CHAPTER ONE
THE THEORY OF FEDERALISM

Federalism is an application of the principle of utilitarianism, so to say, in the political organisation of the states. In the condition of a particular time and place it is a development towards decentralization or towards centralization as the case may be, in order to secure the highest possible utility. Everywhere federalism is a conscious application, a remedy devised by human intelligence in case of troubles. It shows that men are not forever destined to depend for the form of their political organisation on 'accident and force' but can create suitable forms through 'reflection and choice'. It is a relatively modern conception and it is not deduced from any a priori reasoning but is the result of historical evolution.

Federalism in its widest sense can be applied not only on a territorial basis but also on a functional basis. It will then mean decentralization in all affairs without however losing the equilibrium. As Sobei Mogi has spoken of the federal idea, it is 'not confined to the political sphere of the state, but is the general basis of human organisation.' The nature and meaning of the term federalism, if used in this general sense, have been very lucidly explained by M.H. Boehm in his Article on the subject in the Encyclopaedia of Social Sciences.

2. Ibid - P.1060
3. Ibid - P.1111
It is characterised by a tendency to substitute coordinating for subordinating relationships or at least to restrict the latter as much as possible; to replace compulsion from above with reciprocity, understanding and adjustment, command with persuasion and force with law. The basic aspect of federalism is pluralistic, its fundamental tendency is harmonisation and its regulative principle is solidarity. Prof. Laski also holds that since society is federal in nature; the State and its authority must be so organised that the diversities have a place therein. But without denying the element of truth contained in these arguments we must add that if the diversities are not grouped territorially, it is better not to use the term federalism because, in that case, what is really meant is 'functional pluralism'. As W.S. Livingstone puts it so clearly, 'these writers have added a meaning that was not there before and one that introduces an element of confusion into the term'. 'No government', says Livingstone, 'has ever been called federal that has been organised on any but territorial basis; when organised on any other it has gone by another name'. Sobel Mogi also has accepted that 'federal-state mechanism is after all based on territorial federalism', although he thinks that it is its defect that it is organised on territorial basis only, 'without any consideration of functional decentralization'.

5. Laski - A Grammar of Politics, P.270
8. Ibid., P.1068.
For our purposes, it is to be stated in the beginning, we shall be using the term federalism in the restricted sense - in the sense of territorial federalism.

Federalism as a political technique stands midway between unitarianism and a confederate system of alliance. Herman Finer has asserted that there is little distinction to be made between unitary and federal states as all unitary states relax the severity of the central government while in some of the federal states there is more centralization than federalism implies. He has argued:

"Once a general name is given to a number of particular things in order to distinguish them from others, these things acquire a reputation for a discreteness which they do not in fact possess." But though there may be certain features which are common to such forms of government, an analytical probe into the nature of the federal form of government shows that there are certain distinctive features which mark it off from other types of government.

Let us analyze first the nature of a confederation. A confederation is an association of sovereign states formed for the promotion of certain purpose or purposes. Under a confederate system there is some sort of central organization with authority in certain matters affecting all the member-states. A confederation is established on the basis of a treaty concluded among several sovereign states. It does not possess any sovereignty which is retained in tact by the member-states. The restrictions imposed on the powers of the component states are agreed restrictions subject to revocation subsequently if

necessity arises. No new state, therefore, comes into existence through such an alliance. This fact of retention of sovereignty by the component states is the most distinguishing feature of a confederation and all other characteristics follow from it. Willoughby asserts that the 'final test' of a confederation is the power of the individual states to determine the extent of their obligations under the articles of the union and in the last resort to withdraw from the union if their view is not acquiesced in by the general government. This right of secession is evidently founded upon the sovereignty of the individual states.

Other features often mentioned as the distinguishing marks of a confederation are not its essentially distinctive features. Thus according to some authorities the central government in a confederacy cannot operate directly upon the individuals; it deals only with the governments of the units and through them with their citizens, while in a federation the central government enters into direct relationship with the individual citizens. As for instance, Bryce has suggested that a confederation may be turned into a federation by the establishment of a national government with a direct authority over all citizens. But this is not a very significant thing as there are instances of federal government where the administration of certain federal subjects at least, is left with the units. Here legislation is federal, but the administrative agency is the government

10. Willoughby - An Examination of the nature of the State, P.265

of the federating units. Moreover, in the case of a
confederation, if the member-states by agreement leave
to the central authority the power of executing the
decisions arrived at by this authority, (though it may not
be the case, ordinarily,) it does not in any way detract
from the essential principles of a confederacy.

One or two other distinguishing characteristics
mentioned as fundamental by political thinkers may also
be mentioned. It has been held that in a confederation
the central authority possesses only one organ and not a
complete governmental organisation, composed of a legislature,
an executive and a judiciary. But a little reflection will
show that this factor alone does not distinguish a confedera­
tion from other types of political organisation.

Another argument is that in a confederation the powers
of the central organ are strictly and definitely enumerated.
But even if this may be a feature of a confederation, it is
not its distinguishing feature as in many federal governments
(including the U.S.A.) the central or federal government is
vested with strictly enumerated powers. The fundamental
feature of a confederation is, as pointed out before, the
preservation of sovereignty by the member-states.

At the other extreme is the unitary form of government.
In a unitary state there is only one unit of government. The
central government in a unitary state possesses all authority
over the entire territory of the state. It may, and in fact
does, set up units of local or regional government for the
purpose of efficient administration of specified areas of
the state, but these are subordinated to the authority of the
central government. Big unitary states cannot work properly
without decentralization. But whatever may be the degree of
decentralization, legally the central authority is supreme.
The units do not possess a separate existence of their
own apart from the central government, but act as the
agents of the central government. All the powers vested
in them are dependent on the wishes of the central government which is entitled to alter at any time, the arrangement of power between itself and the regional governments irrespective of the wishes of the latter. In exercising the powers vested in them they remain subject to the control of the central government.

In a federal bond of union the members are far more closely united than under the bond of a confederation, though the degree of independence possessed by them is much greater than under a unitary state. Rightly Prof. Wheare considers that the fundamental principle of a federation is the co-ordinate authority of the general and regional governments. According to him each of the two sets of government in a federation—general and regional—"should be limited to its own sphere and, within that sphere, should be independent of the other." 12

Before discussing the characteristic features of a federal state, we are to indicate briefly the ways through which a federal state may come into existence. This is necessary because some thinkers, specially the earlier ones, hold the view that a federal state can be formed through a particular process only. This, however, is not the case and a federation may be the result of either of two processes. It may arise when several sovereign states, owing to economic, defence or other interests, want to unite themselves in a way as not to completely submerge their identity. They want to surrender, to the newly constituted federal government, powers over those affairs which are common to them all retaining at the same time powers over matters of purely local interest. A federation may also come through a very different process. A large unitary state may find it

12. K. C. Wheare - Federal Government (3rd Ed.) p. 15
unsuitable to concentrate all powers in a single organisation and may want to break itself into component units. In such cases also, the matters affecting common interests are retained by the central government, while local affairs are given to the hands of the units with complete authority over them. The powers thus given cannot be taken away by the central government any more. The units are independent and supreme in regard to all these matters, while the central government will remain supreme in regard to all matters retained by it. Thus W.P. Maddox is quite accurate when he writes: 'federation may develop as a result either from a centrifugal political force - the breaking down of a unitary form of government; or from centripetal action - the building up of parts into a new entity.'

Quite a large number of thinkers look upon a federation as a permanent association formed by sovereign states. A federal state, as it has been defined by A.P. Newton, 'is a perpetual union of several sovereign states based first upon a treaty between those states or upon some historical status common to them all, and secondly upon a federal constitution accepted by their citizens.' Similar observations have been made by Lord Haldane during the arguments of an Australian case before the Privy Council. According to him the meaning of a federal government is that a number of states come together and put certain of their powers into a common custody. So while he regards the constitution of Australia as federal, he does not agree to place the constitution of Canada in that category.

15. The A.G. for the Commonwealth of Australia V. The Colonial Sugar Refining Co. Ltd., 1914, A.C. 237
Because, in the case of Canada, to quote Lord Haldane's own words, "what happened was this: an Act was passed in 1867 which made a new start and divided certain powers of government some being given to the Parliament of Canada and some to the Parliament of the provinces. The provinces were created de novo. The provinces did not come together and make a Federal arrangement under which they retained their existing powers and parted with certain of them and an Imperial statute has got to ratify the bargain." But it is inaccurate to hold that the character of a federation depends only upon its process of formation. As Prof. Kennedy has made these appropriate remarks: 'A federation may originate historically in many ways; but once the federation is formed the current of historical and legal opinion is that the central and provincial state governments have co-ordinate authority.' In fact, pre-existing sovereignty of the component parts has got no essential connection with federalism. Even for a dependency, a federal system may be contemplated. The federal plan envisaged by the Government of India Act, 1935 is an instance in point.

However, whatever be the mode of its formation once the federation is formed co-existence of two layers of government - the central or federal government and the state or regional governments - is a special feature of the federal form of government. But mere coexistence of two governments is not enough; as, even in a decentralised unitary state there may be some regional governments. The vital difference between a unitary state and federal one is this

that while the powers of the regional governments in a unitary state are mere concessions from the central government, in a federation the units derive their existence from the constitution of the country. "The real difference", as has been stated by a learned writer, "in the two cases is not merely of degree but also of kind." The two sets of government in a federation work within their respective spheres, thus leading to a division of powers between them. The distribution of powers is thus an essential feature of federalism. As Dicey has truly observed, "The object for which a federal state is formed involves a division of authority between the national government and the separate states."

In apportioning the powers to federal and state governments, there is no strict formula to be followed. Ordinarily subjects of national importance are allocated to the federal government, because those matters which cover the entire territory of the state in their application are expected to be administered efficiently, if left to the centre; and all matters which are not primarily of common interest remain ordinarily in the hands of the constituent units. Among matters of common interest defence, foreign affairs, commerce, communications, currency and coinage are almost invariably allotted to the central government in a federation. "The principal purposes to be answered by union," wrote Hamilton, "are these: the common defence of the members, the preservation of the public peace as well against internal convulsions as external attacks, the regulation of commerce with other nations and between the states, the

Besides those what other powers will be vested in the centre will depend upon the peculiarities in each case. As Mill has observed, the 'powers of a Federal Government naturally extend not only to peace and war, and all questions which arise between the country and foreign governments, but to making any other arrangements which are, in the opinion of the states, necessary to their enjoyment of the full benefits of union.' Even as regards the exercise of those powers which are regarded as invariably federal, there may be some variations. As for example, the subject of foreign affairs, it is admitted on all hands, is to be left to the care of the centre. For all international purposes it is the federal government which exercises powers. But in the case of the U.S.S.R., the Union Republics have a right to enter into direct relations with foreign powers. If we leave the U.S.S.R. out of account because of its extraordinary political structure and argue that this is a mere theoretical right with no practical value, it may be pointed out that Art. 9 of the Swiss Constitution also empowers the cantons to conclude treaties with foreign states in respect of matters of public economy and border police relations. Such treaties, however, must not contain anything prejudicial to the interests of other cantons or of the Federation.

Ordinarily, if several sovereign states unite to form a federation they want to restrict the powers of the centre, while in the case of break up of a large unitary state, the central government retains larger amount of powers.

20. The Federalist, No.23,P.111(Max Beloff edition)
But in this case also it cannot be laid down as a hard and fast rule and may differ in its application in particular instances. It can be accepted as a general principle, with the possibility of variations according to the tradition, environment and aspirations of the peoples concerned.

As regards the method of distribution of powers also, no uniform system can be found. Generally, two different methods are followed. In the first place, powers of one government may be specified and the remainder may be left to the other. According to some authorities a constitution is more markedly federal if the residue is left to the units. So, if the powers of the regional governments are specified and the residue is left to the general government, the government is not federal. As for example, Lord Haldane, in the Australian case previously referred to, holds that as the powers of the Canadian provinces are enumerated in S.92 of the British North America Act, 1867, Canada does not belong to the category of true federations.

In the second place, the powers of both the central and regional governments may be enumerated. But, here also, the problem of residuary powers remains. Because at the time of framing the constitution it is not possible to foresee all the future contingencies. Therefore, in such a case also, residuary powers are to be allocated by the constitution to either of the governments.

It is true that the problem of allocation of residuary powers is an important question to be solved in every

federation and if the general government possesses the enumerated powers only it becomes limited. But that does not establish that the character of a federal government is to be judged only by its seat of residuary powers. This test of federalism is based on a purely 'Superficial' characteristic of the American Constitution. As Prof. Wheare accurately puts it, "The essential point is not that the division of powers is made in such a way that the regional governments are the residuary legatees under the constitution, but that the division is made in such a way that, whoever has the residue, neither general nor regional government is subordinate to the other."

It seems proper to add in this connection that in most of the federations it has been found difficult to allot several functions exclusively to either of the governments. It appears desirable to permit both sets of government to exercise some authority regarding these matters. These are called concurrent subjects as both the central and regional governments enjoy some powers of control over these matters. But in no federation the central and regional authorities possess exactly equal powers regarding the concurrent subjects. In cases of conflict, the central government is vested with overriding powers everywhere, regarding these matters. According to Prof. Wheare although the existence of a concurrent jurisdiction is not incompatible with the federal principle, it may be incompatible with a good federal government as it increases the possibility of litigation. But it cannot be denied that the existence of a

26. Wheare, Op. Cit., P.82
concurrent jurisdiction facilitates the working of a federal government as the central government may exercise these powers when uniformity of legislation is, in the national interest, required. So in many of the federations a concurrent jurisdiction is provided. But the extent of the concurrent jurisdiction is not the same in all federations. In Canada for example, only two subjects are mentioned in the concurrent list, while other countries include many more. Moreover, what is enumerated as a concurrent subject in one federation may be listed in other federations within the jurisdiction of either the general government or of the regional governments as the case may be.

As there should be demarcation of powers between the centre and the units in a federation, it can be best secured by a constitution. Each government here can only function within the limits set by the constitution. The autonomy of the units is as important in a federation as the authority of the central government. This peculiar sanctity of powers of both the federal government and the units is to be maintained by the constitution, as all the governments would derive their authority from the constitution and none of them can transgress the limits set by it. As the constitution is the supreme document, defining the spheres of different governments, it is implied that it must be a written one. A federal state cannot afford to have an unwritten constitution which may be possible in the case of a unitary state. In most cases originally sovereign states form a federal state. They must know clearly how much of the authority still belongs to them. In the opposite case also, i.e., in the case as well of a big unitary state being loosened into a federation, the central government and the units must be
sure about the sphere of their action and there should be no ambiguity in this matter. So in order to avoid friction and misunderstanding the constitution should lay down these things in clear and definite terms.

Thus the constitution in a federal state is drawn after long consideration and possesses a special sanctity. So it is necessary that it should not be subjected to easy and frequent changes. Therefore, it has been accepted that in a federation to write down the constitutional provisions is not enough - these provisions must also be made rigid. From a strictly theoretical standpoint a constitution is to be termed rigid if the constitutional laws cannot be passed or altered through ordinary process of law-making; but through some special or more difficult procedure. Thus if a special majority is needed to make a constitutional amendment, while a simple majority is enough to pass ordinary laws, the constitution in that case is a rigid constitution. But in a federation the term 'rigidity of the constitution' is ordinarily used in a more restricted sense. Many writers think that it means 'the requirement that constitutional changes be made only with the consent of the component units.' The power of effecting amendment of the constitution should remain neither in the hands of the centre exclusively nor in the hands of the states exclusively. The constitution should be amended by a conjoint action of both the governments. Because if it remains only in the hands of the centre, the original distribution of powers may be changed in favour of the central government, while the state governments may

27. W.S. Livingstone - Federalism and Constitutional change - P. 298
change the distribution in their favour if they alone can amend the constitution. Lord Bryce observes that this method is obviously a suitable one in a federation and he mentions several federal governments where this method has been adopted. Nowhere, however, the consent of all the units is required; the consent of only a certain number of the units will suffice.

But it may be mentioned, as a recent writer on the subject has pertinently remarked, that no two of the federations have procedures in all respects alike and clearly no precise form is necessary. As regards the principle of 'state consultation' though there is great similarity, the procedures differ and there are otherwise ostensibly federal countries where there is no provision at all for state consultation. Lord Bryce also admits that the principle of securing the consent of the states is not 'invariably' followed in all federal countries. Theoretically, as has been stated above, the requirements of rigidity will be satisfied if some special procedure such as an amendment by an extraordinary majority is provided for. But it is better if the principle of state consultation is followed, because that would render the rights of the states more secure. According to Prof. Where it is essential that the power of amending 'those provisions of the constitution which regulate the status and powers of the general and regional governments should not be confided exclusively either to the general governments or to the

30. Ibid., P.301.
Regional governments. "Apart from this," continues Prof. Wheare, "it does not matter logically where the power is placed, but there can be no doubt that practically it is wise to associate both the general government and the regions, either their governments or their peoples, in the process." 32 From a strictly logical viewpoint, it is true, a federal constitution may work well, if the consent of the states is taken for amending those provisions at least, which regulate the status and power of the general and regional governments. But ordinarily the federal states prescribe the same procedure for amending all the provisions of their constitutions. India, however, and Canada may be cited as instances of exception; in these federal states different procedures are to be followed for amending different portions of the constitution.

The next essential characteristic of a federal form of government also emerges as a sequence of distribution of powers between the two sets of government through a supreme constitution. The constitution in a federal state is the supreme law of the land and all authorities derive their powers from it. However, whatever may be the degree of carefulness with which the constitution is framed, sources of conflict between the two sets of authorities may not be totally eliminated. So in cases of dispute between different governments in a federation some authority must settle it. Moreover, since the powers of all organs of government are limited by the constitution there must be some authority to interpret the provisions of the constitution and determine whether the constitutional limitations

upon the powers of the executive and legislature (both in federal and state spheres) have been transgressed or not. The necessity, therefore, of an impartial authority to perform all these functions is unquestionable. As Mill has very appropriately observed that in a federation it is evidently necessary not only that the constitutional limits of the authority of each government should be precisely and clearly defined, but that the power to decide between them in any case of dispute should not reside in either of the governments, or in any functionary subject to it, but in an umpire independent of both. Otherwise the government having the control over this umpire will try to exert its influence in its own favour. Prof. Wheare also regarded this as a criterion of federal government that not only the division of powers should not be dependent upon the general government or the regional governments alone, but also the last word in settling disputes about the meaning of the division of powers must not rest either with the general government alone or with the regional governments alone.

Faced with this necessity, almost everywhere federal governments have sought to provide for a federal judiciary in their constitutions, although it must be accepted that all federal tribunals do not possess equal amount of powers. Countries such as Switzerland and the U.S.S.R. do not empower the federal judiciary to determine the limits of the federal legislature. It may be argued that it is not derogatory to the federal principle, if the functions of

34. Wheare, Op. Cit., P.60.
interpreting the constitution and the settlement of disputes between the two sets of governments are vested in any other body than judiciary, because all that is necessary is that there must be some impartial body, uninfluenced by either of the governments to perform this function. There are defects of the system of judicial review of legislation which must be admitted. But in spite of its defects, a count of last resort is 'the most practicable method of providing relatively impartial arbitration' and as Prof. Wheare has pointed out no alternative scheme with fewer inconveniences seems possible. In the words of Alexander Hamilton: "The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body."

One thing, however, may be added in this connection. Although a federal court derives its existence and power from the constitution, 'it is almost inevitably an emanation of the central government' because, practically, in all federal governments, in matters of the appointment and removal of the judges the executive and legislature of the centre exercise some amount of control. But in spite of this fact the federal courts of the world have shown considerable impartiality in the performance of their function as the final authority in respect of constitutional arbitration.

35. Encyclopaedia of Social Sciences, Vol. VI, P.175; Article by A.W. Macmahon.
37. The Federalist, No.76, P.398.
The constitution in most cases seeks to provide for the independence of the judges. The independence of the judiciary which should be the maxim of all forms of constitutionalism should be more so in a federal state; for here the judiciary not only protects the rights of the individuals from encroachment by the government and private individuals, but also the rights of the state government from encroachment by the centre and viceversa.

Among the means of securing the independence of the judges the most important is the security of tenure of the judges. In most states they serve during 'good behaviour', i.e., not guilty of any crime known to law. Hamilton was right in observing that 'nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty'. Moreover, it is usual to provide in the constitution that the salaries of the judges, their terms and conditions of service, the prospects for promotion should not be varied to the disadvantage of the judges during their terms of office. They should remain free from all types of executive patronage. Even the power of the executive to transfer a judge from one judicial post to another of the same rank, was, as Lowell pointed out, the cause of the weakening of the independence of the judiciary in Italy. On the whole, the adoption of the measures stated above secure the independence of the judiciary, so necessary to work a federal form of government.

40. The Federalist, No.78, P.400.
After a discussion of the characteristics which mark a federal form of government off from other forms of government, we may now consider the question which has been regarded by Prof. Shears as the most difficult and in some respects the most important question concerning the federal government. The question is what are the conditions in which it is appropriate to adopt a federal form of government.

Dicey mentions two conditions as necessary. First of all, there must be some units with a desire for union. This desire for union is the resultant of a variety of forces. Here also there are no fixed rules, but different factors have operated in different federations. But there are some factors which are almost invariably present. As for example, a sense of military insecurity, a desire for strength in external relations and an expectation of economic advantages accruing from a large state normally contributed to the growth of federations.

The menace of powerful neighbours endangering the existence of small states has often been the basis of federations. That a federation secures peace and tranquillity more than small detached states has been ably discussed by Jay in 'The Federalist'. He wrote: "As to those just causes of war which proceed from direct and unlawful violence, it appears equally clear to me that one good national government vastly affords more security against dangers of that sort, than can be derived from any other quarter." If each of these states is so powerful as to be able to protect itself from foreign encroachment on its

42. Shears, op.Cit., P.37.
44. The Federalist, No.3, P.11.
individual strength the states will not feel any desire to unite. Because, they will then be apt to think, as J. S. Mill has observed 'that they do not gain, by union with others, the equivalent of what they sacrifice in their own liberty of action.'

Economic factors are no less important than the factor of defence. The thirteen federating Colonies of America were in 1787 not only anxious to stabilize their hard-won independence of Britain but also to enjoy the advantages of a common commercial policy, internal trade, fisheries and greater facilities to build a prosperous economic life. In 'The Federalist' Hamilton has pointed out these advantages of the union. To quote his own words, 'An unrestrained intercourse between the states themselves, will advance the trade of each, by an interchange of their respective productions, not only for the supply of reciprocal wants at home, but for exportation to foreign markets.'

Similarity of social and political institutions also creates a desire for union. But this does not mean that there should be similarity in all points. Some amount of divergence is compatible with the existence of a desire to unite. The same is true of ethnological factors also. Racial and cultural ties - language, race, religion and nationality - cast a great influence on the states in uniting them. But it is possible, nonetheless, that people differing in these respects may feel a strong desire for union if other considerations are present.

But all these factors, it is to be admitted, contribute to the growth of a spirit of union, if there is

46. The Federalist, No.11, P.52.
physical contiguity among the states concerned. States, which are widely separated by distance may not feel any community of interests, even if we leave out of account the difficulties that would naturally result from creating a geographically disjointed state. The states may think that the advantages to be obtained from such a union do not commensurate with the sacrifices necessary for its formation. As Prof. B. M. Sharma has rightly observed, "From the most ancient times right up to the present day political union of a federal character has been successful only between states whose boundaries touch each other." In recent times, however, in 1956 a federal constitution was promulgated in Pakistan which is a state composed of two widely separated territories. This was an extremely short-lived constitution which was abrogated when Martial law was declared in 1958. This constitution did not have enough time for its operation; yet the distance between the two streaks of territory caused some amount of difficulty - there is no doubt about it. If in future any federal constitution becomes successful in Pakistan, it will be possible only because these territories were formerly parts of the same unitary state; for a long time they were under the same system of administration, enjoying the same joys and sorrows, cherishing the same hopes and aspirations.

Thus the recognition of community of interests creates a national spirit. But this spirit of union should not be so great as to desire a unitary form of government. "The phase of sentiment, in short," as Dicey puts it, "which forms a necessary condition for the formation of a federal state is that the people of the proposed state should wish to form for many purposes a single nation, yet should not wish to surrender the individual existence of each man's

47A. Pakistan's new federal constitution was announced on March 1, 1962.
State or Canton. In matters of purely local interest the desire to retain local independence must also be present. Where small independent states form a federation, the differences in their history and tradition create in each of them a feeling of distinctness and so none of them want to merge their identity totally. But when a unitary state is transformed into a federal one, the desire for autonomy on the part of the units cannot be explained as a consequence of a previously independent existence, although in the case of a decentralized unitary state they may possess some experience of acting as units of regional administration. In such cases geographical factors, divergence of economic interests and above all divergence of nationality produce the desire for separation. Because differences in geographical features due to distance produce a regional consciousness among the different parts of a big unitary state. The divergence of economic interests among such parts also make them anxious to get some amount of power in their own hands. But the most important factor creating a desire for autonomy in local matters is the divergence of nationality. Truly has Prof. Wheare observed: "It is surely quite conceivable that communities which had had no previous existence as distinct governmental units, no divergence of economic interest and no isolation through geographical factors, but which nonetheless differed in nationality from each other, would desire separation within union." Needless to say that all these factors which create a desire for autonomy in local matters in the units of a federation carved out of a pre-existing unitary state, also produce a desire for retaining autonomy in such matters in the case of several sovereign states forming a federation.

The desire for union then, without a desire for unity, to use Dicey's oft-quoted aphorism, are the two essential conditions of the formation of a federation. One or two other conditions are also to be satisfied for the successful operation of a federal form of government. In the first place, absence of a very marked inequality of strength among the constituent states has been regarded by Mill as a necessary condition to render a federation advisable. Because one or two markedly strong units may possess a domineering tendency. Wrote Mill: 'there should not be any one state so much more powerful than the rest as to be capable of vying in strength with many of them combined. If there be such a one, and only one, it will insist on being master of the joint deliberations: If there be two, they will be irresistible when they agree; and whenever they differ everything will be decided by a struggle for ascendancy between the rivals'.

In the next place it may be pointed out, a good party system is of 'primary' importance in the organisation of a federal form of government. Theoretically it may be admitted that a federal system has 'no necessary connection with democracy.' All that is essential to federalism is that one central and some regional authorities must accept their respective fields of action limited by a constitution and work within such limits. It does not matter whether or not the internal organization of such authorities is based upon democratic foundations. But actually, these limits are maintained and violations are properly remedied if the government is democratic. The successful operation of

democracy in a country depends greatly upon the working of its party system. It may be argued that this is true in all cases—whether the government in a democracy is constituted on a federal basis or on a unitary basis. But in view of the peculiar nature of the federal government the working of the party system acquires a special importance in such a government. As we shall see presently, in order to meet the needs of a welfare state, co-operation between the different layers of government in a federal state is, now a days, felt immensely imperative. This co-operation may be easily achieved through the adjusting potentialities of the party system; because the national political party is "the most responsive instrument of restraint upon federalism's centrifugal tendencies."

But the constitution in a federal state cannot ensure or provide for a good party system. In a federal state there may be parties formed on the basis of sectional interests—interests of particular state only; or there may be no national party in the true sense of the term, and the state organisations and the national organisation of the party may not have any appreciable common approach to the problems of the country; and in either case it will be extremely difficult to work the governmental system. "This does not merely mean," as it has been correctly pointed out by the Committee on Political Parties, American Political Science Association, "a substantial disregard of national needs of matters of national interest, but it also means piecemeal as well as one-sided use of state power and state resources."

53. 'Federalism and the Party System' by David B. Truman in Federalism Mature and Emergent (Edited by A.W. Macmahon) P. 123.

Another problem may also arise. According to Prof. Wheare a two-party system is an ideal, if not always a possibility. But although it is true that a two-party system is better than a multiple party system, the existence of two parties only may not always ensure the satisfactory working of the federal government. If the basic approaches of the two parties regarding the nature and function of the state are totally different, it may become very difficult to work a federal system. Accepting the fact that this would cause friction and difficulty in a unitary state even, the disadvantage will be all the more serious in a federal state, because, if one of the two parties with viewpoints totally different is in a majority in some of the states and the other in the centre, ensuring harmonious relationship and co-ordination between the centre and the states will be almost impossible. So, the importance of the working of the party system in a federal state can hardly be exaggerated.

These are then the main conditions for establishing and operating successfully the federal form of government. Before concluding our discussion on the theory of federalism we should, however, note some recent trends in federalism.

First of all, from the working of federal governments in different countries, the conclusion is unavoidable that the central government is more and more gaining in strength in all of them. This has been accepted as 'one general tendency in all federal governments' by Prof. Wheare also. Even in the United States, the oldest of the modern federations, where the federal principle has been sought

55. Wheare, op. cit., P. 90.
to be strictly applied, the powers of the general government have increased to some extent through constitutional amendment and in a greater degree through judicial interpretation and through a system of federal grants-in-aid.

In the next place, another strong tendency is that co-operation through various means between the central and state governments is being sought and achieved in every federal constitution.

The forces which lead to the operation of these tendencies are many. But among them several may be cited as most important. To begin with, the occurrence of two World Wars within less than fifty years left its mark upon the mould of federalism, as war is a great centralizing force. Nowadays no major power can remain outside the scope of a World War and in times of such catastrophe as war, only the strength of the general government can save the people. Therefore, in times of war, centralisation becomes inevitable.

Secondly, the conception regarding the nature of the state has traversed a long way since the establishment of federal government in the U.S.A. The scope of activities of a modern state - its functions and duties - are increasing day by day. It is expected now that the state should not only provide political liberties to their people but also should assume large amount of responsibilities in the economic sphere and should provide various types of social services. In a federation the function of providing social and economic welfare which is the most extensive field of action is generally entrusted to the state or regional governments. But mere vesting of functions is meaningless unless the means adequate to their fulfilment is also vested
in them. Actually the resources of the states have proved inadequate to the performance of these tasks.

In the next place, modern industrialism requires a large amount of integration of economic life. Periodic economic depression also requires central control if it is to be fought out and planned economic development to avoid economic dislocations also necessitates central-state cooperative relations.

So in the domain of finance the federal government is compelled to provide greater and greater assistance to the units. But although some amount of increase in the financial powers has been made through the fuller exploitation of the powers originally granted to all the federal governments by their constitutions and through constitutional amendments, a large amount of it has come through the federal system of grants made to the States. Naturally the federal government in most cases attaches some conditions to the grants made by it to the states and thus exercises some controlling authority over them. "The grant," as has been truly observed, "always entails some national control as well as assistance and co-operation." The state governments, unable to meet the demands of their citizens for various types of services, have found it impossible to prevent growing federal participation in services through conditional grants-in-aid.

The understanding of this necessity of central assistance and the need for mutual co-operation has resulted in a changed outlook on federalism. Old state loyalties are not as strong as they were. The federal-state relationship is

now looked upon as one of joint endeavour to strengthen the state which can secure to its citizens the essentials of human life. So federalism has entered upon a new phase - the phase of 'co-operative federalism' as modern writers term it. And, in the words of Prof. Wheare, 'it is this co-operative tendency in federal government which provides its most hopeful prospect.'

The co-operation is sought not only in the domain of finance but in other spheres also. As regards legislation there may be a temporary delegation of powers by regional to the central governments or vice versa. Delegation of legislative powers, however, it is to be admitted, is not possible in all federations. It is possible in such countries as Australia where the Constitution expressly provides that the Dominion Parliament may legislate on the request of the legislature of one or more states. But in the administrative sphere a great amount of facility may be achieved through the delegation of functions. Even in the case of a country as the U.S.A., where the constitutio­nal system limits the possibility of such delegation, the Commission on Inter-Governmental Relations has been impressed by the extent to which both the national and state governments may gain from voluntary use of the state machinery.

The recognition of these facts is marked in the post-war federal constitutions. The new federal states have 'provided for interaction between the federal and state authorities in a number of ways' in their

60. A.H. Birch - Federalism, Finance and Social legislation in Canada, Australia and the United States, P.305
62. Ibid., P.248.
63. Report of 'the Commission on Inter-Governmental Relations' (U.S.A.) P.80, (1955)
constitutions and have given greater powers to the central government and included a long list of concurrent powers. The older federations also, through adopting such extra-constitutional means as grants-in-aid and administrative co-operation meet the needs of the present time. What Prof. Wheare has said as regards the 'financial assistance' provided by the central government to the states is true as regards other forms of inter-governmental co-operation also. That is to say all this means a modification of the federal principle, though it need not necessarily mean a complete denial of federalism. Division of functions does not mean that there should be no connection between the two levels of government. While discussing the advantages of joint activity between federal and state officials in America, J.P. Clark wrote rightly: "Complete independence of the federal and state governments was neither contemplated by the Fathers nor carried out in actual administrative practice by their successors."

Though there may be some inevitable 'modifications' of the federal principle, that federalism will survive the centralizing tendencies of the modern age is beyond any doubt. This also shows the dynamic nature of federalism. Countries, one after another, have chosen federalism in the post war years owing to its adaptable nature. Writing in 1955 A.W. Macmahon said: "About forty percent of the world's population live in countries with constitutions that call themselves federal, begging the question whether the purported design exists in reality or is negated by a monolith of..."
party or other dictatorial power. So, Sidgwick's prophecy that in future there would be an extension of federalism has come true. Complexities and difficulties are, we must admit, inherent in federalism. Nevertheless its achievements point to a bright prospect in the future.

67. A.W. Macmahon - Federalism mature and Emergent, P.4
68. Sidgwick - The Development of European Polity, P.439.