

Chapter 2-Federalism

Introduction: Federalism

Federalism is a system of government in which the power is divided between a central authority and various constituent units of the country. Usually, a federation has two levels of government. One is the government for the entire country that is usually responsible for a few subjects of common national interest. The others are governments at the level of provinces or states that look after much of the day-to-day administering of their state. Both these levels of governments enjoy their power independent of the other.

The Indian Federation:

The word 'federation' has not been used in the constitution of India, but the Indian Union was formed on the basis of federalism.

The Constitution originally provided for a two-tier system of government. The Union Government or Central Government represents the Union of India and the State governments represent the provinces. Later, a third tier was added in the federation; with the formation of Panchayats and Municipalities.

Key Features of Federalism:

- There are two or more levels (or tiers) of government.
- Different tiers of government govern the same citizens, but each tier has its own jurisdiction in specific matters of legislation, taxation and administration.
- The jurisdictions of the respective levels or tiers of government are specified in the constitution. So the existence and authority of each tier of government is constitutionally guaranteed.
- The fundamental provisions of the constitution cannot be unilaterally changed by one level of government. Such changes require the consent of both the levels of government.
- Courts have the power to interpret the constitution and the powers of different levels of government. The highest court acts as an umpire if disputes arise between different levels of government in the exercise of their respective powers.
- Sources of revenue for each level of government are clearly specified to ensure its financial autonomy.
- The federal system thus has dual objectives: to safeguard and promote unity of the country, while at the same time accommodate regional diversity.

Therefore, two aspects are crucial for the institutions and practice of federalism. Governments at different levels should agree to some rules of power sharing. They should also trust that each would abide by its part of the agreement. An ideal federal system has both aspects: mutual trust and agreement to live together.

Balance of Power:

The exact balance of power between the central and the state government varies from one federation to another. This balance depends mainly on the historical context in which the federation was formed.

There are two kinds of routes through which federations have been formed; which are as follows:

- a. **Coming together federations:** This type of federation exists in the USA, Switzerland and Australia. Independent states came together on their own to form a bigger unit so that they could increase their security; while maintaining their sovereignty. In this type of federation, the constituent states have equal power and are stronger vis-à-vis the central government.
- b. **Holding together federation:** This type of federation exists in India, Spain, Belgium, etc. In this case, power is shared among various social groups to accommodate a huge diversity. In this type of federation, the central government is more powerful than the state government. Different constituents of the federation may have unequal powers. Some units are granted special powers, e.g. the case of Jammu & Kashmir in India.

List of Jurisdiction:

Union List: Union List includes subjects of national importance; such as defence of the country, foreign affairs, banking, communications and currency. They are included in this list because we need a uniform policy on these matters throughout the country. The Union Government alone can make laws relating to the subjects mentioned in the Union List.

State List: State List contains subjects of State and local importance such as police, trade, commerce, agriculture and irrigation. The State Governments alone can make laws relating to the subjects mentioned in the State List.

Concurrent List: Concurrent List includes subjects of common interest to both the Union Government as well as the State Governments, such as education, forest, trade unions, marriage, adoption and succession. Both the Union as well as the State Governments can make laws on the subjects mentioned in this list. If their laws conflict with each other, the law made by the Union Government will prevail.

Residuary List: Anything out of purview of above mentioned list is taken as residuary subject. Union Government has the power to legislate on these subjects.

Special Status: Jammu and Kashmir has its own Constitution. Many provisions of the Indian Constitution are not applicable to this State without the approval of the State Assembly. Indians who are not permanent residents of this State cannot buy land or house here. Similar special provisions exist for some other States of India as well.

Union Territories: There are some units of the Indian Union which enjoy very little power. These are areas which are too small to become an independent State but which could not be merged with any of the existing States. These areas, like Chandigarh, or Lakshadweep or the capital city of Delhi, are called Union Territories. These territories do not have the powers of a State. The Central Government has special powers in running these areas.

This sharing of power between the Union Government and the State governments is basic to the structure of the Constitution. It is not easy to make changes to this power sharing arrangement. The Parliament cannot on its own change this arrangement. Any change to it has to be first passed by both the Houses of Parliament with at least two-thirds majority. Then it has to be ratified by the legislatures of at least half of the total States.
