

Federal System in India

Introduction

- Federalism is an institutional mechanism to accommodate two sets of polities, i.e., first is the center or national level and second is at the provincial or regional level. Both the sets of polities are autonomous in its own sphere.
- Each level of the polity has distinct powers and responsibilities and has a separate system of government.
- The details of this federalism or dual system of government are generally found in a written constitution.
- Written Constitution is considered to be supreme and also the source of the power of both sets of government.
- Certain subjects, which are the concern of a nation as a whole, for example, defense or currency, are the responsibility of the union or central government.
- On the other hand, regional or local matters are the responsibility of the regional or state government.
- In case of a conflict between the center and the state on any issue, the judiciary has the powers to resolve the disputes.
- Though the Indian Constitution does not use the word 'federalism' anywhere; however, the structure of Indian government is divided into two sets of governments i.e.
 - For the entire nation known as the '**Union Government**' (or central government) and
 - For each unit or state known as the '**State Government**'.

The nature of Indian Constitution

Constitutions are either unitary or federal. In the unitary government, the powers of the government are centralised in the central government & the states are subordinate to the centre. In the federal constitution, there is a division of power between the states & the central government & both are independent in their own spheres.

The nature of Indian Constitution can be understood as it is:

1. Federal with unitary features
2. Unitary with federal features
3. Quasi-federal.

Essential Features of a Federal Constitution

1) Distribution of powers -

The distribution of powers is an essential feature of federalism . Federalism means the distribution of powers of the state among the number of coordinate bodies each originating in and controlled by the constitution.

2) Supremacy of Constitution -

A federal state derives its existence from the constitution. Hence, every power, executive, legislative or judicial whether it belongs to the nation or the individual state is subordinate to and controlled by the constitution. The constitution in a federal state constitutes the supreme law of the land. According to Prof. Wheare that those two institutions - the supreme constitution and the written constitution are then, essential institutions to a federal government. The supremacy of constitution is essential if a government is to be federal.

3) A written constitution -

A federal constitution must almost necessarily be a written constitution. The foundations of a federal state are complicated contracts. It will be practically impossible to maintain the supremacy of the constitution unless the terms of the constitution have been reduced into writing.

4) Rigidity -

A natural of a written constitution is its rigidity . A constitution which is the supreme law of land must also be rigid. In a rigid constitution the procedure of amendment is very complicated and difficult. This doesn't mean that the constitution should not be legally unalterable. It simply means that the power of amending of the constitution should not remain exclusively with either the central or state governments. A constitution of a country is considered to be the permanent document. It is the supreme law of land. The Supremacy of the constitution can only be maintained if the method of amendment is rigid.

5) Authority of courts -

In a federal state the legal supremacy of the constitution is essential for the existence of federal system. The very nature of the federal state involves a division between the central and the state governments under the framework of the constitution. It is therefore, essential to maintain this division of powers between

the two levels of governments. This must be done by some independent and impartial authority above and beyond the ordinary bodies whether federal or state legislature or State legislature existing under the constitution. The judiciary has, in a federal polity, the final power to interpret the constitution and guard the entrenched provisions of the constitution

Peculiar Features of Indian Federalism

Indian Constitution differs from the federal systems of the world in certain fundamental aspects, which are as follows:

(1) The Mode of Formation: A federal Union, as in the American system, is formed by an agreement between a number of sovereign and independent States, surrendering a defined part of their sovereignty or autonomy to a new central organisation. But there is an alternative mode of federation, as in the Canadian system where the provinces of a Unitary State may be transformed into a federal union to make themselves autonomous.

India had a thoroughly Centralised Unitary Constitution until the Government of India Act, 1935 which for the first time set up a federal system in the manner as in Canada viz., by creation of autonomous units and combining them into a federation by one and the same Act.

(2) Position of the States in the Federation: In a federal system, a number of safeguards are provided for the protection of State's rights as they are independent before the formation of federation. In India, as the States were not previously sovereign entities, the rights were exercised mainly by Union, e.g., residuary powers.

(3) Citizenship etc: The framers of the American Constitution made a logical division of everything essential to sovereignty and created a dual polity with dual citizenship, a double set of officials and a double system of the courts. There is, however, single citizenship in India, with no division of public services or of the judiciary.

(4) Residuary Power: Residuary power is vested in the Union. In other words, the Constitution of India is neither purely federal nor purely unitary. It is a combination of both and is based upon the principle that "In spite of federalism the national interest ought to be paramount as against autocracy stepped with the establishment of supremacy of law".