

ADMINISTRATIVE RELATION IN INDIAN AND AMERICAN CONSTITUTION: A COMPARATIVE ANALYSIS

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INTRODUCTION

American constitution is one of the oldest written national constitutions framed and enforced. It came into force in 1789. What makes U.S constitution exceptional is its omission of positive rights, nature, the remarkable durability, stability and brevity and even system of distribution of powers. Indian constitution comprising of 448 Articles, 22 parts and 12 schedules is the lengthiest constitution in the world; The Constitution was adopted on the day of 26th November, 1949 and it became effective on 26th January, 1950. Unlike Indian constitution American has its states constitution also and a federal constitution i.e. the supreme law of the land. Americans have written 149 state constitutions and has thousands amendments to those constitution on the other hand its federal constitution is short and a brief document with limited amendments. The American constitution and American system of governance is considered the epitome of federalism while on the other hand

the Indian constitution is famously quasi federal in nature, this puts both the constitution in contrasting nature to each other especially in administrative relations and is an area that gives scope for an effective comparative analysis.

COMPARATIVE ANALYSIS

Section 1 of Article II of US Constitution- It vests executive power of the state in the president. This Article is very similar to Article 53 of Constitution of India that also vests the union's executive power in the president. Further, section 1 of Article II, also establishes the tenure of the President and the vice president which is four years which in India according to Article 56 is five years of President and Article 67 of vice President is 5 years. Further, "Article II, section 2 of U.S constitution the president shall be the commander of chief of army and Navy of U.S" and in Indian constitution according to Article 53, "the power of supreme command of defence forces of the Union shall be vested in the President".

▪ President's Election

"Article II of the U.S constitution provides that each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress". On the other hand the, India's President is elected by an electoral college made up of members of both houses of Parliament – Lok Sabha and Rajya Sabha and elected members of state assembly under Article 54. Here what is pertinent to observe is that the process of electing the president is uniform in India as the members form a part of the Electoral College come through same criteria i.e. elected representation. On the other hand, the selection of electors in U.S is reserved for state legislatures to decide. The states are free to choose whatever process that fits in the eye of state legislature for the purpose of choosing the electors who further will vote in the election of

the president. This allows state legislatures more autonomy in choosing who will participate in the election of the President. For example: in *McPherson Vs. Blaker*, the U.S Supreme court affirm instead of state wise popular vote, the state has power to select its electors on the basis of electoral district and also held that even state constitution cannot restrict this power of state legislatures to choose their own method of appointing the elector.

▪ **Emergency powers:**

Indian Constitution provides power to declare Emergency "if the President is satisfied that grave emergency exists whereby the security of India or of any part of the territory is threatened, whether by war or external aggression or armed rebellion." The American constitution has no provisions for imposition of national or state emergency. Even though many scholars believe that the power to declare emergency is implicit in the American constitution as the president has undefined executive powers and is also the commander of the army nevertheless unlike Indian constitution where the President has the power to take over administration of state on occasion of emergency, the American constitution does not grant the President any power to take over the Administration of the State in an emergency case.

Article II, Section 3 of U.S constitution , "The President shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States." In case of *Association of American physician and surgeons Vs. Clinton*, it was held that

the recommendation clause lays and undisputed authority on the president to recommend legislations. Hence, as held in *Youngstown sheet & Tube Co. vs. Sawyer*, "the president has the power to recommend while the function of legislation lies with the congress." On the other hand in India, the constitution provides the president no such power to recommend legislations.

However, Article 1 of the U.S constitution "provides for suspension of writ of Habeas corpus, during time of rebellion or invasion without specifying who actually have the power to suspend the writ", which was exercised by Abraham Lincoln during the American civil war but still it is never considered under the category of emergency.

▪ **Pardoning power:**

According to Article II, Section 2, clause 1 of U.S Constitution, the President he shall have Power to Grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. On the other hand, Article 72 of Indian constitution, the president of India have the power to grant pardon reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence and governor has pardoning power under Article 161 of Indian Constitution. The pardoning power of the president of the United States is unlimited and unfettered. The president of the United States when granting pardon is answerable to no one. In *Ex-Parte Garland*, in which President Andrew Johnson exercised his pardoning power, the court held that the power of the president to grant pardon extends to all federal offences and this power is unlimited and cannot be fettered by any legislative restriction. Further, in terms of pardon, the president is answerable to no-one and can pardon according to his own wishes. However, maintaining the federal nature of the distribution of power of the United States, the president can only pardon federal offenses i.e. offence created under a federal legislation.

According to the department of justice U.S.A, the President cannot pardon anyone convicted under a state law and it is possible that a person pardoned by the President can still be convicted under a state law. For the propose of getting a pardon under a state law a convict has to approach the authorities with whom such pardoning power rests, which generally is either the governor or a pardon board if it has been created by the state.

On the other hand in India, unlike the U.S President grants pardon on the aid and advice of council of ministers as observed by the Supreme Court of India in the case of "Maru Ram vs. Union of India and Dhananjoy Chatterjee vs. State of W.B" Further, the power of the President to grant pardon in India is superior to that of the power of governor, while the governor can pardon all offenses except death sentence and court martial, the President can pardon in case of all offences created whether under state law or union law. In a landmark case of Eupuru Sudhakar vs. Govt. of A.P, it was held that a clemency power of President and Governor are subject to judicial review and thus making President not only the union cabinet but also the Court.

CONCLUSION

Both in India and United states, laws are executed in the name of the President, while The Indian Constitution states that "*The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution*", The Art. II, Section 3 of US Constitution provides that, the President is responsible for ensuring that laws are faithfully carried out. (Faithfully execution clause of the section) The federal nature of the U.S constitution is very much crystallized upon observing the provisions of Article II of the their Constitution providing all the federal

executive powers and leaves scope for State executives to regulate and administers their own administration through their own laws in the Constitution, which includes power to make rules for selection of electors, enforcement of state laws and Pardon. On the other hand India's quasi federal, or Federal with strong centralizing tendency is very much evident from the powers that the President enjoys which is in every way superior to the power of the Governor.

This was the comparative analysis of Administrative relation in Indian and U.S federal constitution.