

## Federal System

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the national government and the regional governments. By definition, a unitary government is one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government. A federal government, on the other hand, is one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently. Britain, France, Japan, China, Italy, Belgium, Norway, Sweden, Spain and so on have the unitary model of government while the US, Switzerland, Australia, Canada, Russia, Brazil, Argentina and so on have the federal model of government. In a federal model, the national government is known as the Federal government or the Central government or the Union government and the regional government is known as the state government or the provincial government.

The specific features of the federal and unitary governments are mentioned below in a comparative manner:

**Table 13.1** *Comparing Features of Federal and Unitary Governments*

<i>Federal Government</i>	<i>Unitary Government</i>

1. Dual Government (that is, national government and regional government)	1. Single government, that is, the national government which may create regional governments
2. Written Constitution	2. Constitution may be written (France) or unwritten (Britain)
3. Division of powers between the national and regional government	3. No division of powers. All powers are vested in the national government
4. Supremacy of the Constitution	4. Constitution may be supreme (Japan) or may not be supreme (Britain)
5. Rigid Constitution	5. Constitution may be rigid (France) or flexible (Britain)
6. Independent judiciary	6. Judiciary may be independent or may not be independent
7. Bicameral legislature	7. Legislature may be bicameral (Britain) or unicameral (China)

The term ‘federation’ is derived from a Latin word *foedus* which means ‘treaty’ or ‘agreement’. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units. The units of a federation are known by various names like states (as in US) or cantons (as in Switzerland) or provinces (as in Canada) or republics (as in Russia).

A federation can be formed in two ways, that is, by way of integration or by way of disintegration. In the first case, a number of militarily weak or economically backward states (independent) come together to form a big and a strong union, as for example, the US. In the second case, a big unitary state is converted into a federation by granting autonomy to the provinces to promote regional interest (for example, Canada). The US is the first and the oldest federation in the world. It was formed in 1787 following the American Revolution (1775–83). It comprises 50 states (originally 13 states) and is taken as the model of federation. The Canadian Federation, comprising 10 provinces (originally 4 provinces) is also quite old—formed in 1867.

The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons—the large size of the country and its socio-cultural diversity. They realised that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.

However, the term ‘federation’ has nowhere been used in the Constitution. Instead, Article 1 of the Constitution describes India as a ‘Union of States’. According to Dr B R Ambedkar, the phrase ‘Union of States’ has been preferred to ‘Federation of States’ to indicate two things: (i) the Indian federation is not the result of an agreement among the states like the American federation; and (ii) the states have no right to secede from the federation. The federation is union because it is indestructible.<sup>1</sup>

The Indian federal system is based on the ‘Canadian model’ and not on the ‘American model’. The ‘Canadian model’ differs fundamentally from the ‘American model’ in so far as it establishes a very strong centre. The Indian federation resembles the Canadian federation (i) in its formation (i.e., by way of disintegration); (ii) in its preference to the term ‘Union’ (the Canadian federation is also called a ‘Union’); and (iii) in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

## FEDERAL FEATURES OF THE CONSTITUTION

The federal features of the Constitution of India are explained below:

### 1. Dual Polity

The Constitution establishes a dual polity consisting the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with the matters of national importance like defence, foreign affairs, currency, communication and so on. The state governments, on the other hand, look after the matters of regional and local importance like public order, agriculture, health, local government and so on.

### 2. Written Constitution

The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules.<sup>2</sup> At present (2016), it consists of a Preamble, about 465 Articles (divided into 25 Parts) and 12 Schedules.<sup>3</sup> It specifies the structure, organisation, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

### **3. Division of Powers**

The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 100 subjects (originally 97), the State List 61 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (ie, which are not mentioned in any of the three lists) are given to the Centre.

### **4. Supremacy of the Constitution**

The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must conform to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

### **5. Rigid Constitution**

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre–state relations and judicial organisation) can be amended only by the joint action

of the Central and state governments. Such provisions require for their amendment a special majority<sup>4</sup> of the Parliament and also an approval of half of the state legislatures.

## **6. Independent Judiciary**

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.

## **7. Bicameralism**

The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

## **UNITARY FEATURES OF THE CONSTITUTION**

Besides the above federal features, the Indian Constitution also possesses the following unitary or non-federal features:

### **1. Strong Centre**

The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the US, they are vested in the states. Thus, the Constitution has made the Centre very strong.

## **2. States Not Indestructible**

Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.

## **3. Single Constitution**

Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard is the case of Jammu and Kashmir which has its own (state) Constitution.<sup>5</sup>

## **4. Flexibility of the Constitution**

The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.

## **5. No Equality of State Representation**

The states are given representation in the Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

## **6. Emergency Provisions**

The Constitution stipulates three types of emergencies—national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.

## **7. Single Citizenship**

In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country. The other federal states like US, Switzerland and Australia have dual citizenship, that is, national citizenship as well as state citizenship.

## **8. Integrated Judiciary**

The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.

## **9. All-India Services**

In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.



## **10. Integrated Audit Machinery**

The Comptroller and Auditor-General of India audits the accounts of not only the Central government but also those of the states. But, his appointment and removal is done by the president without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.

## **11. Parliament's Authority Over State List**

Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.

## **12. Appointment of Governor**

The governor, who is the head of the state, is appointed by the President. He holds office during the pleasure of the President. He also acts as an agent of the Centre. Through him, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.

## **13. Integrated Election Machinery**

The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But, this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.

## **14. Veto Over State Bills**



The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.

## CRITICAL EVALUATION OF THE FEDERAL SYSTEM

From the above, it is clear that the Constitution of India has deviated from the traditional federal systems like US, Switzerland and Australia and incorporated a large number of unitary or non-federal features, tilting the balance of power in favour of the Centre. This has prompted the Constitutional experts to challenge the federal character of the Indian Constitution. Thus, KC Wheare described the Constitution of India as “quasi-federal”. He remarked that “Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features.”<sup>6</sup>

According to K Santhanam, the two factors have been responsible for increasing the unitary bias (tendency of centralisation) of the Constitution. These are: (i) the dominance of the Centre in the financial sphere and the dependence of the states upon the Central grants; and (ii) the emergence of a powerful planning commission which controls the developmental process in the states. He observed: “India has practically functioned as a unitary state though the Union and the states have tried to function formally and legally as a federation.”<sup>7</sup>

However, there are other political scientists who do not agree with the above descriptions. Thus, Paul Appleby<sup>8</sup> characterises the Indian system as “extremely federal”. Morris Jones<sup>9</sup> termed it as a “bargaining federalism”. Ivor Jennings<sup>10</sup> has described it as a “federation with a strong centralising tendency”. He observed that “the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth”. Alexandrowicz<sup>11</sup> stated that “India is a case *sui generis* (i.e., unique in character). Granville Austin<sup>12</sup> called the Indian federalism as a “cooperative federalism”. He said that though the Constitution of India has created a strong Central government, it has not made the state governments weak and has not reduced

them to the level of administrative agencies for the execution of policies of the Central government. He described the Indian federation as “a new kind of federation to meet India’s peculiar needs”.

On the nature of Indian Constitution, Dr B R Ambedkar made the following observation in the Constituent Assembly: “The Constitution is a Federal Constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, nor are the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the Constitution, both derive their respective authority from the Constitution.”<sup>13</sup> He further observed: “Yet the Constitution avoids the tight mould of federalism and could be both unitary as well as federal according to the requirements of time and circumstances”.<sup>14</sup> While replying to the criticism of over-centralisation in the Constitution, he stated: “A serious complaint is made on the ground that there is too much centralisation and the states have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relations between the Centre and the states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the states not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The states are in no way dependent upon the Centre for their legislative or executive authority. The states and the Centre are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It is, therefore, wrong to say that the states have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary”.<sup>15</sup>

In *Bommai* case<sup>16</sup>(1994), the Supreme Court laid down that the Constitution is federal and characterised federalism as its ‘basic feature’. It observed: “The fact that under the scheme of our Constitution, greater power is conferred upon the Centre *vis-a-vis* the states does not mean that the states are mere appendages of the Centre. The states have an independent constitutional existence. They are not satellites or agents of the Centre. Within the sphere allotted to them, the states are supreme. The fact that during emergency and in certain other eventualities their powers are

overridden or invaded by the Centre is not destructive of the essential federal feature of the Constitution. They are exceptions and the exceptions are not a rule. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle—the outcome of our own process and a recognition of the ground realities”.

In fact, the federalism in India represents a compromise between the following two conflicting considerations<sup>17</sup>:

- (i) normal division of powers under which states enjoy autonomy within their own spheres; and
- (ii) need for national integrity and a strong Union government under exceptional circumstances.

The following trends in the working of Indian political system reflects its federal spirit: **(i)** Territorial disputes between states, for example, between Maharashtra and Karnataka over Belgaum; **(ii)** Disputes between states over sharing of river water, for example, between Karnataka and Tamil Nadu over Cauvery Water; **(iii)** The emergence of regional parties and their coming to power in states like Andhra Pradesh, Tamil Nadu, etc.; **(iv)** The creation of new states to fulfil the regional aspirations, for example, Mizoram or recently Jharkhand; **(v)** Demand of the states for more financial grants from the Centre to meet their developmental needs; **(vi)** Assertion of autonomy by the states and their resistance to the interference from the Centre; **(vii)** Supreme Court’s imposition of several procedural limitations on the use of Article 356 (President’s Rule in the States) by the Centre.<sup>18</sup>

## NOTES AND REFERENCES

1. *Constituent Assembly Debates*, Volume VII, P. 43.
2. The American Constitution originally consisted only 7 Articles, the Australian 128 and the Canadian 147.
3. The various amendments carried out since 1951 have deleted about 20 Articles and one Part (VII) and added about 90 Articles, four Parts (IVA, IXA, IXB and XIVA) and four Schedules (9,10,11 and 12).
4. A majority of 2/3 of the members of each House present and voting and a majority of the total membership of each House.
5. Jammu and Kashmir enjoys a special status by virtue of Article 370 of the Constitution of India.

6. K C Wheare: *Federal Government*, 1951, P. 28.
7. K Santhanam: *Union-State Relations in India*, 1960, PP. 50–70.
8. Paul Appleby: *Public Administration in India*, 1953, P. 51.
9. Morris Jones: *The Government and Politics in India*, 1960, P. 14.
10. Ivor Jennings: *Some Characteristics of the Indian Constitution*, 1953, P. 1.
11. C H Alexandrowicz: *Constitutional Development in India*, 1957, PP. 157–70.
12. Granville Austin: *The Indian Constitution—Cornerstone of a Nation*, Oxford, 1966, PP. 186–88.
13. *Constituent Assembly Debates*, Vol. VIII, P. 33.
14. Ibid, Vol. VII, PP. 33–34.
15. Dr B R Ambedkar's speech in the Constituent Assembly on 25.11.1949 reproduced in *The Constitution and the Constituent Assembly*; Lok Sabha Secretariat, 1990, P. 176.
16. *S R Bommai v. Union of India* (1994).
17. Subash C Kashyap: *Our Parliament*, National Book Trust, 1999 Edition, P. 40.
18. *S R Bommai v. Union of India* (1994). For the details of the judgement, see "President's Rule" in [Chapter 16](#).