

Federalism – Centre State Relationship

- What is Federalism/ Federal Structure?
- Why India adopted Federalism?
- What was the views of various eminent jurist/historians?

What is Federalism/ Federal Structure?

Nature of Indian Constitution

Two classification (system of government or form of government):

- Unitary
- Federal

Is Indian Constitution Federal in nature or Unitary in nature?

----- Before finding the answer to the said question let us discuss the definition of the terms Unitary and Federal.

Definition:

Unitary Government – all the powers are vested in the national government and the regional governments derive their power from the national government.

Eg: Britain , Japan, Spain, China etc

Federal Government – Powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.

Eg: US, Australia, Canada, Russia etc

Why India adopted Federalism?

- Help in addressing the diversities
- Suitable for a country of size of India
- Would help address the fissiparous tendencies by retaining the autonomy of the states.
- Powers of the local self government were also protected.

- Essentials of Federalism:
 1. Division of Powers
 2. Supremacy of Constitution
 3. Rigidity of Constitution
 4. Written Constitution
 5. Authority of Courts

- **Essentials of Federalism:**

1. **Division of Powers** – 7th Schedule – Three list

- Union List (97 entries) - National importance such as defence, foreign affairs etc
- State List (66 entries) – look after the matters of regional importance such as Public order, Health
- Concurrent List (47 entries)
- Residuary power given to centre

2. **Supremacy of Constitution** – laws enacted must confirm to the provisions of Constitution

3. **Rigidity of Constitution** – Amendment procedure is tough

4. **Written Constitution** – lengthiest, specifies the structure, organisation, powers and functions of both central and state government.

5. **Authority of Courts** – independent judiciary-
two reasons

a) to protect the supremacy of the
Constitution

b) to settle the dispute between centre and
state

- Unitary features:
 - Strong Centre'
 - Single Constitution
 - Flexibility of the Constitution etc

Views of Eminent jurist/ historians- Critical evaluation

- A federal constitution envisages a demarcation of governmental functions and its powers between the centre and the state as sanctioned by the constitution which is a written document.

Is Indian Constitution purely federal in nature?

- Prof. Wheare : “ The Constitution establishes a system of government which is almost quasi- federal..... a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features”
- Sir Ivor Jennings has characterized it as “a federation with a strong centralizing tendency”.
- Granville Austin called the Indian Federalism as a “Cooperative Federalism”.

- American Constitution is truly federal type.
- Framers of Constitution took note of the practical needs of the country designed on federal structure 'not on the footing that it should confirm to some theoretical, definite or standard pattern, but on the basis that it should be able to subserve the need of the vast and diverse country like India'.

Dr.Ambedkar on Federalism – “The basic principles of federalism is that the legislative and executive authority is partitioned between the centre and States and not by law or by the Centre **but the Constitution itself..** The Centre and States are co-equal in this matter”

- Thus , the Indian **Constitution is mainly federal** with unique safeguards for enforcing national unity and growth.

Unitary features in Federal structure

1. Appointment of Governors – Article 155 and 156
2. Parliament's power to legislate in the national interest – Article 249
3. Parliaments powers to form new states and alter boundaries of existing States – Article 3
4. Emergency Provisions – Article 352, 356, 360

Centre –State Relationship

- Legislative – Art 245 to Art 255
- Administrative – Art 256 to Art 263
- Financial – Art 268 to Art 293

Legislative – Art 245 to Art 255

- **1.Extent of laws made by Parliament and by the Legislatures of States** - Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- **Exception** – Parliament can make extra territorial legislation. It can be applicable to Indian citizens and their property in any part of the world.

- 2. Subject-matter of laws made by Parliament and by the Legislatures of States – Three list under **Art 246**
- Union List -97 entries
- Concurrent List – 66 entries
- State List- 47 entries

- 3. When can Parliament enact laws in the state field?
 - **National Interest** – Art 249 - resolution must be supported by 2/3rd of the members present and voting.
 - One year – further period of one more year
 - **Proclamation of Emergency** – Art 250 -
 - **When states make a request** – Art 252 -One year – further period of one more year

- Art 254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States – **Doctrine of Repugnancy**
- Which will prevail? – Central Act will prevail and Legislature of the State shall, to the extent of the repugnancy, be void
- Art 254 (2) – Reserved for assent of president – State Act will prevail

Administrative – Art 256 to Art 263

Article 256 – Obligation of States and the Union:

- State should ensure the compliance with the laws made by the Parliament

Article 257 – Control of Union over states in certain cases:

- Executive power of states shall be exercised so as not to impede or abridge the executive power of the union
- Construction and **maintenance of means of communication**, declared to be of national or military importance
- Measures to be taken for the **protection of railways** within the state.

- All India Services
- Public Service Commissions

Financial – Art 268 to Art 293

CATEGORY	LEVIED	COLLECTED
TAXES (Art 268)	Union Ex: stamp duties on bills of exchange, cheques and promissory notes	Collected and appropriated by States Ex: stamp duties on bills of exchange, cheques and promissory notes
TAXES (Art 269)	Levied by Union but assigned to States Eg: Sale or purchase of goods and consignment of goods	Collected by Union but assigned to States Eg: Sale or purchase of goods and consignment of goods
TAXES (Art-270)	Levied by Government of Indian- Distributed between Union and States	Collected by Government of India - Distributed between Union and States
Central GST	Union	Union and States
State GST	Union	Union and States

- **Administrative Reforms Commission**

- 6 member under the chairmanship of Moraji Desai
 - study the centre state relation – 22 recommendations were submitted. Few are
- 1. Inter – State Council has to be established under Art 263
- 2. Delegation of powers to the maximum extent to the states.
- 3. Transferring of more financial resources to the states to reduce their burden.

- **Rajmanner Committee** – Tamil Nadu Government - three member committee on the head of Dr.Rajmanner
- **Sarkaria Committee** – in 1983, three member committee – 247 recommendations were submitted-study for one year.

They are:

1. Permanent Inter-State Council should be set up under Art 263
2. All India Service must be strengthened
3. Centre should consult State before making any any law on concurrent list.

4. Zonal Councils should be established and activated to promote federalism

5. The residuary power of the Central Government should remain with the parliament

- Punchhi Committee

In 2007

1. To facilitate effective implementation of the laws on List III

- 2. New all- India services in sectors like health, education, engineering and judiciary should be created.
3. The current ceiling on profession tax should be completely done away with by a Constitutional Amendment.

Finance Commission – Art 280

Finance Commission is a constitutional body for the purpose of allocation of certain revenue resources between the Union and the State Governments.

Duty of the Commission to make recommendations to the President in relation to the

- the distribution between the Union and the States of the net proceeds of taxes which are to be, or maybe, divided between them and the allocation between the States of the respective shares of such proceeds;

- the principles which should govern the **grants in aid of the revenues of the States out of the Consolidated Fund of India**;(Consolidated Fund of India is the account of the revenue the Government of India receives — via income tax, Customs, central excise and the non-tax revenue — and the expenses it makes, excluding exceptional items.)
- any other matter referred to the Commission by the President in the interests of sound finance