

8

FEDERALISM

8.1 INTRODUCTION

Federalism is a modern concept. The idea of federalism has been put into practice by the United States of America. After the end of World War II, federalism became fashionable, particularly in the British Commonwealth countries as a means of solving the problems of countries attaining or about to attain their independence.

Federalism is the result of historical evolution. The reasons for the formation of a federation was usually the ideal of national unity, the desire to promote common economic interests, the amicable solution of common problems and the considerations of defence and national prestige.

There is no accepted theory of federalism. As Federalism has been the product of self needs of a country, different federations are formed due the varied reasons. But its essence is that it is a political system which creates two tier government, with assigned powers and functions. It is a method of dividing powers so that the central and provincial governments are each within a sphere, co-ordinate and at the same time act independently. It provides a constitutional device for bringing unity in diversity by harmonizing the opposing forces for the achievement of common national goals.

8.2 OBJECTIVES

The study of this lesson will enable you to:

- explain the meaning of federalism;
- recognise the federal features of the Indian Constitution;
- explain the unitary features of the Indian Constitution;
- recall that India is federal in character but unitary in spirit;
- explain legislative, administrative and financial relations between the Centre and the States;
- recognise that in Centre-State relations how the Central Government has and edge over the State Governments;

- identify areas of conflict between the Centre and States;
- recognise demand for autonomy for the States by various State governments, and
- describe the recommendations of the Sarkaria Commission and the need for co-operation between the Centre and the States.

8.3 FEATURES OF FEDERALISM

The Constitution of the Republic of India which came into force on 26 January, 1950, has federal features, though it does not, in fact claim that it establishes a federal union. The question whether the Indian Constitution could be called a federal Constitution troubled the minds of the members of the Constituent Assembly. Most of them expressed their dissatisfaction with the scheme of federal polity adopted by the Constitutions. This question cannot be answered without going into the meaning of federalism and the essential features that are evident in a Federal State. Let us examine them and try to find out whether India is a federation or not.

If we look at the features of a federation, we find that, federation is a system of government, where each state within its own sphere not only remain independent but also co-ordinates. It is a device for securing unity in diversity.

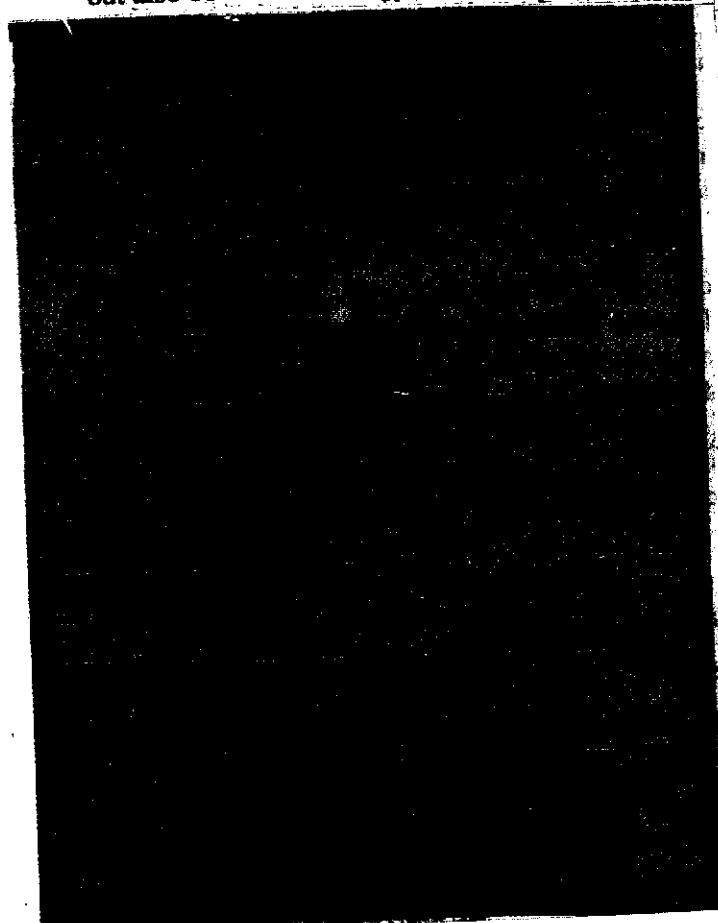


Fig. 8.3: This chart illustrates the demarcation between the subjects in respect of which the Union Govt. and the State Govts respectively have legislative powers.

8.3.1 Written Constitution

The most important feature of a federation is that its Constitution should be a written one, so that both the Union Government as well as the States can refer to that as and when needed. The Constitution of India is a written document and is the most elaborate Constitution of the world. It establishes supremacy of the Constitution because both the union and the States are given powers by the Constitution as to be independent in their spheres of governance.

8.3.2 Division of Powers

In our Constitution, there is a clear division of powers, so that the States and the Centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the func-

tions of the other. This requisite is evident in our constitution. It enumerates three lists, viz. the Union, the State and the Concurrent List. The Union List consists of 97 subjects of national importance such as Defence, Railways, Post and Telegraph, etc. The State List consists of 66 subjects of local interest such as Education, Public Health, Police etc. The Concurrent List has 47 subjects important to both the Union and the State, such as Electricity, Trade Union, Economic and Social Planning, etc.

8.3.3 Independent Judiciary

Another very important feature of a federation is an independent judiciary to interpret the Constitution and to maintain its sanctity. The Supreme Court of India has the original jurisdiction to settle disputes between the Union and the States. It does not allow the Union and the State governments to violate the Constitution. It can declare a law as unconstitutional, if it contravenes any provision of the Constitution.

INTEXT QUESTIONS 8.1

Tick out (✓) which ever is correct.

1. In a federation the powers are _____ (with the Centre/with the States/Divided between the Centre and the States).
2. Federation has a _____ Constitution (Written / unwritten/evolved).
3. The Governor of a State in India is _____ (Directly elected / Indirectly elected / appointed by the President).
4. In the Indian Constitution of there are _____ Lists (2, 3, 4).
5. 66 subjects are included in the _____ List (Union/ State/Concurrent).
6. The concurrent list consists of _____ subjects. (97, 47, 66)

8.4 NATURE OF INDIAN FEDERATION

In spite of the fact that the Indian Constitution establishes a federal structure, it is indeed very difficult to put the Indian Constitution in the category of a true federation. The framers of the Constitution have modified the true nature of Indian federation by incorporating certain non-federal features in it. They are :

Article I of the Constitution describes India as a 'Union of States' which implies two things : firstly, it is not the result of an agreement among the States and secondly, the States have no freedom to secede or separate from the Union. Besides, the Constitution of the Union and the States is a single framework from which neither can get out and within which they must function.

The Centre appoints the Governors of the States and may take over the administration of the State on the recommendations of the Governor or otherwise. This enables the Union government to exercise control over the State administration. The control of the Union becomes all comprehensive in case of National Emergency about which you will study in the next lesson. As a matter of fact, the federal structure can be converted into a unitary one during emergency.

In addition to all this, all important appointments such as the Chief Election Commissioner, the Comptroller and Auditor General and the Chairman of the Planning Commission are made by the Union Government. Besides, there is single citizenship. There is no provision for separate Constitutions for the States. The States cannot propose amendments to, the Constitution. As such amendments can only be made by the Union Parliament. One of the essential pre-requisites of Federalism is the equal representation of States in the Upper House of the Union Parliament. In the senate, the Upper House of the American Congress, two representatives are chosen from every state. But in our Constitution there is no equality of representation of the States in the Rajya Sabha.

In order to ensure uniformity of the administrative system and to maintain minimum common administrative standards without impairing the federal system. All India Services such as IAS and IPS have been created which are kept under the control of the Union. In financial matters too, the States depend upon the Union to a great extent. The States do not possess adequate financial resources to meet their requirements. During Financial Emergency, the Centre exercises full control over the State's finances.

In case of disturbances in any State or part thereof, the Union Government is empowered to depute Central Force in the State or to the disturbed part of the State. Also, the parliament, by law, may increase or decrease the area of any State and may alter its name and boundaries.

The Constitution of India establishes a strong Centre by assigning all important subjects to the Centre in the Union List.

As a result of the distribution of powers between the Union and the States is that the State Governments have very limited powers. The powers, functions and procedures of the Planning Commission clearly show that the States do not have effective role any where. State plans are framed within the provisions of the Central Plan and are put into operation after the approval of the Planning Commission.

From the above discussion, it becomes clear, that there is a tilt in favour of the Centre at the cost of the States. The States have to work in close co-operation with the Centre. This has lent support to the contention that the Indian Constitution is federal in form but unitary in spirit.

INTEXT QUESTIONS 8.2

1. The _____ may change the area of a State by law. (Parliament / State Legislature/Municipal Corporation).
 2. All Indian Services are under the control of _____. (Union Govt./ State Govt./District Govt.).
 3. In a federation there is _____ representation in the upper house of Parliament (unequal/equal/proportional).
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8.5 CENTRE – STATE RELATIONS

We have discussed that the Constitution of India provides for a federal system. Both the Union and the States are created by the Constitution and derive their respective authority from it. Yet, there is a serious complaint from the critics that India is a federal State but with subsidiary unitary features. How far is this criticism valid ? To under-

stand this, it is desirable to study the relationship between the Union and the States.

The relations between the Centre and the States which constitute the core of federalism have been enumerated in Parts XI and XII of the Constitution under the heads, namely Legislative, Administrative and Financial relations. Let us examine them one by one.

8.5.1 Legislative Relations

Regarding legislative relations, there is a threefold division of powers in the Constitution. We have followed a system in which there are two lists of legislative powers, one for the Centre and the other for the States, known as the Union List and the State List, respectively. An additional list called the Concurrent List has also been added.

The Union List which consists of 97 subjects of national interest is the largest of the three lists. Some of the important subjects included in this list are: Defence, Railways, Post and Telegraph Income Tax, Custom Duties, etc. The Parliament has the exclusive power to enact laws on the subjects included in the Union List for the entire country.

The State List consists of 66 subjects of local interest. Some of the important subjects included in this List are Trade and Commerce within the State, Police, Fisheries, Forests, Industries, etc. The State Legislatures have been empowered to make laws on the subjects included in the State List for its own State only.

The Concurrent List consists of 47 subjects of common interest to both the Union and the States. Some of the subjects included in this list are: Stamp Duties, Drugs and Poisons, Electricity, Newspapers etc. Both the Parliament and the State Legislatures can make laws on the subjects included in this list. But in case of a conflict between the Union and the State law relating to the same subject, the Union law prevails over the States law. Power to legislate on all subjects not included in any of the three lists vests with the Parliament.

Under certain circumstances, the Parliament can legislate on the subjects mentioned in the State List. These are:

- (i) If there is a proclamation of National Emergency.
- (ii) If the Rajya Sabha passes a resolution by two-thirds majority to the effect that a particular subject in the State List is of National importance.
- (iii) When a State is under President's Rule.
- (iv) When two or more States make a joint request to the Parliament to legislate on a State subject.
- (v) In order to implement any international treaty or agreement.

From the above discussion it is quite clear that the division of legislative authority is clearly biased in favour of the Centre. We have a long Union List wherein all important subjects have been included. The residuary powers have been vested with the Union. There is scope for expansion of Parliamentary Competence. In case of inconsistency between the Union law and the State law, the Union law prevails. The procedure for the amendment of the Constitution and many such other provisions make it abundantly clear that in the legislative sphere, the Centre plays a predominant role.

8.5.2 Administrative Relations

The fathers of the Indian Constitution never intended to create two independent positions in India regarding the administrative relationship between the Union and the States. Instead, they attempted to provide for co-operation and co-ordination between them as far as possible.

The executive power of the State is to be exercised in such a way as to ensure compliance with the laws made by the Parliament. Further, the Union Executive is empowered to give directions to a State, if necessary for the purpose.

The Union Government can issue directions to the States to ensure compliance with the laws of the Parliament for construction and maintenance of means of communications, declared to be of national and military importance, and also on the measures for the protection of Railways. In addition to all this, the Parliament can alone adjudicate on inter-State river disputes. Also, a provision has been made for constituting inter-State council to advise the President on inter-State disputes.

The heads of the States i.e. Governors are appointed by the President. They hold office during his pleasure. This enables the Union Government to exercise control over the State administration. The President has the power to recall the Governor of any State. Appointment and transfer of the judges of the High Courts are also made by the President.

Even the State governments may delegate some of its administrative functions relating to the State subjects to the Union Government for a specified period.

The Constitution of India has certain special provisions to ensure uniformity of the administrative system. These include the creation of All India Services such as IAS and IPS and Placing members of these services in key administrative positions in the States. The presence of All India Service Officers further paves way for the Central Government to exercise its authority over the States. The members of these services are recruited by the Centre but are appointed in the States. No disciplinary action can be taken against them by the State Governments without the permission of the Centre. The Constitution also makes provision for the creation of new All India Services by the Parliament on the recommendation of the Rajya Sabha. The President also puts the entire control of the State administrative machinery under the control of the Union. You will recall this from the lesson on emergency provisions.

You would also recall that the Union executive is empowered to give such directions to a State as it may appear to the Union Government to be necessary for the purpose. The Union Government has wide powers to issue directions based on the subjective view of the Union and may therefore interfere with the State autonomy in the field of administration. Ordinarily, the Central police forces and Army are posted to the States at the request of the State Governments. However, there have been occasions when the CRPF or BSF has been deployed in States much against the wishes of the State Governments. Thus the Centre plays a very important role in the administrative sphere concerning the States.

8.5.3 Financial Relations

Finance plays an important role in smooth running of the administration. The distribu-

by making the distribution adequate. State plans are framed within the priorities of the central plan and they are executed with the approval of the Planning Commission. Further, the States, have to carry out the centre sponsored schemes for which the Centre gives grants and the conditions under which these are to be made. The Planning Commission has created an over-centralised planning system. No initiative is left to the States and the centrally formulated schemes have been inappropriately and unimaginatively imposed upon them.

INTEXT QUESTIONS 8.3

1. The Union List consists of _____ subjects (97/66/47).
2. The Finance Commission can be constituted by _____ (President/Prime Minister/Governor).
3. Post and Telegraph is a subject in the _____ List (Union/State/Concurrent).
4. The _____ can legislate on subjects in the State List when there is President's rule (State Legislature/Parliament/Both of them)
5. Trade and Commerce is a subject with _____ List (Union/State/Concurrent)

8.6 CONCLUSION

The founding fathers of the Indian Constitution were deeply concerned about ensuring the unity and integrity of the Country. They were aware of the forces of disruption and disunity working within the Country. These disturbing and destabilising conditions which were existing at the time of Independence could be handled only by a strong government at the Centre.

Therefore, the framers of the Constitution assigned a predominant role to the Centre. At the same time they made provisions for the establishment of a co-operative federalism.

The working of the Indian federation during the last five decades clearly shows that the relations between the Centres and the States have not always been co-ordial.

The administrative Reforms Commission and several other Commissions were appointed by the Government of India to regulate Centre-State relations. The Union Government appointed Sarkaria Commission to suggest ways and means to improve Centre-State relations.

The recommendations of the Sarkaria Commission assume importance so as to evolve an appropriate policy in the area of federal Legislative, Administrative and Financial Relations. It has not suggested wholesale structural changes in the fundamental fabric of the Constitution. It felt that Federalism is more a functional arrangement for co-operative action than a static institutional concept. Difference between the Union and the States should be resolved by mutual consultation. It has taken a favourable view on the demand of the States to have more financial resources at their disposal. In order to improve Centre-State relations in the Country, it has suggested economic liberalisation and suitable amendments to the Constitution.

WHAT YOU HAVE LEARNT

In a federal system of government there is a need for clear cut division of power between the Union and the States. This also, required to have a written and rigid constitution and an independent judiciary to decide disputes between the Union and the States. Though the Indian Constitution has all such features of a federal state, it is indeed difficult to put the Indian Constitution in the category of federations.

The framers of the Constitution have incorporated certain non-federal features in it such as single citizenship, single judiciary, a strong centre, appointment of the Governor by the President, inequality of representation in the Rajya Sabha, and so on. There is a tilt towards strong centre. The States have to work in close co-operation with the Centre. This has lent support to the contention that the Indian Constitution is federal in form but unitary in spirit.

The study of Centre-State relationships in Legislative, Administrative and Financial spheres also clearly shows that this Centre is stronger as compared to the States. The Centre has been assigned a predominant role, keeping in view the dangers to the unity and integrity of the nation. Therefore, there are provisions for a co-operative federalism.

The working of the Indian Constitution over the years indicates that relations between the Centre and the States have not remained very co-ordinal. The States have started demanding more autonomy. Various commissions have been appointed by the Government of India to review the Center-State relations. Recently the Sarkaria Commission has submitted its report. Although it has not suggested wholesale structural changes in the fundamental fabric of the Constitution. Yet its recommendations indicate a need to evolve an appropriate policy in the area of federal legislative, administrative and financial relations.

TERMINAL EXERCISES

1. What are the federal features of the Indian Constitution.
2. Discuss the unitary features of the Constitution of India.
3. Write a short note on the legislative relations between the Centre and the States.
4. Describe the financial relations between the Centre and the States.
5. Explain that the Indian Constitution is federal in form but unitary in spirit.

tion of revenue resources is especially critical in determining the nature of the State's relationship with the centre. Both the Union and the States have been provided with independent sources of revenue by the Constitution. The Parliament can levy taxes on the subjects included in the Union List. The States can levy taxes on the subjects in the State List. By and large taxes that have an inter-state base are levied by the Centre and those with a local base by the States.

The Union List consists of items of taxation which fall under the following categories :

- (i) Taxes levied by the Union but collected and appropriated by the States such as stamp duties and duties or excise on medicinal and toilet preparations, etc.
- (ii) Taxes levied and collected by the Union but assigned to the States, viz. Railways, sea or air, etc.
- (iii) Taxes levied and collected by the Centre and may be distributed between the Centre and the States if the Parliament by law so provides, such as Union excise duties, excise on toilet preparations, etc.
- (iv) Taxes levied and collected and retained by the Centre such as Customs, surcharge on income tax etc.
- (v) Taxes levied and collected by the Centre and distributed between the Union and the States such as taxes other than agriculture, etc.

The State List also contains several items of taxation. Every State is entitled to levy, collect and appropriate those taxes. Some of the important subjects of local importance are land revenue, liquor and opium, taxes on land and buildings, taxes on vehicles, etc. In the financial sphere too the Centre is better equipped. The Centre can exercise control over the State finances and grants-in-aid both general and special to meet the expenditure on developmental schemes. During financial emergency, the President has the power to suspend the provisions regarding division of taxes between the Centre and the States. He can also impose other restrictions on the expenses of the States.

The distribution of financial resources has to be adjusted from time to time, keeping in view the changing economic conditions and varying financial needs of the Union and the States. Provision is made for the appointment of a Finance Commission to discharge this function. The Finance Commission can be constituted by the President once every five years. The duty of the Finance Commission is to make recommendations to the President as to :

- (i) the distribution between the Union and the States of the net proceeds of taxes and the allocation between the States themselves of the respective shares of such proceeds;
- (iii) Besides the devolution of revenues, it meets the financial needs of the States in two open ways. They are :
 - (a) by making grants-in-aid of State revenues and other grants ;and
 - (b) by giving loans.

Efforts are generally made to keep these grants-in-aid to the States to a minimum

KEY TO INTEXT QUESTIONS

8.1 Q.1. Divided between the Centre and the states

Q.2. Written

Q.3. Appointed by the President

Q.4. 3

Q.5. State

Q.6. 47

8.2 Q.1. Parliament

Q.2. Union Government

Q.3. unequal

Q.4. Parliament

Q.5. Quasifederal

8.3 Q.1. 97

Q.2. President

Q.3. Union

Q.4. Parliament

Q.5. State

4. Proposals for amendment to the Constitution can be initiated by _____ alone.

Parliament/None of them/State Legislature

5. The Indian Constitution by its nature is _____ Unitary/
federal/Quasi federal

HINTS FOR TERMINA EXERCISES

1. Please see Section 8.3

2. Please see Section 8.4

3. Please see Section 8.5.1

4. Please see Section 8.5.3

5. Please see Section 8.3 and 8.4