

## PART IV

# THE FEDERAL SYSTEM

### A. INTRODUCTION

Federalism constitutes a complex governmental mechanism for governance of a country. It has been evolved to bind into one political union several autonomous, distinct, separate and disparate political entities or administrative units. It seeks to draw a balance between the forces working in favour of concentration of power in the centre and those urging a dispersal of it in a number of units. It thus seeks to reconcile unity with multiplicity, centralisation with decentralisation and nationalism with localism.<sup>1</sup>

The originality of the federal system lies in that power is, at one and the same time, concentrated as well as divided. There is centralisation of administration and legislation in certain respects along with decentralisation in other respects. A federal constitution establishes a dual polity as it comprises two levels of government. At one level, there exists a Central Government having jurisdiction over the whole country and reaching down to the person and property of every individual therein. At the other level, there exist the regional governments, each of which exercises jurisdiction in one of the regions or administrative units into which the country is divided under the constitution. A citizen of a federal country thus becomes subject to the decrees of two governments—the Central and the regional. The regional governments are called the State Governments as in the U.S.A, Australia or India, or Provincial Governments as in Canada.

The two levels of government divide and share the totality of governmental functions and powers between themselves. The distribution of legislative powers

- 
1. On Federalism generally see: DICEY, *LAW OF THE CONSTITUTION*, Ch. III, 138 et seq. (1952); Federalism; Problems and Methods, 4 *International Bulletin of Social Science*, 5 et seq. (1952); BOWIE, *PROBLEMS OF FEDERALISM*; WHEARE, *FEDERAL GOVERNMENT*; SCHWARTZ, *AMERICAN CONSTITUTIONAL LAW*, Chs. II & VI; FRIEDRICH & BOWIE, *STUDIES IN FEDERALISM*; MCWHINNEY, *COMPARATIVE FEDERALISM* (1962); SAWER, *MODERN FEDERALISM* (1969); RIKER, *FEDERALISM; ORIGIN, OPERATION, SIGNIFICANCE* (1964); LIVINGSTONE, *FEDERALISM AND CONSTITUTIONAL CHANGE* (1956); JAIN, *Federal Grants-in-aid in the U.S.A.*, 1956 *VYAVAHARA NIRANAYA*, 245; JAIN, *Some Aspects of Indian Federalism*, 28 *Jl. of Max-Planck Inst.*, 301-364 (1968); JAIN, *Federalism in India*, 6 *JILI*, 355 (1965); ALICE JACOB, *Centre-State Governmental Relations in the Indian Federal System*, X *JILI*, 583 (1968); S.N. JAIN, *Freedom of Trade and Commerce and Restraints on the State Power to tax Sale in the course of Inter-State Trade and Commerce*, X *JILI* 547 (1968); M.P. JAIN, *Indian Federalism—A Background Paper in I.L.I.*, *Constitutional Developments since Independence*, 205-254 (1974); SETALVAD, *UNION AND STATE RELATIONS UNDER THE INDIAN CONSTITUTION* (1974); JAIN & KASHYAP, *THE UNION & THE STATE* (1972); REPORT OF THE SARKARIA COMMISSION ON CENTRE-STATE RELATIONS (1988).

between the Centre and the States is the most important characteristic, rather the core, of any federal system. In reality the whole federal system revolves around this basic core of distribution of powers. A federal constitution thus envisages a demarcation or division of governmental functions and powers between the Centre and the regions by the sanction of the Constitution itself which is usually a written document and also a rigid one, *i.e.*, which is not capable of amendment easily. From this follow two necessary consequences—

(1) that any invasion by one level of government on the area assigned to the other level of government is a breach of the constitution; and

(2) that such a breach of the constitution is a justiciable issue to be determined by the courts. Each level of government thus functions within the area assigned to it by the constitution.

The several governments do not, however, function in watertight compartments. They come in contact with each other at many points. Their areas of operation and functioning cross and intersect in several respects thus creating a variety of governmental relations between the Centre and the regions and between the regions *inter se*. The pattern of intergovernmental relations in a federal country is not static; it is dynamic and is constantly finding a new balance in response to the centripetal and centrifugal forces operating in the country.

As contradistinguished with the federal constitution, there is the unitary constitution in which the Central Government is supreme. There may, and usually do, exist local governments in a unitary state having certain assigned functions to discharge, but these local governments exist, at the sufferance of the Centre, and their area of operation is confined to what the Centre seeks to confer on them which may be curtailed, restricted and modified by the Centre and at its own will.

The local units in a unitary constitution have no higher status than mere administrative agencies of the Central Government. The constitutional status of the constituent units in a federation is comparatively more permanent, more enduring, more immutable and they possess a much larger amount of functional autonomy than what the local governments enjoy in a unitary constitution.

The units in a federation act under the constitution; their functions are governed under it and their area of operation can be changed only by an amendment in the constitutional law, *i.e.*, by a constituent process and it cannot ordinarily be done at the instance solely of the Federal Government. The units in a federation thus have their own identity and personality and have their own separate functions to discharge apart from the Federal Government.

The Constitution of India establishes a dual polity in the country, consisting of the Union Government and the State Governments.<sup>2</sup> The States are the regional administrative units into which the country has been divided and, thus, India has been characterised as the Union of States [Art. 1(1)]<sup>3</sup>. The fabric of the Indian federal system stands on three pillars, *viz.*, a strong Central Government, flexible federal system and co-operative federalism.<sup>4</sup> This will be apparent as we go along with the discussion of the details of the Indian federal system in the following pages.

---

2. *Supra*, Chs. II—VIII.

3. *Supra*, Ch. V.

4. *Infra*, Ch. XIV

The strength of the Centre lies in its large legislative<sup>5</sup> and financial<sup>6</sup> powers and in its emergency powers.<sup>7</sup> The flexibility of the Indian Federalism lies in the expedients adopted in the Constitution to mitigate the rigidity of a federal system and to increase temporarily the powers of the Central Government if the contemporary situation so demands.<sup>8</sup> The formal method to amend the federal portion of the Constitution is also not so rigid as is to be found in other federations.<sup>9</sup> The concept of co-operative federalism has been worked out in a number of constitutional provisions as well as strengthened through legislation and administrative practices.<sup>10</sup>

The framers of the Indian Constitution learnt a great deal from the experiences—the problems faced and the solutions attempted—of the Federations of the U.S.A., Canada and Australia. The approach of the framers of the Indian Constitution was conditioned in good measure by the knowledge of the working of these Federations. They have tried to incorporate in the Indian Federal Structure the main developments in those Federations, and have also sought to avoid the difficulties faced therein from time to time. But, still, the Indian Federal System breaks some new ground and the Indian Constitution contains some novel provisions which are not to be found in other Federations.<sup>11</sup>

---

5. Chapter X, *infra*.

6. Chapter XI, *infra*.

7. *Infra*, Chapter XIII.

8. Chs. X, XI, XII and XIII, *infra*.

9. Ch. XLI, *infra*.

10. *Infra*, Chapter XIV.

11. *Supra*, Chapter I; also see, *infra*, Chs. X-XIV .