

FEDERALISM

HISTORICAL BACKGROUND:

Federalism entered world scene with American federation in 1787. This system evolved out of the need for a union of number of independent states, who were not strong enough to protect themselves from external attacks, but such states do not surrender their freedom completely.

Factors which led to formation of federation are:

- i) Idea of national unity.
- ii) Common economic interest.
- iii) Amicable solution to common problem
- iv) Need to have considerable defense and international prestige.

WHAT IS FEDERALISM?

Federalism is a form of government in which power is divided between the centre and states under the guidance of constitution. In federal structure, there is on one hand a central govt. having its jurisdiction on the entire country and on other hand states with their respective governments. Central govt. looks after national and international matters whereas the state govt. deals with state and regional matters.

Federal structures can be of two types. First through unification, where many newly independent states unite together for achieving political, economic and social development and to fulfill common goals like USA.

Second through separation, when a big country is divided into several states for securing goal of healthy administration and other socio-economic objective, like Canada.

ESSENTIALS OF FEDERAL GOVERNMENT:

- i) There should be a set of states with their independent govt.'s and states may have a separate constitution as per their necessity.
- ii) A federal govt. needs written and rigid constitution.
- iii) The division of powers between centre and states. The division should be such that subjects of national importance should be with centre, and subjects of local importance with states.
- iv) A powerful union judiciary, That will explain constitution from time to time, and devise solution to clash of power between centre and state.
- v) There should be two houses of central legislature. The first house leads to unequal representation because of population based representation, where as the second house is structured on the basis of equal representation ensuring equality among nations.

ESSENTIALS OF FEDERAL GOVERNMENT:

The constitution of India has established dual polity one at the centre and other at states. As main characteristic of Indian culture is "Unity in Diversity", so federal structure of India was different, as centre was powerful and states cannot exercise their powers independent of centre. India before independence was having unitary govt. and later

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constitution makers opted federal system for proper administration and states had no right to secede.

HOW DOES FEDERALISM ENSURE ACCOMODATION OF DIVERSITIES?

i) For small and weak countries, there is threat that powerful nations can curb their freedom. For that purpose these small countries can unite and form a union which will protect their freedom.

ii) This system is fit for diversities, where people are not ready to avoid their culture.

iii) Success is in division of powers as centre govt. deals with national issues and state with regional ones.

iv) Under federalism, local self-govt. is established; by which people get opportunity to participate in administration.

v) For large countries, federal govt. is necessary for success of democracy.

vi) It is beneficial for small states, as union handles their complex works like defence, foreign affairs etc.

vii) Federal system avoids chance of despotic rule from central govt.

viii) Federalism gives rise to sense of world union and also people hold respectful citizenship.

IN WHICH WAY INDIAN CONSTITUTION IS FEDERAL:

Many scholars and politicians either Indian or foreign accept that India is a federation. In constituent Assembly, it was almost a unanimous verdict that India will be a federal society. Chairman drafting committee, Dr. B.R. Ambedkar stated that Dual polity will be followed in India according to constitution of India, with a union at centre and state Govt.'s in peripheries.

Prof. K.C. Wheare envisaged three stages, necessary for federal structure:

- All powers be distributed between the centre and state in the dual polity.
- Constitution should be written and amended through a defined process.
- There should be provision for Supreme Court to protect the constitution. Indian constitution is true to norms mentioned by Prof. Wheare, so India is a federation. Centre is more powerful than states and lays stress on the unity of the country.

FEDERAL FEATURES OF INDIAN CONSTITUTION:

The federal features of Indian constitution are:

a) Indian constitution distributes powers between centre and state. It provides three lists. Union list, State list concurrent list. One for centre, second to state and third for both.

b) Federal Government owes its existence to the constitution. Indian federal system considers constitution supreme.

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c) Indian federation has a written constitution & judiciary responsible to defend the constitution.

d) Indian constitution is rigid and to amend it, a rigid procedure is to be followed.

e) Like federal system, India also has an independent and supreme judiciary, and, are guardians of constitution.

IN WHICH WAYS DOES THE CONSTITUTION STRENGTHEN THE CENTRE?

The provisions of the Indian constitution which makes the centre strong are:

a) The president can declare a state of Emergency in the country under emergency conditions, which suspends the federal structure and establishes a unitary govt.

b) Centre has authority over the lists of subjects. Centre is more powerful than states in legislation.

c) If a new subject is born out of new circumstances, then it becomes part of Union list.

d) All federal states of world have a provision of dual citizenship, but India follows single citizenship, feature of Unitary govt. only state of J&K hold separate citizenship.

e) A single judicial system throughout the country makes centre strong.

f) In constitution India has been addressed as the “Union of States” in first article.

g) Centre has power to change boundaries of states.

h) Centre appoints Governors of states and all I.A.S & I.P.S officials.

i) India follows structure and functions of houses like Unitary Govt.

j) States in India do not have their own constitution.

WHY ARE THERE SPECIAL PROVISIONS FOR SOME STATES AND AREAS?

India is a big country, with different food habits, modalities of life and behavioral aspects, but there differences are imaginary. Indian culture provides complete freedom to its people to develop their culture. Indian culture is based on “Unity in Diversity”, and these diversities provide unity to India.

To maintain this cultural diversity, special provisions were made for certain states.

Article 370, for special status of J&K . Article 371, for Maharashtra, Gujrat, Nagaland, Assam, Manipur, Andhra Pradesh, Sikim, Mizoram, Arunachal Pradesh & Goa.

WHY SPECIAL PROVISIONS FOR CERTAIN STATES?

Special provision of Jammu and Kashmir:

Article 370.

i) Under article 370, Jammu and Kashmir has its own constitution promulgated in 1957.

ii) State constitution can be amended only by state legislative assembly and no amendment in India constitution shall extend to J&K.

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iii) Parliament of India is having limited jurisdiction over J&K as residuary powers are with state itself.

iv) Autonomy of J&K; Parliament can't make law without consent of the state legislature:

- a) Alteration of the name or territories of state (Article 3)
- b) International treaty or agreement effecting the arrangement of any part of the territory of state. (Article. 253)
- c) Executive powers of India Union have been curbed to safeguard autonomy of state;
 - 1) No decision affecting disposition of state can be made by the govt. of J&K.
 - 2) Union shall have no power to suspend constitution of the state under art.356.
 - 3) Emergency under. Art. 352 by Indian union shall have no effect on state, if it is in disagreement with state govt.
 - 4) By Amendment order of 1964, Art. 356-375 extend to state of J&K, but as power of state const. and not Indian constitution.
 - 5) Union shall have no power to declare emergency over state under art. 360.

In J&K, two kinds of proclamations can be made:

- a) Governor's rule under section 92 of state constitution.
- b) President's rule under art. 356 of Indian constitution. Governor can assume all powers except High Court.
- 6) Provisions of Part – IV of the Indian constitution regarding the Directive Principles of state policy do not apply to the state of J&K.
- 7) The jurisdictions of the comptroller and Auditor General Election commission and the special leave Jurisdiction of the Supreme Court have been extended to J&K by the amendments of constitution order.

STATES OF NORTH –EASTERN INDIA:

Governor of Assam has special prerogative powers over the north-eastern states of Assam, Tripura, Manipur, Nagaland, Mizoram and Arunachal Pradesh. This was done to protect interests of tribal's living aloof on hilly areas.

PROVISION FOR OTHER STATES:

Some hilly states like Himachal Pradesh, Andhra Pradesh, Goa, Gujarat, Maharashtra and Sikkim are also give special provisions to provide autonomy to people.

