If Prime Minister functions as the head of the government at the federal level, the Premiers exercise the executive powers at the province level. In provinces, there also exists a cabinet and ministers. Like the federal government, states have their legislature, executive and judiciary. Initially, the legislature of the four provinces was bicameral. At present, they are single-chambered and elected by people. The size of the provincial legislature varies as Prince Edward Island has only twenty-seven member legislature while Quebec has 125 member legislatures. A central government and state governments exist, each having its political institutions and processes. They have a separate legislature, executive, and judiciary. The President is head of the Union of India, while the Governor is the constitutional head of states. If the supreme court is India's highest judiciary, the High courts are the state's highest judiciary. Establishing a distinct set of political institutions for central and state governments has resulted in establishing two tiers of government in Indian Federation, But unlike the US and Switzerland, there is only one citizenship, that is the citizenship of India

### Contemporary challenges or emerging trends in both the countries

1. Cooperative federalism – Governance, Politics, international issues,
  2. Competitive federalism – fight for getting funds, investment, and social indicators
  3. Bargaining federalism – GST council
- Ineffective Functioning of Several Bodies: The Planning Commission has been scrapped, the Inter-State Council has met only once in the last seven years while the National Development Council has not met at all.
    - These events have led to obstructions in upholding the cooperative spirit between the Union and states.
  - Issues in Tax Regime: The misconceived Goods & Services Tax (GST) has already taken away much of the autonomy available to states and has made the country's indirect tax regime unitary in nature.
    - During the pandemic, the Union government repeatedly violated the compensation guarantees to the States under the GST regime. Delay in paying the States their due worsened the impact of the economic slowdown.
  - Encroachments Upon States' Autonomy in State Subjects: Many important and politically sensitive decisions have been taken in the past few years, without reference to, and consultation with, the concerned states such as:
    - Article 370 was removed without consulting the state legislature.
    - Parliament legislated on "agriculture" in the state list, to enact the three contentious farm laws, overstepping its jurisdiction and imposing a law on the states.
    - The New Education Policy 2020 has also been flagged as encroaching on the federal nature of the polity.
    - Additionally, the BSF's jurisdiction was extended in Assam, West Bengal and Punjab without any consultation with the concerned states.
  - Impact of Covid-19: The states were curtailed in aspects relating to Covid-19 management such as procurement of testing kits, vaccination, the use of the Disaster Management Act, 2005, and the unplanned national lockdown.
    - Moreover, the ill-prepared government during the Second Wave countered criticism by claiming health as a 'State subject'.

### Canada:-

#### *Perceptions of Fairness*

One of fiscal federalism's greatest challenges is its perception as a fair system which strikes balance different interests. Bird and Dinning both alluded to the character of Canadian fiscal federalism as a form of social contract,

which aims to strike a balance between different principles, notably interpersonal fairness and jurisdictional autonomy. There is today a growing sense in Alberta that fiscal federalism is failing on multiple accounts, as well as a desire to change the current framework by removing equalization from the Canadian constitution or by agreeing to a new arrangement. Bird reminds us that federal constitutions limit changes which may be required by changing circumstances. Fiscal federalism in Canada has always been under negotiation; having shifted from an initially very centralized system to one where the “social state” is mostly managed by the provinces.

#### *Public Spending and Debt*

Issues related to spending and debt are at the heart of fiscal federalism. Lévesque outlined the diverging paths of federal and provincial debt since 2007. Since the 2008 financial crisis and the decline in oil prices, provincial debt has been on an upward trend, reaching historic levels. This is a vertical issue, with increases in spending not followed by higher revenues. This is especially the case with the health and infrastructure sectors, where provinces have financed increased spending through debt, rather than decreases in spending on other programs. This is generating significant debt accumulation and undermining the sustainability of provincial spending. On the other hand, federal spending is relatively under control, but there is not yet federal recognition of these issues with provinces’ finances. This is further reinforced by federal involvement through new programs, as it has been known to decrease funding over time, increasing provinces’ financial burden. For instance, costs of the federal childcare system proposed in the 2021 budget will be shared between levels of government, which is also expected to significantly increase provincial debt, except for Quebec, which already has such a system. Dinning pointed out that there is room for more innovation in the delivery of healthcare. Bird agreed with above statements and pointed out that there are many lingering inefficiencies in the Canadian health sector.

#### *Municipalities’ Fiscal Woes*

The panelists also discussed municipal governments’ complex situation within Canada’s system of fiscal federalism. Lévesque argued that municipalities already have taxation powers – which they often refuse to use – but that the pandemic may change their dependence on traditional sources of funding such as property taxes and provincial transfers. Bird, on the other hand, pointed out that municipal governments do not raise taxes on citizens to reduce the risk of being punished at the ballot box, which Dinning saw as an important form of accountability rather than a drawback. The panelists agreed that issues with the municipal revenue gap need to be seriously discussed by all three levels of government.

#### *Energy and the Environment*

Another issue facing Canadian fiscal federalism – and Canadian politics more generally – is the tension between economic interests in the energy sector and the need to address climate change. Dinning argued that the federal government’s current spending policies can only have a negative effect on fiscal federalism in the long run, by further indebting the federal government. He believes that there should be an emphasis on spending on innovation and on energy, which must include all forms of energy – including fossil fuels – and that Alberta must be an integral part of discussions in this area. Dinning emphasized that current environmental issues will not be solved by an ‘either or’ mentality, but by pairing various measures and resources. Lévesque underlined the importance of using oil revenues to fund ‘green’ innovations. Bird questioned the lack of effective methods in interprovincial transportation of energy. Dinning lamented that Alberta and Canada have not better managed oil revenues. He also emphasized the need for a better pan-Canadian energy corridor, to which Lévesque agreed. On the topic of energy and the environment, the panellists generally agreed that a more intergovernmental and collaborative framework is required.

#### **Conclusion:**

Canadian federalism has evolved from conflictual to interdependence phase via Cooperation and constructive engagement phase. Indian federalism has evolved from cooperative federalism to competitive federalism via bargaining federalism.

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