

# FEDERALISM: A CONCEPTUAL ANALYSIS

Bhawna Yadav  
(Law Student)

Gumnawara behind University Campus, Jhansi, Uttar Pradesh

**ABSTRACT:-** Federalism, in its basic sense means division of legislative and executive power between central government and regional governments so that each government can work independently in its own sphere. In a country like India the importance of federalism is vital because different people from different background and culture live together. Neither it would be possible for a single government to make laws for the whole country nor is it desirable in the interest of the people with varied cultures, language and diverse backgrounds. So, the Central government may make laws for the whole and any part of territory of India and the respective State governments may make and implement the laws according to social, economic and political conditions of the people living in different areas. This paper will classify the types of federalism in a broader perspective.

## KEYWORDS:

## INTRODUCTION:-

Federalism is a type of government in which the power is divided between the national government and other governmental units. It contrasts with a unitary government, in which a central authority holds the power, and a confederation, in which states, for example, are clearly dominant. The term “federal” derived from the Latin ‘foedus’, which mean, “covenant”. This embodies ideas of promise, commitment and undertaking; and therefore, the federal idea involves cooperation, reciprocity and mutuality. Federalism is compound mode of two governments. That is, in one system there will be a mixture of two governments – state government with central government. In India, we can describe federalism as a distribution of authority around local, national, and state governments. This is similar to Canadian model of political organization.

Federalism is at its core a system where the dual machinery of government functions. Generally, under federalism, there are two levels of government. One is a central authority which looks after the major affairs of the country. The other is more of a local government which looks after the day to day functioning and activities of their particular region.

For example, our Indian Constitution says that India too is a federal country. As you know we have two levels of parliament, at the centre the Union government and at State level, we have the individual State governments.

## CONCEPT OF FEDERALISM

Federalism is a system of government in which power is divided between a central authority and various constituent units of the country. A federation has two levels of government. Both these levels of governments enjoy their power independent of the other. One is the government for the entire country that is usually responsible for a few subjects of common national interest. Governments at the level of provinces or states that look after much of the day-to-day administering of their state. Some of the key features of federalism system are:

There are two or more levels (or tiers) of government. Different tiers of government govern the same citizens, but each tier has its own jurisdiction in specific matters of legislation, taxation and administration. The existence and authority of each tier of government is constitutionally guaranteed. The fundamental provisions of the constitution cannot be unilaterally changed by one level of government. Such changes require the consent of both the levels of government. Courts have the power to interpret the constitution and the powers of different levels of government. Sources of revenue for each level of government are clearly specified to ensure its financial autonomy. The federal system has dual objectives:

- i) To safeguard and promote the unity of the country
- ii) Accommodate regional diversity.

**K.C. Wheare**, who described the federal principle as "the method of dividing powers so that the general and regional governments are each within a sphere co-ordinate and independent."

**Dicey** observed that “Unitarianism means the concentration of the strength of the state in the hands of one visible sovereign power...Federalism means the distribution of the force of the state among a number of co-ordinate bodies each originating in and controlled by the Constitution”

## 1.1. Different Routes Through Which Federations Can be Formed

Two aspects are crucial for the institutions and practice of federalism: mutual trust between the government of different levels and agreement to live together. There are

two kinds of routes through which federations have been formed.

The **first route** involves independent States coming together on their own to form a bigger unit. This kind of “*coming together*” federations is formed in the USA, Switzerland and Australia.

The **second route** is that a large country decides to divide its power between the constituent States and the national government. This kind of ‘*holding together*’ federations is followed in India, Spain and Belgium countries.

### **CLASSIFICATION OF FEDERALISM**

The federalism is classified as follow:

#### **1. DUAL FEDERALISM**

It is also known as layer cake federalism, or divided sovereignty. It began in 1870 in America. It is an arrangement in which powers are divided between the federal and state governments in clear defined terms. According to William H. Riker, under such a system, “two levels of government rule the same land and the people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee ... of the autonomy of each government in its own sphere.” Example- Canada, India, Pakistan, and USA.

#### **Dual federalism has two approaches**

**Layer cake model:** there is a hierarchical (unitary) type of relationship among the various orders of government. The national government is at the apex, and it has the option to deal with local governments either through state governments or more directly. Local governments do not have any constitutional status: they are simply extensions of state governments and derive their authority from state governments. It is practiced in Mexico, Malaysia, and Russia.

**Coordinate-authority model:** States enjoy significant autonomy from the federal government.

#### **2. COOPERATIVE FEDERALISM**

This types of model came when it was realised that if either government has to serve the purposes of the people for whom they both owed their power, they could not work in water tight compartments and, in a matter which concerns the nation as a whole, the two

government must think and act together in a scheme of cooperation, even though the subject in question has been assigned by the constitution to only one of them. The urge for cooperative federalism was accelerated with the change in the social, economic and industrial conditions.

#### **3. COMPETITIVE FEDERALISM**

In Competitive federalism the relationship between the Central and state governments is vertical and between state governments is horizontal. This idea of Competitive federalism gained significance in India post 1990s economic reforms. In a free-market economy, the endowments of states, available resource base and their comparative advantages all foster a spirit of competition. Increasing globalisation, however, increased the existing inequalities and imbalances between states.

In Competitive federalism States need to compete among themselves and also with the Centre for benefits. States compete with each other to attract funds and investment, which facilitates efficiency in administration and enhances developmental activities. The investors prefer more developed states for investing their money. Union government devolves funds to the states on the basis of usage of previously allocated funds.

Competitive federalism is not part of the basic structure of Indian constitution. It is the decision of executives. The acceptance of the 14th Finance Commission’s recommendations, apart from significantly enhanced devolution (devolution of 42% of the divisible pool to states during 20015-16 to 2019-20, against 32% suggested by the previous commission), enables states to design and implement programmes better suited to their needs. Some analysts argue that such a competitive framework would create leaner and more efficient governments that would be more responsive and accountable to people.

#### **4. ASYMMETRIC FEDERALISM**

Charles Tarlton who is credited with having coined the term asymmetrical federalism in 1965. “Asymmetric federalism” is understood to mean federalism based on unequal powers and relationships in political, administrative and fiscal arrangements spheres

between the units constituting a federation. Asymmetry in the arrangements in a federation can be viewed in both vertical (between centre and states) and horizontal (among the states) senses. Examples: Canada, India, Indonesia, Iraq, Italy, Malaysia, Russia, Spain, United Kingdom.

#### **5. SYMMETRIC FEDERALISM**

Federal system of government in which each constituent state to the federation possess equal powers. In a symmetric federalism no distinction is made between constituent states. Examples: Australia and USA.

#### **6. SWISS FEDERALISM**

It has a peculiar feature in itself. It has a trilateral form of government: confederation, cantons (26), and communes (2250) Law made by the cantons can be invalidated by the federal courts but not the law made by the federal assembly. There is no jurisdiction over the powers of the federal assembly, if it violates the boundaries of its own jurisdiction as fixed by the constitution. There are two constitutions in Switzerland: Federal Constitution (adopted in 1879), Constitution for each Cantons. In Article 5: the federal constitution guarantees the existence of canton constitution.

#### **7. INTEGRATIONIST MODEL**

Some subjects like defence, policy making are assigned only to the central government, but most of the subjects are concurrently assigned to both the governments. Example: Germany.

#### **8. CONCURRENTIST MODEL**

In this type of federalism the enumerated powers are assigned to the central government and rest to the state. Residual powers belong to the state. Example: USA, Australia.

#### **9. REGULATORY MODEL**

Regulatory federalism is a term used to describe the emergence of federal programs aimed at, or implemented by, state and local government. We can call regulated Federalism as a form of federalism in which Congress/Parliament imposes legislation on states and localities, requiring them to meet national standards. Example: Mines is a state subject but

regulation and development power is with the centre, regulation in case of emergency is done by the union government.

#### **10. CENTRIPETAL FEDERALISM**

Centripetal: A number of states, at first separate and sovereign, may come together and form a federation by accepting common sovereignty. It is a process of integration. Example: USA, Switzerland, and Australia.

#### **11. CENTRIFUGAL FEDERALISM**

Centrifugal Federalism: A state which was formerly unitary may be transformed into a federation as a result of centrifugal forces. It is a process of Disintegration. Example: India, a unitary state under the British rule was broken up and recognized into autonomous units to form a union of states, a federal structure with a strong centre.

#### **TYPES OF FEDERALISM IN INDIA**

India is a federal system but with more tilt towards a unitary system of government. It is sometimes considered a quasi-federal system as it has features of both a federal and a unitary system. Article 1 of the Indian Constitution states, "India, that is Bharat, shall be a union of states". The word federation is not mentioned in the constitution.

Elements of federalism were introduced into modern India by the *Government of India Act of 1919* which separated powers between the centre and the provincial legislatures.

#### **Various forms of federalism in India**

India shows various forms of federal features. India has *dual federalism* feature as the powers are clearly divided between centre and state as provided in Article 246 of the India Constitution. It provides that power shall be divided into three lists the central, state and concurrent list (Seventh Schedule) and each shall have power to make law on subject provided in the list. And there is shared power also in the form of concurrent list, on which both can make law. And in case of conflict between state and centre on concurrent list the centre shall prevail.

***Cooperative federalism in India:*** The changing dynamics and the varied experiences that the Indian State has had like one party rule, the rise of regional parties, the formation of coalition Governments, active

role of the Judiciary, have shaped the trajectory of federalism by swinging the pendulum from cooperative to confrontationalist and vice versa. It has been a trend in Indian political history that so long as the central and state governments were ruled by the same political party, the cooperative framework worked very well. But when different political parties are in power in the centre and the states and more recently when coalition governments are in power there are signs of stresses and tensions in intergovernmental relations between the Centre and the States.

#### Trend so far:

- **“Cooperative in the 50s and 60s-** First fifteen years after independence were marked by a democratically elected regime with a comfortable majority coupled with idealism and freshness of hope having just gained independence.
- **Confrontationist From 1960s To 1980s** - The supremacy of the Centre broke the power of States and established a new balance or rather, imbalance between the Centre and the States.
- **Cooperative in the 90s** – the decade was marked by regime of coalition government of national and regional parties at the centre which were cooperative in nature.”

#### Steps toward Competitive Federalism

The acceptance of the 14th Finance Commission’s recommendations, apart from significantly enhanced devolution ( devolution of 42% of the divisible pool to states during 20015-16 to 2019-20, against 32% suggested by the previous commission), enables states to design and implement programmes better suited to their needs.

**Asymmetric federalism in India-** The Indian federalism is asymmetric in nature, unlike that of America which is symmetric in nature. It is asymmetric federalism, because in India some of the federating units are accorded weightage because of their historical and cultural factors that created a desire for special or distinct constitutional provisions. Indian federation is based on four kinds of asymmetries.

- First, there is a universal asymmetry affecting all units. For instance, the States in India are represented in the Rajya Sabha not on the footing of formal equality as in the United States of America but on the basis of their population i.e. Article 3(1) and 80(2) read with fourth schedule. Thus the State of Uttar Pradesh has 31 seats whereas the States of North-East like the State of Meghalaya, Mizoram, and Manipur has only one seat. Union Territories

like Pondicherry and Goa also has only one seat each in the Rajya Sabha.

- Second, there is a specific asymmetry with regard to the administration of tribal areas, intra-state regional disparities, law and order situation and fixation of number of seats in legislative assemblies in relation to the States of Maharashtra, Gujarat, Assam, Manipur, Andhra Pradesh, Sikkim, Arunachal Pradesh and Goa (Articles 371, 371B, 371C, 371D, 371E, 371F, 371H, 371I). These provisions are provided under Part XXI of the Indian Constitution.
- Third kind of asymmetry in the Indian federalism is for the special kind of federating units that are called the Union Territories (UTs). There are now nine UTs created at the different point of time.
- Last, the fourth kind of asymmetry in Indian federalism is for the State of Nagaland and Mizoram (Article 371A and article 371G). These Articles provides that the consent of the legislatures of these states are required for the extension of the statutes of the Parliament, if the law relates to the religious and social practices of Nagas and Mizos, Nagas and Mizos customary law and procedures, administration of civil and criminal justice affecting the Naga and Mizo customary law and ownership and transfer of land resources of these States.

India show *centrifugal federalism* also as India, a unitary state under the British rule was broken up and recognized into autonomous units to form a union of states, a federal structure with a strong centre.

#### CONCLUSION:-

Historically speaking, the earliest form of political organisation was not federal but unitary. But it is the pressure of economic, political and social circumstances which impelled unitary States (generally monarchical) to enter into alliance with other States for meeting common problems, - which initially related to defense. Though there were loose forms of union in the world between States prior to 1787, modern federalism started with the Constitution of the United States (1787), which is regarded as the model of Federal Constitutions.<sup>1</sup> Subsequently, the adoption of the federal form in Canada, Switzerland and Australia gave a great impetus to federalism and a number of federal constitutions have cropped up since World Wars I and II, notable amongst which are – the U.S.S.R., West Germany, India, Malaysia and Nigeria.

<sup>1</sup>13\_CHAPTER6.PDF, [https://shodhganga.inflibnet.ac.in/bitstream/10603/58893/13/13\\_chapter%206.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/58893/13/13_chapter%206.pdf) (last visited Mar 30, 2020).

Political Science classified Constitutions as unitary and federal, from the organizational standpoint, i.e.; from the standpoint of distribution of governmental powers. Broadly speaking, while in a unitary State, all power is vested in a single Central Government, without imposing any constitutional limitations upon its authority, and the local authorities operate as administrative agencies of the Central government, exercising such powers as the Central government might delegate to the latter. On the other hand, in the federal State, the Constitution divides the powers between the central and regional governments, each deriving its powers from the provisions of written Constitution, so that there is a sphere of autonomy belonging to the territorial organizations called States, which cannot be withdrawn or curtailed at the will of the central organization, called the Federal Government.

Federalism is thus a system of government of a country under which there exist simultaneously a federal or Central Government (legislature and executive) and several State or provincial legislatures and governments as contrasted with a unitary State. Both federal and State governments derive their powers from the federal Constitution, both are supreme in particular spheres and both operate directly on the people; the State governments accordingly are not exercising powers delegated by the federal governments, nor they are subordinate to it (though they may deal with less important matters).

The form of federalism depends on policy on which government is functioning and the policy on which the Constitution of the Country is based. Such has like in USA all the constituent states are provided with equal powers and no special provisions are provided to any state by the constitution so it is a symmetric federalism, whereas in India the constituent states are provided with powers to make law as provided in the Article 246 and in the Seventh Schedule of Indian Constitution, with that

some special provisions are also provided to the states from Article 371 to 371I.

**REFERENCES:-**

1. 14th Finance Commission: Government accepts recommendations; gives higher share to states in central taxes - The Economic Times, <https://economictimes.indiatimes.com/news/economy/finance/14th-finance-commission-government-accepts-recommendations-gives-higher-share-to-states-in-central-taxes/article-show/46355198.cms?from=mdr> (last visited Mar 30, 2020).
2. Aspects of Dicey's essential condition of federalism: Historical Studies: Australia and New Zealand: Vol 3, No 10, <https://www.tandfonline.com/doi/abs/10.1080/10314614508594850?journalCode=rahs18> (last visited Mar 29, 2020).
3. Asymmetric Federalism in India|Mostly Economics,<https://mostlyeconomics.wordpress.com/2012/10/01/asymmetric-federalism-in-india/> (last visited Mar 30, 2020); Concepts of Federalism, <https://www.cliffsnotes.com/study-guides/american-government/federalism/concepts-of-federalism> (last visited Mar 29, 2020).
4. Cooperative Federalism in India, <https://iascore.in/national-issues/cooperative-federalism-in-india> (last visited Mar 30, 2020).
5. L0201117179.PDF,<http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue11/Version1/L0201117179.Pdf> (last visited Mar 30, 2020).