

FEDERAL STRUCTURE AND DISTRIBUTION OF POWER

Federal Government	Unitary Government
1) Dual Government (National, Regional)	1) Single Government
2) Written Constitution	2) Constitution may be written (France) or unwritten (Britain)
3) Division of power between national and regional Government	3) No division of power. All power with national government.
4) Supremacy of the constitution	4) Constitution may be supreme (Japan) may not be supreme (Britain)
5) Independent judiciary	5) Judiciary may or may not be independent
6) Bicameral legislature	6) Legislature may be bicameral(Britain) or unicameral(China)

Federal features of the constitution

1) **Dual polity**

- The constitution establishes a dual polity consisting union of centre and state.
- Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by constitution.
- The union government deals with defense, foreign affairs, currency, communication and so on while state government look after matter of regional and local importance like order, agriculture, health, local government etc.

2) **Written constitution**

- The constitution is not only a written document but also lengthiest constitution of India.
- Originally it contained a preamble, 395 Articles and 8 schedules. At present it consists a preamble , 465 Articles and 12 schedules.

3) **Division of powers**

- The constitution divided the powers between the centre and states in terms of union list, state list and concurrent list I seventh schedule.
- The union list consists of **100 subjects**, state list **61 subjects** and concurrent list **52 subjects**.
- Both centre and state can make laws on subject of concurrent list but in case of conflict central law prevails.

4) **Supremacy of the constitution**

- The constitution is the supreme law of land and both laws enacted by the centre and state must confirm to its provisions.
- Otherwise they can be declared invalid by the supreme court or high court through their power of judicial review.

5) **Rigid constitution**

- Method of amendment is rigid to division of power and supremacy of constitution.
- Those provisions which are concerned with federal structure (centre-state relations) can be amended only by central and state governments. (It requires special majority and approval of half of state legislatures.)

6) **Independent judiciary**

- The constitution establishes an independent judiciary headed by supreme court for two purposes.
- 1) To protect supremacy of constitution by power of judicial review.
- 2) To settle the dispute between centre and states or between states.

7) **Bicameralism**

- The constitution provides for a bicameral legislature consisting of an upper house and lower house.
- The Rajya Sabha represents the states of Indian federation while the lok Sabha represents people of India as a whole.
- The Rajya Sabha is required to maintain the federal equilibrium by protecting the interests of state against undue interference of the centre.

Unitary (Non-federal) features of the constitution

1) Strong Centre

- The division of power is in favor of centre and highly inequitable from the federal angle.
- The union list consists more subjects and important subjects and also centre has overriding authority over concurrent list.

2) States not indestructible (An indestructible union of destructible states)

States in India have no right to territorial integrity.

- The parliament can by unilateral action change the area, boundaries and name of any state.
- Moreover, it requires only a simple majority and not a special majority.

3) Single Constitution

- Usually, in a federation, the states have the right to frame their own constitution separate from the center. In India no such power is given to states.
- The constitution of India includes constitution of center and state both.

4) Flexibility of constitution

- The process of amending the constitution is less rigid than what is found in other federations.
- The bulk of the constitution can be amended by the unilateral action of parliament, either by simple or by special majority.
- Power to initiate an amendment to the constitution lies only with centre.

5) No equality of state representation

- The states are given the representation in Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31.
- In the US American senate has 100 members, two from each state(Principle of equality of representation).

6) Emergency Provisions

- The constitution stipulates three kind of emergencies – National, state and financial.
- During an emergency, the central government becomes all powerful and states go into total control of centre.
- It converts federal structure into unitary.

7) Single citizenship

- In spite of dual polity, the constitution of India , like that of canada, adopted the system of single citizenship.
- There is only one citizenship and no separate state citizenship like US, Switzerland and Australia.

8) Integrated Judiciary

- Integrated judicial system with supreme court at the top and states high court below it.
- Single system of courts enforces both central and state laws.
- In US federal laws are enforced by federal judiciary and state laws by state judiciary.

9) **All India services**

- In US, the federal government and state governments have their separate public services. In India also, the centre and states have their separate public services.
- But, in addition, there are all Indian services (IAS, IPS, IFS) which are common to both centre and states. The members of these services are recruited and trained by centre which also possesses ultimate control over them.

10) **Integrated audit machinery**

- The Comptroller and Auditors General of India audits the accounts of both centre and state governments.
- But his appointment and removal is done by the president without consulting states.
- Hence, this office restricts financial autonomy of states.

11) Parliament's authority over state list

- The states do not have exclusive control over the list of subjects.
- The parliament is empowered to legislate on any of subject of state list if Rajya Sabha passes a resolution to that effect in national interest.

12) Appointment of Governors

- The governor who is the head of state is appointed by president.
- He acts as an agent of the centre and through him centre exercise control over the states.

13) Integrated election machinery

- The election commission conducts elections for states and centre.
- This body is constituted by president and states have no say in matter.

14) Veto over state bills

- The governor is empowered to reserve certain type of bills passed by state legislature for consideration of president.
- The president can withhold his assent to such bills and he has absolute veto.

Legislative relations between centre and states

Article 245 to 255 in part 11 of the constitution deal with legislative relations between the centre and states.

1) Territorial extent of central and state legislation

- The parliament can make laws for the whole or any part of territory of India. It includes both states and union territories.
- A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable to outside the state.
- The parliament can alone make 'Extra-territorial' legislation. Thus the laws of parliament are also applicable to the Indian citizens and their property in any part of world.

2) Distribution of legislative subjects

- The parliament has exclusive powers to make laws with respect to any of the matters enumerated in union list.
- The list has at present 100 subjects like defense, banking, foreign affairs, currency, atomic energy, insurance, communication , inter-state trade, commerce, audit and so on.
- The state legislature has at present 61 subjects like public order, police, public health, sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling so on.

- According to concurrent list both parliament and state legislature can make laws on 52 subjects at present. For ex. Criminal law and procedure, civil procedure, marriage and divorce, population control, family planning, electricity, labor welfare etc.
- The power to make laws with respect to residuary subjects (matters which are not listed in any of three subjects) is given to parliament.

3) Parliament legislation in the state field

- The constitution empowers the parliament to make laws on any matter enumerated in state laws under following extraordinary circumstances.

3.1 When Rajyasabha passes a resolution

- If the Rajyasabha declares that it is necessary in the national interest that parliament should make laws on the matter of state list, the parliament becomes competent to make law on this matter.
- Such laws must be passed by two third of the members present and voting.

3.2 During a national emergency

- During the time of national emergency, parliament has power to make laws on state matters.
- The laws become inoperative the six months of end of emergency.

3.3 When state makes a request

- When the legislature of two or more states pass resolutions requesting parliament to enact laws on a matter in the state list, then parliament can make laws for regulating that matter.
- A law so enacted applies only to states which have passed the resolution.

3.4 To implement international agreements

- The parliament can make laws on any matter in the state list for implementing the international treaties, agreements or conventions.
- The agreement enables the central government to fulfill its international obligations and commitments.

3.5 During president's rule

- When the president's rule is imposed in a state the parliament becomes empowered to make laws with respect to any matter in the state list.
- A law made by the parliament continues to be operative even after the end of president rule. However, new state legislation can change it.

4. Centre's control over state legislation

- The constitution empowers the centre to exercise control over the state's legislative matter in following ways

4.1 The governor can reserve certain types of bills passed by state legislative for the consideration of president. The president enjoys absolute veto over them.

4.2 Bills on certain matter enumerated in the state list can be introduced in the state legislature only with previous sanction of the president. (Bills imposing restriction on freedom of trade and commerce)

4.3 The president can direct the states to reserve money bills and other financial bills for his consideration during financial emergency.

THANK YOU