

The Constitutional provisions for federalism and decentralization:- Case study between India and Canada

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ABSTRACT

Both India and Canada are federal nations having federalism and decentralization clauses in their constitutions. Different kinds of federalism and decentralization are established by the constitutions of Canada and India. India is a federal republic that emphasizes unity in diversity in the division of powers between the federal government and the states. The Constitution ensures cooperative governance by assigning specialized subjects to each level. In the meantime, a careful balance is maintained between the federal and provincial governments through the division of powers under the Canadian federal system. Both countries use decentralization ideas to give local governments more authority. Different approaches to decentralization are demonstrated by the provinces of Canada and the Panchayati Raj institutions of India. Both constitutional systems support federalism, which promotes unity while honoring regional variety, despite contextual differences.

While there are some similarities between their federalism systems, there are also differences. Through different sources, we can compare constitutional provisions for federalism and decentralization in India and Canada in this abstract.

Keywords-

Federal, decentralization, constitution, Panchayat, government

Federalism in India:

The central Government and the States each have a set of powers under India's federal system of governance. The fundamental guidelines for federalism and decentralization are laid out in the Indian Constitution, which was approved in 1950³.

- ✓ **Distribution of powers** – The Union and the States are given different legislative responsibilities under Article 246 of the Indian Constitution. While the states have exclusive authority over matters on the State List, the Union has exclusive authority over those on the Union List.
- ✓ **Concurrent List** – Additionally, the Concurrent List allows for legislation from both the Union and the states. In the event of a dispute, Union law is applied.
- ✓ **Financial Decentralization** – The Finance Commission is in charge of recommending how money should be split between the federal government and the states.
- ✓ **Local Self-Government** – The 73rd and 74th Amendments to the Constitution also allow for local self-government through organizations like Panchayat(rural) and Municipalities(urban).

Federalism in Canada:

Canada also has a federal system of government, as outlined in the Constitution Act, 1867(formerly the British North America Act, 1867)⁴. The Canadian federal system has its own unique characteristics.

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³ The Constitution of India (1950)

- ✓ **Divisions of Powers** – The provinces are given special powers under section 92 of the Constitution Act of 1867, whereas the central government is given certain powers under Section 91.
- ✓ **Residual powers** – In Canada, unlike India, Section 91 lists a class of “residual powers” that belong only to the federal government.
- ✓ **Equalization payments** – In order to guarantee that provinces with inferior budgetary capacities receive more funding from the federal government, Canada uses a system of Equalization payments.
- ✓ **Local Governments** – Local governments in Canada derive their powers from the provinces rather than a separate constitutional provisions.

Keywords – *Federalism, Decentralization, constitution*

INTRODUCTION

Both Canada and India are large, diverse countries with different approaches to decentralization and federalism under their constitutions. India, a federal nation, emphasizes the separation of powers between the federal government and the states in its Constitution, which is based on federalism principles. On the other hand, the federal system in Canada distinguishes between the powers of the federal and provincial governments. Both nations struggle to strike a balance between regional autonomy and centralization, which is understandable given their distinct historical, cultural, and political backgrounds. Examining the constitutional provisions provides insights into these countries' governance structures and efforts to achieve inclusive governance by shedding light on how federalism and decentralization are evolving in these countries. Key Characteristics of the political systems in both India and Canada include federalism and decentralization. In order to accommodate their huge areas, diversified populations, and various regional identities, these two nations have chosen federal forms of governance. The constitutional provisions for federalism and decentralization in India and Canada will be briefly discussed in this introduction, with an emphasis on the similarities and contrasts between the two countries.

India:

India is a federal republic and the largest democracy in the world.⁵ The constitution of India, which was enacted on January 26, 1950, codifies its federal system. The constitution establishes a clear framework for federalism by allocating authority between the federal government and state governments.

- ✓ **Financial Federalism** – The Finance Commission⁶, which is tasked with advising on how to allocate financial resources between the central government and the states, is established by Article 280 of the Indian Constitution. This is a key component of India's fiscal federalism in India.
- ✓ **Local self – Government** – The 73rd and 74th Amendments⁷ to the Constitution's provisions for local self-government entities, such as Panchayats and Municipalities, support decentralization. These changes give local government entities a lot of power in several areas of policy.

Canada:

Since its confederation in 1867, Canada has been a federal nation, and its federalism is strongly ingrained in its Constitution⁸, which contains the Constitution Act, 1867 (formerly known as the British North America Act, 1867), as well as later Constitutional texts.

- ✓ **Amendment procedure** - Changes to the Constitution are governed by the amending formula described in the Constitution Act of 1982, which guarantees that both the federal government and

⁴ The constitution Act, 1867 (formerly the British North America Act)

⁵ "Balancing Acts: A Comparative Analysis of the Separation of Powers - India and US", International Journal of Novel Research and Development (www.ijnrd.org), ISSN:2456-4184, Vol.8, Issue 11, page no.a512-a518, November-2023, Available :<http://www.ijnrd.org/papers/IJNRD2311056.pdf>

⁶ Finance Commission of India: <https://fincomindia.nic.in/>

⁷ 73rd and 74th Amendments to the Constitution of India.

⁸ The Constitution Act, Canada (1982)

the provinces have a role in Constitutional revisions. This demonstrates how important provincial consent is to Canada's federalism.

- ✓ **Indigenous Self -Government** – Additionally, mechanisms for Indigenous self – government are included in Canada's federalism. Indigenous rights are acknowledged in Section 35 of the Constitution Act of 1982, and contemporary treaties and agreements give indigenous communities some degree of self – governance.

ANALYSIS OF THE TOPIC

The fundamental tenets of both the Canadian and Indian constitutions, federalism and decentralization, determine how the federal, state, and local governments are assigned authority and responsibility. Although the specifics and ways in which federalism is applied in these two nations differ greatly, there are still some noteworthy commonalities. The following is a citation - based examination of the federalism and decentralization clauses in the constitutions of Canada and India:

India:

- ✓ **Constitution Framework**⁹: India is a federal republic with a system that is somewhat federal. The territorial integrity and the division of powers between the federal and state governments are defined by the Indian Constitution, namely by Articles 1 through 4.
- ✓ **Distribution of powers**: The Union List, State List, and Concurrent List are three lists that delineate the areas of jurisdiction that are under the purview of the Union and state governments in the seventh schedule of the Indian Constitution. The goal of this power structure is to guarantee cooperation and avoid disagreements.
- ✓ **Residual Powers**: In India, the central government has residual powers, but the Canadian constitution grants the provinces this authority. This is a big distinction since it gives the Indian Union the authority to enact laws on subjects that aren't specifically covered by any list.
- ✓ **Decentralization**: With the creation of Panchayats and Municipalities for rural and urban self-governance, the Indian Constitution places a strong emphasis on decentralization. These organizations are essential to local governance and decision-making.
- ✓ **Amendment Procedure**¹⁰: A special majority can change the Indian Constitution, although a majority of states must agree to certain federalism-related clauses. The goal of this is to safeguard federal principles.
- ✓ **Judicial Interpretation**: Federal principles are crucially interpreted and upheld by the supreme court of India. Over time, it has frequently tended toward enhancing the federal government's authority in order to preserve national unity.

Canada:

- ✓ **Constitutional Framework**: Canada is a federal country, meaning that the federal and provincial governments have distinct powers from one another. The British North America Act, 1867 delineates this division.
- ✓ **Division of powers**: The Constitution Act of 1867¹¹ delineates the domain of authority of the central government and the provinces in section 91 and 92. The federal government is in charge of matters of national concern like trade and defense, while the provinces are in charge of things like health and education.
- ✓ **Residual powers**: In contrast to India, Canada's Constitution gives the provinces residual powers, which means that they have control over subjects that aren't specifically covered by the Constitution Act of 1867.
- ✓ **Decentralization**: Although Canada has a federal structure that promotes decentralization, it also has a municipal government system that gives towns and cities specific authorities. Nonetheless, these

⁹ Constitution of India

¹⁰ 73rd and 74th amendments to the constitution of India

¹¹ Constitution Act, 1867

localities have less autonomy than Indian panchayats and Municipalities as these powers are granted by the province.

- ✓ **Amendment Procedure:** The federal government and each of the provinces must agree to any changes made to the Canadian Constitution, which is a difficult procedure. This might make it challenging to enact constitutional amendments, particularly those pertaining to federalism.
- ✓ **Judicial Interpretation:** In interpreting and upholding the federal character of the Canadian constitution, the supreme court of Canada is an essential institution. Conflicts between the federal and provincial governments are frequently resolved by it.

STATUS AND PROBLEMS OF THE TOPIC

In India and Canada, federalism and decentralization are intricate subjects with unique constitutional provisions, circumstances, and difficulties. Let's examine these factors to compare the two nations:

India:

- ✓ **Constitutional provisions:** India is a federal nation with the Union Government and State Governments functioning as separate political entities. The Seventh Schedule of the Indian Constitution delineates the precise allocation of powers between the two tiers of governance. Three lists -- the Union List, State List, and Concurrent List -- are used to group the subjects. These are topics on the Union List that can only be enacted by the federal government, topics on the Concurrent List that can be enacted by both.

Canada:

- ✓ **Constitutional Provisions:** Canada is a federal country as well, with the federal and provincial/territorial administrations having different authorities. The Constitution Act of 1867, which gives distinct powers to each level of government, defines the division of power. Additionally, it contains a residual power clause that states that federal law governs any issue not assigned to either level.

India:

- ✓ **Status of the topic:** India's federalism is still developing. Concerns regarding the progressive loss of state autonomy have arisen as a result of the steady transfer of authority from the states to the federal government over time. One instance of cooperative federalism, in which the federal government and the states share power, is the Goods and Services Tax (GST)¹². The precise ratio between federal and unitary traits, however, is still up for discussion.

Canada:

- ✓ **Status of the topic:** The federal government of Canada is largely stable. On matters like resource management and environmental legislation, there have been occasional disagreements between the federal and provincial governments, though. Constitutional conventions, legal conflicts, and political agreements are used to manage these tensions.

India:

- ✓ **Problems of the topic:**
- ✓ **Financial Imbalance:** Fiscal disparities between the federal and state governments pose difficulties, particularly when it comes to income sharing.
- ✓ **Political Centralization:** There is a belief that the center has been gaining ground, which raises questions about the potential loss of state sovereignty.
- ✓ **Inter state disputes:** Frequent disputes between Indian states regarding boundaries, river water sharing, and resource allocation can strain federal relationships.

¹² Goods and Services Tax (GST) council

Canada:

- ✓ **Problems of the topic:**
- ✓ **Resource Management:** Conflicts have arisen as a result of disagreements over resource management¹³ (such as oil, gas, and water) between the central government and the provinces.
- ✓ **Language and cultural differences:** There may occasionally be conflicts between the federal government and the provinces, especially Quebec, as a result of the nation's linguistic and cultural diversity.
- ✓ **Constitutional Amendments:** The Canadian Constitution's amendment procedure has proven to be difficult, occasionally resulting in constitutional deadlock.

DIFFICULT SCENARIO

Both Canada and India have federal political systems, which entail a separation of powers between the federal government and several local, state, and regional administrations. There are some clear parallels and distinctions between the two nations:

India:

- ✓ **Constitutional Basis:** India's Constitution establishes its federal system. The Seventh Schedule of the Indian Constitution provides a clear definition of the duties and authority of the federal government and state governments.
- ✓ **Distribution of Powers:** India has three lists for the division of powers: the Union List, which belongs to the federal government; the State List, which belongs to state governments; and the Concurrent List, which is shared by the national and state government. The Indian Constitution's Article 246 and Seventh Schedule describe the split.
- ✓ **Decentralization:** India's decentralization structure is multitiered, with municipalities, or urban local bodies, and panchayats, or local self-governing entities, operating at the grassroots level. These institutions are given authority by the 73rd and 74th Amendments¹⁴ to the Constitution.
- ✓ **Inter-Governmental Relations:** The Inter-state Council and the Finance Commission are two of the tools the Constitution establishes for setting conflicts between the federal government and state governments.

Canada:

- ✓ **Constitutional Basis:** The Constitutional Act, 1867 (originally the British North America Act, 1867), which establishes the separation of powers between the federal and provincial governments, is the foundation of Canada's federal system.
- ✓ **Distribution of powers:** Section 91 and section 92 of the Constitution Act of 1867 delineate the allocation of authorities. While provincial governments are in charge of matters like health and education, the federal government is in charge of defense and immigration.
- ✓ **Decentralization:** with 10 provinces and three territories, each with its own government, Canada has a decentralized political structure. The authority that provincial governments have over their respective domains is rather broad.
- ✓ **Inter-Governmental Relations:** The Conference of the Federation and the Council of the Federation are two examples of Canada's intergovernmental cooperation structures. The courts, especially the supreme court of Canada¹⁵, are another avenue for resolving disputes.

FUTURE PERSPECTIVES**India:**

¹³ Resource Management and Federalism in Canada.

¹⁴ Seventh Schedule of the Indian Constitution

¹⁵ Supreme court of Canada

- ✓ **Future Perspective:** India sees federalism as a future that will address regional development gaps, devolve greater financial resources to states and local entities, and strengthen the role of local governments in fostering grassroots democracy. There is a continuous discussion over the necessity of increased fiscal decentralization as India grows.

Canada:

- ✓ **Future Perspective:** Future perspectives on federalism in Canada include equalization payments- a system in which wealthier provinces contribute to a fund that assists the less prosperous ones- and other related problems. There are also continuing conversations concerning the role of provincial governments in environmental and climate change policies, as well as indigenous self- governance and reconciliation initiatives.

CONCLUSION

An important characteristic of the political structures in Canada and India is their decentralization and federalism. The constitutional provisions of these two nations delineate the allocation of powers between the federal government and state or local governments. I'll outline the federalism and decentralization clauses included in the constitutions of Canada and Indian below, along with relevant citations:

India:

India has a federal system in which the Union, the national government, and the state governments each have different levels of authority. The Seventh Schedule to the Indian Constitution delineates the allocation of powers among the three levels of government. These lists, namely the Union List, the State List, and the Concurrent List, indicate the subjects that each level of government is authorized to legislate on.

India's government is divided into several levels, with local governments having more authority. The Indian Constitution's 73rd and 74th Amendments decentralize government by giving municipalities and panchayats (village councils) some legislative and administrative authority.¹⁶

Canada:

In Canada, the federal government and provincial governments each have a certain amount of authority. The Constitution Act of 1867 lays out the separation of powers in detail, outlining which spheres of government are under federal and which are under provincial authority in several parts.

Canada is a decentralized country as well, with each province having its own legislative and government. Regarding matters like natural resources, healthcare, and education, each province has substantial control.¹⁷

¹⁶ <https://lawmin.gov.in/>

¹⁷ <https://www.justice.gc.ca/eng/csj-sjc/constitution/index.html>