

HARMONIZING RELATIONSHIPS BETWEEN CENTRAL AND LOCAL GOVERNMENTS IN A FEDERAL STRUCTURE

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ABSTRACT

In the twentieth century, especially during the last forty years from it, the implementation of the political decentralization (Federalism) spread across many countries. The decentralized system has become an indispensable necessity to many countries for the advantages of this system, which is the exercise of democracy where the government is more accountable when it is closer to the people. Also, the citizens can better oversee the behaviour of public officials when they live in the same region than when the officials operate from a distant national capital. Besides the democratic advantages of decentralization, there are also advantages related to improving the delivery of services to citizens. The political decentralization creates an incentive to present the maximum quality of public services at the lowest cost. On the other hand, the decentralization can protect the states which are threatened by division, especially in highly divided societies. Therefore, to achieve the objective of the federalism, which is to achieve the advantages of this system, there must be harmony and cooperation between the central government and regions in the performance of their functions. This harmony is achieved by the application of legal texts that distribute competence between the central government and the states and not to violate these texts, which are the constitution. The guarantor of the implementation of the legal texts that distribute the competence is the judiciary which is the constitutional judiciary. This study explains this phenomenon with the help of two law cases.

Keywords: Political Decentralization, Federalism, Harmony between Central Government and Local Government, Judiciary.

INTRODUCTION

In the twentieth century, especially during the last forty years, the implementation of political decentralization (Federalism) has spread across many countries (Freille et al., 2007). There are several advantages that have resulted with the spread of federalism including the achievement of the principle of democracy. According to von Braun and Grote (Hankla, 2009):

"Many scholars argue that decentralization encourages such positive incentives by increasing the democratic accountability of the state. The basic intuition here is that the government is more accountable when it is closer to the people. First, citizens can better oversee the behaviour of public officials when they live in the same region than when the officials operate from a distant national capital."

Besides the democratic advantages, there are also advantages related to improving the delivery of services to citizens. The improvement of transparency in the implementation of federalism leads to better public services (Hankla, 2009). According to Qian and Roland (1998) federalism:

"Generates an incentive to provide the maximum quality of government services at the lowest cost".

Also, Litvack and Seddon (1999) states:

"Advocates of political decentralization assume that decisions made with greater participation will be better informed and more relevant to the diverse interests in society than those made only by national political authorities. The concept implies that the selection of representatives from local electoral jurisdictions allows citizens to better know their political representatives and allows elected officials to better know the needs and desires of their constituents."

On the other hand, critics have opined that federalism can protect such states that are threatened by division (Hankla, 2009). In the same context, Crook (Hankla, 2009) stated that:

"A number of states around the world have relied on federalism to maintain national cohesiveness".

The author also said that:

"The specific impact of decentralization on cohesiveness is probably only an issue in highly divided societies and is likely to vary on a case-by-case basis".

The harmony between the federal government and the regions leads to achieving the advantages of the political decentralized system (Federalism) in the exercise of democracy and improving the provision of services to citizens in addition to protecting national unity. The researcher will examine how to achieve this harmony in this study.

Distribution of Competence between the Central Government and Regions or Provinces

The harmonization and cooperation between the federal government and the regions can be achieved by their commitment to the distribution of competences between them, which is according to the nature of the authority. For example, the central authority carries out the competence concerning the country's relations with other countries, such as diplomatic representation, bilateral and public treaties and declaration of war. The central authority also exercises the activities which exceed its effect more than a state or which extends to all the country's territories, such as the distribution of electricity, regulation of water through the country's territories, issuing currency and regulation of trade between states. On the other hand, the local authorities are responsible for all activities related to the local population such as providing public services, organizing activities within the state and providing all the needs of the local population. Therefore, the members of the local authority must be from the local population and be elected so that the local people can monitor the work of the members of the local government in administering their affairs. This harmony between the central government and local governments also leads to the goal of decentralization, which is to provide the best services to the population in the country and to

achieve the principles of democracy that allows the local people to monitor the members of the local authority and maintain the unity of the country.

There are several ways for the division of competence between the central government and local unities. The countries differ in the way the competence are distributed, and the difference is due to the political and historical factors relating to each country (Burgess, 2006; Ali and Rasool, 2009).

In the federal system, the most prominent way adopted by some countries is to divide the competence in order to list the competence of federal government, and to leave the rest to the states, such as in the United States of America. Another way is to list the competence of the federal government, and of the states, as well as a list the concurrent competence, such as in India (Hankla, 2009). The third method is to, determine a list of the competence for the federal government and a list of common competence, and then leave the rest for the local government, such as in Iraq (Articles 110, 114, 115; Iraqi constitution, 2005). In the same context, the scholars also have drawn attention to methods such as to divide the competences, to list the competences of the states and leave the rest to the central government (Kazem, 2011). There are also instances where the distribution of competence in a federal system is through the Constitution, (Sesah, 2012).

The guarantee for the implementation of the legal texts that distribute competence between the central government and the regions is judiciary which monitors the non-violation of these texts. The following are a few examples of law cases that ensure the application of legal provisions that distribute competence between the central government and local governments.

Law Cases

These cases are from the United States of America as the US courts monitor both the central authority and the local authority competence, as well as prevents the local authority from infringing upon the powers of the central authority. This leads to a harmonious action between central and local governments without exceeding each other in competence. Burgess (2006) opines that any study about federal system is "*compelled repeatedly to return to the American federal experience not because it is the prototype making all subsequent federations mere carbon copies but because many aspects of that experience retain a significance for contemporary federal experiments*".

Marshall, who was the President of the Federal Court for 35 years, believed that the judiciary at various federal and regional levels is able to carry out the task of unifying the American people because it is unified through its legal identity and because politics is only a small part of its powers and interests (Shukr, 2014).

The following is a law case related to the relationship between the federal government and the states in the United States of America¹:

Legal principle

"The New York law was found invalid because the Commerce Clause of the Constitution designated power to Congress to regulate the trade among the states and that the broad definition of commerce included navigation".

Issue

In 1808 the legislative authority of the New York State granted exclusive navigation privileges of all the waters within the territories of that State to Robert R. Livingston and Robert Fulton, for twenty years. Subsequently, Livingston and Fulton also requested from other states similar monopolies in order to promote a national network of steamboat lines, but only the Orleans State accepted their request and granted them a monopoly on the lower Mississippi. The competitors objected to granting privileges to Livingston and Fulton by “*arguing that the commerce power of the federal government was exclusive and superseded state laws*”. After problems arose about the monopoly of navigation among the states, Gibbons, who was granted the right of navigation based on the federal law in 1793 governing the coastal trade, challenged the matter before a court in New York. The plaintiff argued that the Federal Congress had the right to regulate interstate commerce. Granting the right of navigation is a form of trade. The defendant argued that the states had the authority to grant navigation in the rivers within their territory, which was outside the scope of regulating the trade among the states. The court decided to dismiss the case. The plaintiff appealed the decision before the New York Court of Appeal, but the court upheld the decision. Hence, the plaintiff proceeded to challenge the decision before the Supreme Court.

Law case

“*The United States Supreme Court judged in favour of Gibbons*”.

Congress had the right to regulate interstate commerce. The sole determining source of Congress's power to promulgate the law at issue was the Commerce Clause. “*With respect to ‘commerce,’ the Court held that commerce was more than mere traffic—that it was the trade of commodities. This broader definition included navigation*”. The Court also stated that:

“*Any license granted under the Federal Coasting Act of 1793 took precedence over any similar license granted by a state*”¹.

Analysis

According to the federal constitution, the federal government has the competence of the regulation of interstate commerce. The state of New York violated federal competence when it granted a license for navigation within state waters, on based that navigation was not included in interstate commerce. The New York state did not want to breach the competence of the federal government, but it made a mistake in describing the nature of its decision. There has been a dispute over the decision to grant a navigation license whether the decision was within the concept of interstate commerce and thus within the competence of the federal government. Or was it not within this concept and thus within the competence of the local government. Local courts supported the second interpretation, while the Supreme Court upheld the first interpretation, therefore granting the license to navigation was within the competence of the federal government.

The dispute between the federal government and the local government about the competence threatens application of the principle of harmony and cooperation between the central government and local governments. The Supreme Court has protected this principle

by ending the conflict between the federal and local government. In this dispute, the court gave its judgment in favour of the federal government.

II-Printz v. United States (United States Supreme Court, 1997)

Legal principle

“The Brady Handgun Violence Prevention Law’s interim provision” which commands the officers in the states by the federal government is unconstitutional.

Issue

The federal government issued the Brady Handgun Violence Prevention Act 1993 (the Act), which amended the Gun Control Act of 1968. The Act required the United States Attorney General to set up an electronic or phone-based background check to prevent the sale of firearms to people who are prohibited from possessing firearms under the Gun Control Act of 1968. This test is called *“The National Instant Criminal Background Check System”*. The Law also immediately put forth interim provisions until the system came fully into force. According to the interim provisions, there were procedures that the weaponry dealer had to follow to ensure that the buyer was not included in the weapons embargo list.

Several officers in the Arizona state challenged the constitutionality of the Act's interim provision before a local court, whereby they objected to the use of congressional action to compel state officers to execute the federal law. The plaintiffs argued that it was contrary to the tenth amendment of the Constitution, which states that

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people”.

The local court agreed that the interim provision was contrary to the Tenth Amendment to the United States Constitution (the Constitution), but it could be optionally applied so that the officers of the states were not forced by the federal government. The Court of Appeal subsequently overturned the lower court's judgment on the unconstitutionality of the interim provision. The case then reached the United States Supreme Court.

Law case

The United States Supreme Court held that:

“Federalism in the United States is based upon ‘dual sovereignty’ and that states retain ‘a residual and inviolable sovereignty’”.

The Court also stated that:

“The Framers designed the Constitution to allow federal regulation of international and interstate matters, not internal matters reserved to the State Legislatures”.

The Court concluded by holding *“that allowing the federal government to recruit the police officers of the 50 states into its service would increase its powers far beyond what the Constitution intends”*. The court decided that *“the interim provisions for the Brady Handgun*

Violence Prevention Act 1993 violated the Tenth Amendment to the Constitution". (United States Supreme Court, 1997).

Analysis

The federal government issued an act about the Guns Control. Several officers in Arizona State challenged the constitutionality of the Act's provision before a court, whereby they objected to the use of congressional action to compel state officers to execute the federal law. The plaintiffs argued that it was contrary to the tenth amendment of the Constitution, which states that:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people".

The Supreme Court upheld the plaintiffs.

In fact, the issuance of direct orders to local police by the federal government is a violation of the United State Constitution. This is also contrary to the principle of harmony and cooperation between the federal government and the states. Hence, the Supreme Court can intervene and protect harmony and cooperation between the federal government and the states by preventing the federal government from violating the competence of local governments, if it is causing problems between the federal government and states and can be termed as disturbing the harmony and cooperation.

The Supreme Court in the law cases is seen in favour of the government and sometimes in favour of the state, in order to prevent violating the competence by both the federal and local governments. The commitment of the constitutional texts which are distributed the competence achieve the harmony and cooperation between the federal government and the states. This leads to the achievement of federal goals, in the democracy and provision of services to citizens in addition to protecting national unity. And the guarantor of application of the constitutional texts is the Supreme Court.

CONCLUSION

The federal system has become an indispensable necessity in many countries, for the advantages of this system in the exercise of democracy and improving the provision of services to citizens in addition to protecting national unity. Therefore, to achieve the objective of the federal system, which is to achieve the advantages of this system, there must be harmony and cooperation between the central government and regions in the performance of their functions. This harmony is achieved by the application of legal texts that distribute competence between the central government and the states and not to violate these texts.

The guarantor of the implementation of the legal texts that distribute the competence is the judiciary. Therefore, the researcher investigated, for example, two law cases from the United States of America, the home country for the federal system. In these cases, the high court monitors the respect of the federal authority towards the local authority's competence, as well as the prevention of local authorities from infringing upon the powers of the federal authority. This will ensure harmonious cooperation between the central and local governments without breaching each other's area of competence.

To sum up, the performance of courts reveals whether there is a respect for the Legal provisions stipulating the distribution of competence between the central government and

regions, or not. Therefore, it can be said that without a professional judiciary there will be disputes between the central authority and the local authorities and this will impede the application of the federal system. So, the judiciary is the guarantor of coordinated action between the central authority and the local authorities, thus achieving the goals of the federal system, as noted in the law cases examined in this paper.

ENDNOTE

1. Gibbons v. Ogden, 22 US 1 - Supreme Court 1824.

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