



SNS COLLEGE OF ENGINEERING



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**DEPARTMENT OF ELECTRONICS AND COMMUNICATION
ENGINEERING**

FEDERAL SYSTEM

**Sub: Indian Constitution
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System of Government**

23MCT002/Indian Constitution/ Federal System/ Dr.Husna
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Meaning of Federalism

The term federation is derived from the Latin word “Foedus” meaning ‘Treaty or Agreement’. Hence it is the result of an agreement between two sets of governments, that is Central or Federal government and State government. Historically, a federation means a union of some states brought about through the instrumentality of treaty. Federation has come to mean a union of two or more states. In such a union there is a central government and there are state governments. Thus, there is a state authority and powers of the state are divided between the central and regional governments



The Concept of the Federation

The word “Federation” appears in the Swiss and Australian Constitutions and in explaining its meaning.

Lord Haldane observed in Attorney General of Australia Vs. Colonial Sugar:

“In a loose sense, the word “federal” may be used... to describe any arrangement under which self-contained states agree to delegate their powers to a common government with a view to entirely new constitutions, even of the states themselves. But the natural and literal interpretation of the word confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.”



The word “Federation” implies, in the first place, that a federation is the result of an agreement; secondly, this agreement is to delegate powers; thirdly, the delegation of powers is to a common government; fourthly, the delegation of powers is with a view to an entirely new constitution; fifthly, the agreement is among self-contained states; and lastly, these states retain, in the main, then constitution.

It follows then that the question, ‘what is federation’ can reasonably be answered with reference to only its sovereign status, the dual governmental structure and co-ordinate spheres of their competence, and these three alone should be die final determinants of whether a country is a federation.

Wynes, however, conclusively observes: **“the chief characteristic of the federal system is the division of powers between the Federal and State governments.**



In short ,

- In a federal system, power is **shared** by a powerful central government and the state or local governments.
- States or provinces are given considerable self-rule, usually through their own legislatures.
- In a federal form of government, power is divided between a central government & small divisions, such as states.
- A document (such as a constitution) may describe the rights, responsibilities, and duties of the central government & the states.
- Central government can be powerful, but does not have the ability to dissolve states or choose state leaders.



DEFINITIONS

1. K.C.Wheare, an authority on federalism says that **“Federation is a system which consists of two sets of governments which are independent, co-ordinate and distinct.”**
2. Prof. A.V.Dicey, says: **“Federation is a political contrivance intended to reconcile national unity with the maintenance of State Rights.”**
3. Dr. B.R.Ambedkar, **“The partition of legislative and executive power of the centre and units is the main criteria of federation.”**



DEFINITIONS

4. In 1961, M.J.C.Vile, made an attempt to substitute the idea of interdependence in the place of independence and according to him, **“Federalism is a system of government in which neither level of a government is wholly dependent on the other not wholly independent of the other.”**
5. In 1964, W.H.Riker, pointed out that, **“A constitution is federal if**
- (i) two levels of government rule the same land and people and**
 - (ii) each level has at least one area of action in which it is autonomous, and**
 - (iii) there is some guarantee of the autonomy of each government in its own sphere.”¹**
6. According to A.H.Birch, **“A federal system of government is one in which there is a division of powers between one general and several regional authorities, each of which, in its own sphere, is coordinate with the other, and each of which acts directly on the people through its own administrative agencies.”**



Nature of Federalism

Federalism has two aspects -**static and dynamic**. It is a structure as well as a process. It has been defined as “a method of dividing powers so that the general and the regional governments are each within a sphere, co-ordinate and independent.

Grodzins Morton states that, “**Federalism is the device for dividing decisions and functions of government.**”

A Federal society is characterised by **the continuing existence of both centripetal and centrifugal forces; the former tends towards integration and unity, while the latter tends towards disintegration and disunity**. Federalism provides **the constitutional device for bringing about unity in diversity by harmonizing these opposing forces for the achievement of common national goals**.



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“Federalism is by its very essence a compromise and a pact. It is a compromise in the sense that when national consensus on all things is not desirable or cannot readily obtain, the area of consensus is reduced in order that consensus on some things be reached. It is a pact or treaty in the sense that terms of that compromise cannot be changed unilaterally. That is not to say that the terms are fixed forever, but only that in changing them, every effort must be made not to destroy the consensus on which the federated nation rests.”



“A Federal government is one which divides powers between the states and the national government. Each level guarantees certain rights, including the right to exist, so that the states cannot conspire to destroy the national government or another state government, and the national government may not dissolve the states. Thus the union is one and inseparable.”

“The essence of a federal government is the distribution of powers between the national government and the constituent units. The constitution provides for the basic division of powers, but the dynamic nature of the federal system is illustrated by the judicial and political interpretations which have made it possible for national problems to be solved by unilateral action on the part of the national government, through the co-operation of the central government and the states, or by co-operation among the state.”



The distribution of subjects is made by a written constitution. Considerable care is taken while dividing the subject between the centre and the units so that, as Bryce points out, a proper balance is maintained between the jurisdictions of the two sets of governments. The allocation of powers may be made in the following three ways:

- 1) To enumerate the subjects to be dealt with by the central government and the units**
- 2) To enumerate only the subject of the centre and to give the rest to the units**
- 3) To enumerate the subjects of the units and give the rest to the centre by a general grant**



Necessary Condition

- **Need for defense and security**-The need for a common defense system against external aggression may necessitate the adoption of a federal system of government. For example, the thirteen American colonies joined together in a federation following the American War of independence for reason of collective security.
- **Preservation of local autonomy** -The federal system is adopted to provide considerable amount of decentralization in the administration. It brings the government closer to the door steps of the people, encouraging local participation in the political process of their country.
- **Differences in level of economic development** - Sharp differences in the level of economic development between different units of a country may lead to the adoption of a federation to enable each unit to have the freedom to develop at its own speed.
- **The need to check dictatorship** - Different groups within a country may adopt federalism as a means of preventing the over- concentration of power at the centre. This is one way in which they can prevent the country from drifting into dictatorship.



- **Common culture and historical background**-States with a common historical background can come together to form a federation. For instance, the different parts of Nigeria adopted federalism at independence on account of the common historical background.
- **Resource Pooling** - Some states adopt federation because of the desire to pool resources together for the development of the country as a whole. For instance, the desire to promote trade through the removal of all internal trade barriers is a condition for successful federation. It was this desire which contributed to the success.
- **Geographical nearness**-The various states which desire to form a federation must be close to one another. If they are not physically close to each other, it is not possible for the federation to work.
- **Existence of adequate economic resources** - A federation is relatively expensive mechanism. A state wishing to adopt a federation must have both human and economic resources to support both the central and local government.



Essential features:-

The following are the essentials of a federal government:-

- (1) A precise distribution of powers between the centre and the states (units)**
- (2) The supremacy of the constitution**
- (3) The supremacy of Judiciary**



(1) Distribution of powers between the Centre and the States:

There is a distribution of powers between the centre and the state governments, because a distribution of powers between the centre and constituent units is indispensable for its existence.

Secondly, for administrative efficiency, the central government grants autonomy to provincial governments. Thus, the division of powers between the centre and the units is indispensable. Generally, the division of powers is made in such a way that matters of national importance are given to centre and matters of regional interest be given to provincial governments.



(2) Supremacy of the Constitution:

The second essential feature of a federation is a written and rigid Constitution. In order to make a clear division of powers between the centre and the units, a written constitution is indispensable.

The constitution should be rigid so that the centre as well as the units may not amend it arbitrarily. A special procedure is adopted to amend the constitution. This procedure is very complicated.

The reason is that the constitution is considered a sacred document and both the centre and the states (units) agree that there should be very few amendments so that the stability of the constitution is maintained. The process of the amendment of the constitution should make it binding that no amendment is to be given effect without the consent of both the Parliament and state legislatures.



(3) Supremacy of Judiciary:

There is a dual government in a federation. Though there is a clear mention of the powers of centre and the units in the Constitution, yet any dispute relating to the jurisdiction can arise in future. In the event of such disputes both the central and the state governments will interpret the constitution in their own way. Therefore, free and impartial judiciary should interpret the Constitution impartially in order to settle the dispute of jurisdiction etc.

Freedom of judiciary is essential so that the centre or the states may not have the decisions in their favour by exerting any sort of pressure on it. Only a free judiciary will be able to give decisions independently and will be in a position to win the confidence of both the centre and the state. Thus the stability of the federation depends upon the establishment of a free judiciary.



Federal country:-

- Many countries use this form of distributing government power.
- **Western hemisphere: Brazil, Canada, Mexico, US, Venezuela, etc.**
- **India, Pakistan, Malaysia**
- A federal system does not mean that there is more or less personal freedom for the people. It explains how power is distributed.



Federalism in India

- **The Indian constitution defines the power distribution between the federal government (the Centre) and**
- **the States in India. This part is divided between legislative, administrative and executive powers. The legislative section is divided into three lists: Union list, States list and Concurrent list. Unlike the federal governments of the United States, Switzerland or Australia, residual powers remain with the Centre, as with the Canadian federal government**



The Development of Federalism in India



The framers of the Indian Constitution wanted to build a strong united India. She has adopted federalism to actualize and uphold the values of national unity, cultural diversity, democracy, regional autonomy and rapid socio-economic transformation through collective efforts.



The Development of Federalism in India



The main features of Indian Federal system are as follows:-

- 1) Division of Powers**
- 2) Supremacy of the Constitution:**
- 3) A Written Constitution**
- 4) Rigid Constitution**
- 5) Independent Judiciary**
- 6) Bicameral Legislature**



Administrative Powers

The Union and states have independent executive staffs fully controlled by their respective governments and executive power of the states and the Centre are extended on issues they are empowered to legislate. As in legislative matters, in administrative matters also, the Central government has been made more powerful than the States. The Constitution has made it clear that the State governments cannot go against the Central government in administrative matters. The State governments have to work under the supervision and control of the Central government. The States should exercise its executive powers in accordance with the laws made by the Parliament. The Central government can make laws for maintaining good relations between the Centre and the States. It can control the State governments by directing them to take necessary steps for proper running of administration. If the State fails to work properly or according to the Constitution, it can impose President's rule there under Article 356 and take over its (the State's) administration. Again, there are some officials of the Central government, working in the States, through which it can have control over the State governments.



Union control over States:-

According to the Article 356 of the Constitution of India, states must exercise their executive power in compliance with the laws made by the Central government. Article 357 calls upon every state not to impede on the executive power of the Union within the states. Articles 352 to 360 contain provisions which empower the Centre to take over the executive of the states on issues of national security or on the breakdown of constitutional machinery. Governors are appointed by the Central government to oversee states. The president can dissolve the state assembly under the recommendation of the council of ministers by invoking Article 356 if and when states fail to comply with directives given by the Centre.



Criticism of Indian Federal System

It has been stated earlier that the Indian federal system has been subjected to severe criticism. Due to the prominence of the centripetal forces some critics were not prepared to accept it as a federal constitution.



Criticism of Indian Federal System:



1. The Territorial sanctity of the federating units which is a vital principle of a federal government is not allowed by the Indian Constitution. The states can be re-organized and their territorial limits changed, cut short or enlarged by the Parliament unilaterally without the consent of the concerned state or states
2. The practice of appointment of the Governors by the President smacks of centralism. The Governor enjoys their office during the pleasure of the President and they are expected to work as the agents of the Union Government in the states. The action of some of the Governors in dissolving the state government has been severely criticized



Criticism of Indian Federal System:



3. The President is empowered to transform the federal constitution into a unitary one during the time of national emergency. Under such circumstances, the Union Parliament shall have the power to make laws for the whole of India.
4. While in the U.S.A. an individual enjoys dual citizenship, that is the citizenship of his state and federal citizenship; in India there is single citizenship throughout the country. Wherever in the country an individual might have been from, he is regarded as an Indian citizen.



Reasons for Adopting Federal Structure



The founding fathers of the constitution preferred federal constitutional structure because of the certain factors. These were:

- 1. It would have been very different to rule over such a vast country from one centre. As Justice P.N. Saprú said, “our founding fathers wisely did not establish for this country a completely unitary sovereignty among various units composing it. Any such attempt would have completely broken down, as India is too vast a country to be governed as a completely unitary state.”**
- 2. The reason for India to go for federation was that the foundation of federation had since been laid down by the Government of India Act, 1935. The New Constitution was thus obliged to go in for federal structure. The Indian constitution in its federal aspect is very much influenced by that Act.**



Impact of Party System on Federalism exaggerated



It is, however, an exaggeration to say that the states became like administrative units of a unitary form of government under the impact of the non dominant party system. The fact, as to how the states exerted more and more pressure on the central government, is clear from the following facts:

- 1. Central Government Failed to Enforce its Directives even in Congress Ruled States**
- 2. Unwilling Acceptance Meant no Acceptance**
- 3. Linguistic Reorganization of States in spite of Central Government Opposition**
- 4. Decisions of Centre Changed Under State Pressure:**
- 5. Failure of Centre Over the Question of Hindi**



Constitutional Significance of

Federalism

Federation is a significant aspect of constitutionalism, because basically both aim at consciously constituting public authorities with agreed, defined powers: a consensus with an authority with agreed, defined power: a consensus with a legal core on basic issues relating to the governance of a country brings into being the constitution of the country, and when the consensus includes an arrangement whereby two sets of authorities - one national and the other regional with coordinate spheres of competence are set up to operate in a competitive or cooperative spirit, the constitution becomes federal in nature.



The Federal Polity and Constitutional Construction: -



It is of primary interest to note that the nature of a constitution is relevant in interpreting the provisions of the constitution. The federal nature of a constitution is taken into account in construing the constitution, particularly the provisions relating to the division of powers between the national and regional governments; and the courts so interpret the constitution as to secure a smooth working of two sets of coordinate authorities.



Federal Nature of the Constitution:

Federalism was not unknown to the ancient and medieval east and west, but the credit for having caused its current currency ought to go to the United States. Conceived under the conditions of an age completely different from that of the present generation; founded on the ideas and experiences of that age, especially the predilections and prejudices of its founding fathers; born of peculiar local factors, and followed by the constitutions of Canada (1867), Switzerland (1874) and Australia (1900), are initially shaped, still claims to provide the federal model to the world, although it itself contains the word “Union” instead of the word “Federation”. And this is in a world where all the older federations, including that of the U.S.A. have undergone almost a complete transformation in structural details and operational devices and technique in response to new social claims, economic condition, technological advancements and international needs