FEDERALISM : A THEORETICAL PERSPECTIVE

Federation is both a process and a constitutional form. As a process it has many gradations of tempo and destination. As a constitutional form it has certain legal characteristics that allow a wide variety of applications. The federal principle has often been an unifying solution for the problems of multi-lingual and multi-national states. It is accepted generally because of its reconciling effect upon the two apparently opposite ideas, regionalism and national unity.

The federal arrangement as a form of political association is especially suitable when a group of language speaking or other diverse elements, conscious of themselves as entities or perhaps merely as people who are spread over a large and varied domain, have enough interests and objectives in common to wish to work through a common government without sensing also to be self-contained and self-governing for important purposes. An essential feature is the division of power between the central government and the constituent units under a constitutional scheme that cannot be changed legally by an ordinary method of central legislation. It is also essential that the arrangement assures the ability of the central government to carry out its purposes within the scope of its authority over the whole area. This requirement does not preclude the partial, even considerable, dependence of the central government upon the constituent governments as its agents nor bar the co-operative sharing of functions with them. It does imply that the central government has enough direct relationships with the people as citizens to provide its own political basis for action along with the needed authority for
taxation, regulation and otherwise. In this respect a federation differs from the loose form of union (sometimes called confederal) in which the central organs arise from the member-states, are supported by their contributions, and work through them. Such confederal systems differ from international unions only to the extent that the central decisions do not require the unanimous approval of the heads of the member governments or their representatives.

Therefore, an attempt has been made in this chapter to review, understand and analyse federalism as a concept in general and various theoretical perspectives related to it.

FEDERALISM:

The term ‘federalism’ has been used in variety of contexts. Indeed the extent of terminological and conceptual abuse has obscured its meaning. Like the word ‘democracy’ federalism stands to mean different things to different people. In principle by federal concept, it meant the idea of organisation of state whereby a compromise is achieved between concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which, general (central) and regional (state) governments are assigned co-ordinate authority that neither level of government is legally or politically sub-ordinate to the other.

Federalism, thus is a method of dividing powers so that the central and regional governments are each within a sphere, co-ordinate and independent. To be more clear, federalism provides a constitutional device for bringing unity in diversity by harmonizing the opposing forces of centripetal and centrifugal trends in country for the achievement of common national goals.
THE CONCEPT OF FEDERALISM:

There seems to be sufficient justification for the fulfillment of the prediction of Proudhon that the twentieth century would be distinguished by the marked development of federalism. "This is an age of federalism."¹ In the second half of the twentieth century, more than half of the land mass of the world is under a system of governments which may be called, more or less, federal. This popularity of enlarging governments which is the consequence of rapid technological change. "Each advance in the technology of transportation makes it possible to rule a larger area."²

What seems to be more surprising is that this belief and view enunciated by Riker and generally held by many, has not been supported by the findings and studies of Deutsch and his collaborators who published their work, 'Political Community and the North Atlantic Area,' seven years before Riker. Their findings tended to make them increasingly doubtful about the belief that, "modern life with rapid transportation, mass communication, tends to be more international than life in the past decades or centuries, hence more conducive to the growth of international or super national institutions."³

Another view that villages in the past have joined to make provinces and "Provinces to make Kingdoms." So contemporary states are expected to join into even larger states or federations have not been supported by the findings of Deutsch. "If this were true, even larger political units would appear to be necessary result of historical and technological development. Our findings do not support this view."⁴ However, credit may be due to Deutsch and his collaborators for pointing out that amalgamation could be approached functionally, step by step, rather than an attempt at immediate all out amalgamation which seemed more hazardous. They suggested that
functionalism appeared to be a safer approach to integration than a more ambitious one like a sudden federalism. They, however, stated that they had no evidence that functionalism as such would make any major contribution to the success or failure of an integration movement but they had evidence to suggest that limited functional organization had not been a hindrance (rather could be helpful) to later amalgamation of a larger area. In support of this, they cited the example of amalgamation first of England, and Wales and later England-Wales-Scotland.\(^5\) This conclusion cannot be accepted without misgivings because logical consequence should have been England-Wales-Scotland-Ireland, which did not happen but rather resulted in bitterness and hostility.

We have a large number of cases where integration, political unification (in Etzioni's term), security communities, both pluralistic and amalgamated (in Deutschian style) of which federation may be called a sub system, have worked successfully and there is a considerable number of cases where they did not work or worked for sometime and disintegrated sooner or later. There are several cases which bear no comparisons and defy generalizations. How is it and why is it that the federal system has been working successfully in Switzerland in spite of four distinct linguistic and cultural groups in its community whereas in Canada, inspite of sharing political, social and economic experience and benefits of living under one state for over a century, and celebrating proudly its centennial in its own metropolitan Montreal, Quebec still threatens secession.

More baffling may be the example of India, where the two major communities, hindus and muslims, inspite of living together in the same country for almost a thousand years and sharing many common experiences which tied together the members of a nation into a 'community of character.'\(^6\)
They got separated, when they secured the freedom and choice, into two sovereign federations inspite of the fact that people living in the two Bengals (East-Bengal in Pakistan and West-Bengal in India) are closer to each other linguistically, culturally and geographically than the people of East Bengal (East-Pakistan) are to those of West Pakistan, who have different language, culture, way of life, habits, common food etc, and are separated from them geographically by over one thousand miles.

Before we proceed further, it's better to have a glance of the concept of federalism from the angle of the ancient and medieval to present time.

The Bible is regarded as the first book to discuss the problems of federal polity. Ancient Israel provides the first example of a union of constituent politics based on a sense of common religion nationality. It was visualized as a linkage of people and institutions by mutual consent without the sacrifice of their individual identities. It aimed at evolving a society based on co-ordinative rather than subordinative principle. Both ancient India and Greece had tried to aim at similar goals, but could form only some permanent leagues of independent states, but not federation, in the modern sense of the term. They were united by a sense of common need or crisis, but failed to inculcate a sense of nationhood on some permanent temporal basis. In fact, they were communities more rather than political units. Big empires Persian, Hellenic, Roman, Magadhan, Mauryan, Gupta and so on flourished from time to time which allowed cultural identities to their sub units, but could not evolve them into a form of strong and permanent federation affinities among them were either personal or mythological. They lagged far behind and required political development reaching the milestone of sovereignty and nationalism.
Some elements of federalism appear in the medieval political organizations. They emphasise on essentially immutable contractual relationship which linked various contracting parties which guarantee their rights. Medieval federations were actually leagues and confederations. They were united through a perpetual covenant, binding under prevalent international law. The constituent states delegated some specific powers to a common government retaining full rights, including the right to come out of those collectivities.

Foundations of modern federalism were laid with the rise of the principles of sovereignty and nationalism. The first modern formulation of federalism appeared at the outset of the age of nationalism. Hugo Grotius and Samuel Pufendorf analysed federal arrangement as an aspect of international law. Jean Bodin analysed the possibilities of federation in the light of Sovereignty which again was the formal or legal expression of the principle of nationalism. Johannes Althusis (1603) was the first to perceive that federalism was really concerned with problems of national unity. He is regarded as the real father of modern federal theory. He connected it with popular sovereignty, and distinguished federalism from leagues, multiple monarchies, and confederations. Still he could not develop a full fledged theory of federalism because he favoured hierarchical principles and put emphasis on the corporate organization of society. In general, according to Elazar, the rise of the nation state in the sixteenth and seventeenth centuries provided federal solutions to the problems of national unification but emphasised on three problems:
1. The conciliation of feudally rooted hierarchies with a system demanding fundamental social equality in order to facilitate the sharing of power.

2. The reconciliation of local autonomy with national unity in an era of political upheaval that required most nations to maintain a state of constant mobilization basically incompatible with the toleration of local differences; and

3. The problems of executive leadership and succession which was not solved until the United States invented the elective presidency.7

Modern imperialism also contributed to federalism in its own way. Its discussion is found in the writings of pre-revolutionary theorists of the eighteenth century like Montesquieu and Adam Smith. Britain, in line with her imperialistic design and under pressure created popular assemblies in her colonies of North America. The colonists found out theoretical justification for these institutions on the basis of the Bible which led early Americans to accept those semi federal institutions. Imbued with the biblical spirit, they assumed their relationship with the British Government as 'Federal' or as based on 'coordinative' principles, though the latter did not entertain any such ideas.

The Americans during the course of their struggle for independence translated those ideas and principles into a working system of government. As they were free from ramshackles of European feudal societies and could keep away from external pressures for several decades, they continued to strengthen their federal system. Facing one after another major events, and in the end successfully provided a model of federalism to many politics throughout the world. The Americans had all other social, political, cultural and economic diversities along with emerging tide of unity and cohesion, which all contributed towards the success of an effective federal system.
However, the founders of the United States of America did transform and organize the principles of federalism into a practical system of government. They were able to do so because, being a post feudal society, they could develop themselves as a nation without the disadvantages that beset earlier federal systems. As they were following an isolationist policy, external pressures for centralization were not there for about 150 years.

In fact, allocation of powers between the union and its units is directly related with the evolution and growth of nationalism in a polity. A federation can allow greater autonomy to its units if there is greater amount of nationalism permits greater amount of autonomy to its units. However, it is also true that apart from subjective socio-psychological factors, as stated earlier, objective factors too help or discourage the making and running of a federalism.

MEANING AND DEFINITION OF FEDERALISM:

The term federation is derived from the Latin word "Foedus" which means treaty or agreement, which is made by the different states intending to federate.

Federalism is a modern concept. Its theory and practice in modern times are not older than the American Federation which came into existence in 1787. The federal idea, the plan of government of a number of contiguous territories in association and neither separated nor combined in one is very old and had been practised in ancient Greece, but it has been employed on a larger scale only during the last two centuries. Federalism is the result of historical evolution.

Springs from the necessity for the union of a number of independent states which are not strong enough individually to protect themselves from
outside danger, and whose union is requisite for their safety and for the promotion of their economic interests, but which are not prepared to surrender their independence completely. The impulses which lead to the formation of a federation are usually the idea of national unity, the desire to promote common economic interests, the amicable resolution of common problems and considerations of defence and international prestige. The federal form of government is not deduced from a theory or a priori reasoning, but is a historical product or a necessity arising under certain political conditions.

Hence in a federation we find:

1. Two sets of government constitutionally coordinate;

2. Division of powers between centre and units according to a fairly rigid written constitution.

3. A federal court as a guardian of the constitution; and

4. Supremacy of the constitution which is rigid.

“A federal system of government is one in which a constitution divides governmental powers between the central, or national government, and the constituent government (called “States” in the United States), giving substantial functions to each. Neither the central nor the constituent units receives powers from the other; both derive them from a common source, the constitutions. This constitutional distribution of powers cannot be altered by an ordinary process of legislation for example, by an act of the national legislature or by act of the several constituent governments. Finally, both levels of government operate through their own agents and exercise power directly over individuals”9
DEFINITIONS:

1. K. C. Wheare, an authority on federalism says that, “In a federal constitution the powers of government are divided between a government for the whole country and governments for parts of the country in such a way that each government is legally independent within its own sphere.”

2. According to Birch, “A federal system of government is one in which there is a division of powers between one general and several regional authorities each of which, in its own sphere is coordinate with the others, and each of which acts directly on the people through its own administrative agencies.”

THE PRE-REQUISITES OF FEDERAL GOVERNMENT:

After studying the concept and definition of federalism some questions may arise in our mind like, what are the pre-requisites and requisites for the formation of unions and federations? What are the factors which promote and encourage unification and amalgamations and or what “background” conditions do not discourage and impede disintegration and de-unification? These are not easy questions. Nor can easy answers be supplied because human institutions, unlike atoms and molecules, cannot be easily generalized into abstract models or conceptual frameworks. Scholars and political philosophers since Bodouin Grotius, Pufendorf, Hobbes, Locke, Hume and Montesquieu have been shedding light on the various aspects of federalism and political unification.

They at best provided the philosophical underpinnings. What followed was mostly a formal-legal or traditional approach. Wheare’s work may be considered classical. He adopted a formal legal approach but he did break some
new ground and applied structural functional approach in parts II and III of his book.12 However the model adopted by him for the classification of constitutions as classical federations. In the post World War II period, a structural functional approach was adopted as a sort of reaction to the earlier legal – formal approach. A number of scholars attempted to develop a flexible model of federalism which was regarded as a process rather than as a static pattern of government.

C. J. Friedrich’s description of federation as, "a union of groups, united by one or more common objectives, but retaining their distinctive group character for other purposes."13 Is as flexible as it can be and summarizes the new approach. This description can be applied equally to a federal state and to an alliance, a functional association of states, or union of groups within a state. Federalism thus is a process of federalizing that is, the process of achieving a union of groups which retain their identity.14 And according to Ernst B. Haas, "federalism may be operating in both the directions of integration and differentiation, for both the transformation of the British Empire into the Commonwealth of Nations and that of European states into a United States of Europe are federalizing processes."15

According to Wheare, communities have been led to ‘desire union’ for a variety of reasons which he classifies as, “Prerequisites of federal government”16 and which may be summarized as follows:

1. a sense of military insecurity and the consequent need for common defence;
2. a desire to be independent of foreign powers, for which union is indispensable;
3. a hope of economic advantage from union;
4. some previous political association;
5. geographical neighbourhood; and
6. similarity of political institutions.

Even before describing the prerequisites, K.C. Wheare postulated certain conditions which are 'essential' and 'must' be present for the alliance or unification to be considered "a federal government."\(^{17}\)

These are:

1. The communities or states concerned must desire to be under a single independent government for some purposes at any rate.
2. The communities concerned must desire at the same time to establish independent regional governments in some matters at least; and
3. They must have the capacities to work the system they desire.

It may be noted that, while describing these three conditions, Wheare not only considered these as "essential" but insisted on their being a 'must' where as, while discussing his "half-dozen" pre-requisites he thought that "it is unlikely that states will desire union unless these factors-or most of them are present."\(^{18}\) Thus, even he did not claim his prerequisites to be essential or indispensable for the formation of federations. And his three conditions which he considered as ‘must’ and essential gave us no better idea than his definition of the federal form of government. However, Wheare made a distinction between the factors which produced the “desire for federal union” and the factors which produced “the capacity to work federal union”, the former he called pre-requisites and the latter requisites\(^{19}\) and are summed up as follows:

29
1. Hostility to or fear of a common enemy and desire for common defence which provides cohesive forces that compel the communities to stand together.

2. Community of race, language, religion and nationality;

3. Similarity of social and particularly political institutions; and

4. These institutions should not be autocratic or dictatorial.

In addition to the above pre-requisites and requisites, Wheare also listed certain factors which provided the capacity for the maintenance of federal union. These are:

1. Previous existence as distinct governments;

2. Size of the units; one or two units should not be strong enough to overrule others and bend the will of the federal government; and

3. Must possess sufficient economic resources to support both an independent general government and independent regional governments.

Whatever useful contribution, Wheare might have made to our fund of knowledge, it cannot be denied that his emphasis is more on jural and formal properties and his model is so rigid that he could classify only four constitutions, those of the United States, Australia, Switzerland and Canada under the federal category.

Federalism, like most institutional forms, is a solution of or an attempt to solve a certain kind of problem of political organisation. It is true, on the whole that federal governments and federal constitutions never grow simply and purely by accident. They arise in response to a definite set of stimuli; a
federal system is consciously adopted as a means of solving the problems of these stimuli.  

**NATURE OF FEDERALISM:**

The essence of a federal government is the distribution of powers between the national government and the constituent units. The constitution provides for the basic division of powers, but the dynamic nature of the federal system is illustrated by the judicial and political interpretations which have made it possible that the national problems to be solved by unilateral action on the part of the national government, through the cooperation of the central government and the states or by co-operation among the states.  

The distribution of subjects is made by a written constitution. Considerable care is taken while dividing the subject between the centre and the units so that as Bryce points out, a proper balance is maintained between the jurisdiction of two sets of governments. The maximum scope is provided to units to function freely and enjoy local autonomy.

The allocation of powers may be made in following three ways;

i. to enumerate the subjects to be dealt with by the central government and the units;

ii. to enumerate only the subject of the centre and to give the rest to the units; and

iii. to enumerate the subjects of the units and give the rest to the centre by a general grant.

Each federation has its own way of distributing powers according to historical conditions, the needs of the state and the people.
"A federal government is one which divides powers between the states and the national government. Each level is guaranteed certain rights, including the right to exist, so that the states cannot conspire to destroy the national government or another state government; and the national government may not dissolve the states. Thus the union is one and inseparable."\textsuperscript{23}

**ESSENTIAL FEATURES OF A FEDERATION:**

1. The existence of a dual government. In a federation we have two sets of government, Firstly, the federal or national or central or the union government and secondly, the regional or state or provincial governments. They are the units of the government.

2. There is a division of powers between the centre and the states in a federation. However a study of different federal constitutions reveals that there is no uniform approach in the division of power. In USA, the power of national government has been enumerated in the constitution and rest of the powers belong to the state. In Canada, the powers of the provinces have been defined and the centre is authorised to make laws for "peace, order and good government" of Canada and with respect to subjects not assigned to provinces. This means residuary powers are with the centre. In Australia the powers of the centre are defined, there is a concurrent list in which both the centre and the states can legislate. However the states powers have been vested in the states. Whatever may be the form of distribution of power but this distribution is necessary so that both the governments understand their respective jurisdictions and there is no conflict over it.
3. This division of power is through a constitution which is written, supreme and rigid, the constitution has to be written because the division of power has to be written because the division of power has to be done in a very precise manner. The constitution is also supreme law of the land and both the central government and the state government derive their respective powers from the constitution and they function under its supremacy.

4. Finally, the federal system envisages an independent and impartial judiciary. The judiciary acts as the guardian and protector of the constitution. The final interpretation of the constitution vests with the judiciary. It has to maintain the balance between the centre and states so that they function within the limits prescribed by the constitution.

FEDERATION AND CONFEDERATION:

In order to have a clear idea of federal government it is also very important to understand the difference between the two terms that is a federation and confederation.

The terms federation and confederation do not mean the same thing though both have the same root.

Following are the differences between federation and confederation:

a. A federation is an association of sovereign states formed by a treaty or agreement. This association of states or units formed according to a written constitution, and a federation is a permanent union.
A confederation is a temporary union.

b. In a federation the central government and the units have a common sovereignty. The Units surrender their sovereignty and the constitution is supreme.

In a confederation each member is completely sovereign. There is absolutely no surrender of sovereignty to the confederation.

c. In a federation, the central government and its units have full control over all citizens. Citizens in a federation have to obey the laws of two governments, viz., federal and regional.

In a confederation there is no control over citizens of the member state. Citizens of a member state are under the control of that particular state, and the confederation has no sovereign control over them.

d. A federation is the result of the union of people in the various states, which make a permanent constitutional agreement surrendering their sovereignty.

A confederation is the product of the temporary union of states, which do not surrender their sovereignty.

e. A federation is the result of the union of people in the various states, which make a permanent constitutional agreement surrendering their sovereignty.

A confederation is not a new state it is a loose association of states and each state continues to retain its separate identity and sovereignty.

f. A federated unit cannot secede or legally withdraw from the federation. If war broke out between units, it is a civil war.

In a confederation if member states resort to war it became an international war.
FORMATION OF FEDERATION:

A federation may be formed by following two forces:

1. By Integrating the Centripetal Forces:

A number of states, at first separate and sovereign, may come together and form a federation by accepting common sovereignty. Favourable centripetal forces may aid the formation of federation. The federations of the USA, Switzerland and Australia were formed in this manner. Here the process is of integration.

2. By Disintegrating the Centrifugal Forces:

A state which was formerly unitary, may be transformed into a federation as a result of centrifugal forces. Canada, which was originally unitary was converted into a federation. Similarly India, a unitary state under British rule was broken up and recognized into autonomous units to form a union of states, a federal structure with a strong centre. Here the process is of disintegration.

Therefore, these are the two ways of forming federations, on the basis of which the pattern of federal government is formulated.

THEORIES OF FEDERALISM:

Unanimity of opinion prevails on the fact that two entirely different sentiments must simultaneously develop in order to facilitate the formation of a federal union. Each of the units must possess acute sensitiveness for maintaining as much of its own rights as possible and must not be inclined to allow supersession of regional government for the sake of the common central government. They must also keenly be conscious of the imperative need for a
government different from and stronger than their own governments in order that the advantages sought may be secured in adequate measure. They should have a desire for union but not for unity. "The urge for union comes from the need for collective security against aggression and economic co-ordination for protection and expansion of trade and commerce. The federation is given only enumerated powers, the sovereignty of the states in the union remain otherwise unimpaired."²⁴

"A federation in USA is of this type. Alternatively a federation is found when a sovereign authority creates autonomous units and combines them in a union."²⁵

But the controversy, complex and fascinating, still persists on the conceptual analysis of the term, federation. Constitutional theorists hold conflicting ideas on federalism. Attempts to explain the concept of federalism have given rise, chiefly, to the following theories of federalism.

The theories of federalism are classified as below:

a. Classical, pure or conventional theories,

b. Modern or empirical theories.

Modern theories can be further classified as Origin theory of federalism, Functional, Process and System theories.

I. THE CLASSICAL THEORY OF FEDERALISM:

Basing on a study of the constitution and system of government obtaining in the four classical federations, namely, the United States of America, Switzerland, Canada and the Common Wealth of Australia, the
classical theory explains what federalism is? The outstanding exponents of the classical theory were A.V. Dicey, Harrison Moore, K.C. Wheare, Jethrow Brown, James Bryce, M.J.C. Vile, Robert Garren, John. W. Burgess and others.

Professor A. V. Dicey defines a federal state as, “a political contrivance intended to reconcile national unity and power with the maintenance of state rights.”

At the end of the 19th century, Lord Bryce in his book “American commonwealth” described the federal and state governments as “distinct and separate in their action”. The system he said was, “like a great factory wherein two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, yet each set doing its own work without touching or hampering the other.”

Robert Garran, an eminent Australian scholar, defined federalism thus:

“A form of government in which sovereignty or political power is divided between the central and local governments, so that each of them within its own sphere is independent of the other.”

A classical definition of “Federal Government” is also given by Garner. According to him, “Federal government, as contradistinguished from unitary government, is a system in which the totality of governmental power is divided and distributed by the national constitution on the organic act of Parliament creating it between the central government and the governments of the individual states or other territorial sub-division of which the federation is composed.”

K.C. Wheare, gave a traditional concept of federalism. Wheare applied the following test in order to assess whether a constitution is federal or not.
"The test which I apply for federal government is then simply this. Does a system of government embody predominantly a division of power between general and regional authorities, each of which in its own sphere, is co-ordinate with the other and independent of them? If so, the government is federal."30

K. C. Wheare, puts emphasis on federal principle. It relates to the procedure of division of powers, by which the union and regional governments remain coordinate and equal in their areas. More direct relation with the people in a federal state is not enough. Each unit should remain confined to its own area. In other words, division of powers must result in their ultimate independence and co-ordinate status. Wheare differentiates between federal system, federal constitution and federal government. When a constitution is federal but does not operate on federal principle, Wheare regards it as 'quasi-federal'. The units under such system do not operate in an independent and coordinate manner, constitutions and governments which do not operate on the federal principle are called quasi-federal constitutions, and quasi-federal government. His view is known as 'dual-federalism approach'. Accordingly, a federal constitution is more or less the legal framework which conforms to the federal requirements on paper. Federal government is the translation of federal constitution. A constitution which is federal in character may not establish a federal government and, on the other hand, a unitary constitution might be practiced in such a manner that the union government becomes so much regionalized in its working that many regional pockets emerge which enjoy a fair degree of autonomy. In the long run, they might acquire the status of permanent arrangement. A federal constitution is the outcome of the forces prevailing at a particular juncture of time. This framework at times refuses to cope with the changing nature of the society, and is often unchangeable and rigid. Practice of a constitution makes it, dynamic. It easily adopts and absorbs
the new changes and to the extent becomes difficult from what the fathers of constitution might have envisaged.

A large number of scholars are influenced by this classical model. Herman Finer, finds it, a federal state is, "one in which part of the authority and power is vested in the local areas while another part is vested in a central institution deliberately constituted by an association of the local areas." 31

Birch is also traditional when he writes that, "There must be a division of power between one general and regional governments, each of which, in its sphere, is to co-ordinate with the others; Each government must act directly on the people, each must be limited to its own sphere of action and each must within that sphere be independent of the others." 32

The classical theorists held the "American Model" as the ideal one. As professor Neumann says, "As the British Parliament has been the mother of Parliaments, so the United States has been the father of federalism." 33 And it was a general practice, during a period, to compare the different politics with that of America in order to designate them as "Federal: The classical theorists enunciated the following conditions for a federal system:

a. A written constitution which lays down the powers to be exercised by the general and regional governments;

b. The constitution is to be so rigid that none can amend the constitution by unilateral action and only by joint action of both the governments can alteration be made in the division of powers;

c. There is to be an independent judiciary to settle conflicts of jurisdiction between both the governments.
d. Both levels of government directly operate on the life of the citizens; and
e. There should be allocation of adequate sources of revenue for the
government of each level, general and regional.

Professor. M.J.C. Vile quotes K.C. Wheare with approval to say that no
definition of federalism can be sound if it excludes the American model.34

It is clear that the classical definition attempts to explain federalism in
juristic terms. One merit of each juristic definition is that it enables us to
distinguish a federation from a confederation or a mere league of states brought
to existence by a treaty where the common agency created remains dependent
upon and subordinate to the will of the governments of the constituent units.
Until the year 1787 when the United States constitution was framed, the word
federal signified little more than a league of states resting upon the good sense
of parties, formed for a specific purpose and dictated by expediency. It was an
improvisation for facing some imminent danger that threatened their
individualistic existence. A war or common enemy was enough to rally a
number of small states together into a union to ward off the danger. The old
order used to relapse with the dissolution of the union in the face of the
vanishing of the threat. History of ancient Greece provides several examples of
such loosely-knit-leagues of states. They were neither rigid nor permanent. The
cities of ancient Greece occasionally joined together in temporary alliance in
the face of a common enemy and those unions had varying degrees of
cohesion.35 The causes that led to the formation of such middle ages, resulting
in the formation of medieval unions like the Swiss and the German
confederations. No doubt they represented the improved forms of the leagues.
Yet they did not establish any federal state in the sense we understand the term today. The emergence of the United States of America in 1787 as a federal state effected a complete change in the conception of federation.

Secondly, the juristic definition enable us to distinguish a federal polity from a unitary state. In a unitary system, unlike in a federation, the legislature of the whole country “is the supreme law-making body in the country. It may permit other legislatures to exist and exercise their powers, but it has the right, in law, to over-rule them; they are subordinate to it.”

THE ANACHRONISTIC NATURE OF THE CLASSICAL THEORY OF FEDERALISM:

The challenges of the twentieth century such as wars and depression, economic planning and social services have made the classical theory of federalism an obsolete. The scope of the study of comparative politics has been extended to the study of politics of the developing areas. It has occurred as a result of the realisation that the subject of comparative politics must include all governments along with their infra-structures that “exist in the contemporary world and where possible, reference to governments throughout time.”

Besides time proved that the federal pattern established by the United States is not so inflexible that it does not admit of any variations.

Hence, there was sufficient logic on the side of the critics when they attacked the classical theory of federalism on the ground of legal formalism. According to them, the classical theory explains the nature of federalism purely on the basis of law enshrined in it and the constitutional structure created by it. But the legal division of powers is not strictly adhered to by the two levels of government each of which by practice and usage might encroach upon a field that does not belong to it legally. The theory, it is also alleged, is too legalistic.
to take into account the convention and usages of extra constitutional character which shape and influence the government process in a federal system.

The legal institutional approach of the classical theory of federalism has also been criticised as suffering from the "formalistic fallacy." N. G. S. Kini, for example complained:

"Formalistic fallacy consists in the belief that political behaviour and factual operations of groups and levels within a polity can be adequately understood and explained in terms of formal provisions of law and constitution (political and legal myths) of a political organisation. The conventional model did not go beyond a bare legal description of the formal properties of federation."37

Further, the critics of classical theory apprehend that the term, "independence" representing the relationship between the general government and the regional governments might mean isolation. But as a matter of fact if a federal polity is to be a working system, neither the general government nor the regional governments can operate in isolation.

Prof. Livingston, for example, redefines a federal government as, "a form of political and constitutional organisation that unites into a single polity a number of diversified groups or component politics so that the personality and individuality of the component parts are largely preserved while creating in the new totality a separate and distinct political constitutional unit."38

II MODERN THEORIES OF FEDERALISM:

Modern theories of federalism can be categorized as:

1. Origin theory.
Origin theory again contains three sub-categories:

i) Sociological

ii) Multiple Factor theory and

iii) Political theories.

i) Origin Theories:

The classical theorists concerned themselves with legal institutional explanation of what federalism is; they did not take into account why federal systems were at all created. Today federalism is no more a constitutional experiment; it has fully established its lasting influence as a distinct form of government. Its remarkable achievements as a unifying force, under widely differing conditions make political thinkers and constitution-makers look upon it as a possible device for the solution of many complicated political problems. What is significant is not the achievement but the movement itself. Federalism is like any other idea in government and the correct approach to it should be empirical. The search for its beneficial results is more important than any insistence on rigidity in its form. Hence, theoretical definitions of federalism which ignore the historical evolution of federalism and its potentialities as dynamic idea for future experimentation are of little value.

True, the federal principle is no more the vague idea that it was two centuries ago. Federal compacts are easily distinguishable from confederations or leagues. Similarly, the difference between a federal and a unitary state are also ascertainable with reasonable accuracy. Yet, to adhere to rigid definitions and to characterize federalism as an inflexible pattern, is to miss its purpose. This gap is sought to be filled up by what is called, the favourable to the establishment of a federal system theory seeking to define federalism in terms of the circumstantial factors and forces.
The origin theory can be sustained by three categories of definitions such as;

i. The Sociological Theory.

ii. The Multiple-factor Theory.

iii. The Political Theory.\(^{39}\)

i. The Sociological Theory:

William S. Livingston is recognized to be the first exponent of the sociological theory which was set forth by him, first, in his article, “A note on the nature of federalism”\(^{40}\) and subsequently, in his book, “Federalism and constitutional change.”

The Sociological theory advocates that it is the federal nature of a society that gives birth to the federal political system. It is held that the federal government is a device by which the federal society, according to Livingston, is one which contains within its fold elements of diversity. Usually, diversity is caused by differences of economic interests, religion, race, nationality, language, separation by great distances, differences in historical background, previous existence as independent states, or separate colonies and dissimilarity in social and political institutions. But Livingston laid down one important condition which is that the diversities must be territorially grouped, in order to result ultimately in the formation of a federal union. These diversities must not be too great to break up the community into independent groups, nor should they be suppressed to make way for a unitary form of government.

According to Livingston, “the essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal
government is a device by which the federal qualities of the society are articulated and protected. Societal forces are more important than any thing else.

The dynamic process of federalism is shaped by three variables which are separate and distinct, though interdependent. These three variables are; formal federal structure, political behaviour, and the social economic environment. Formal federal structure refers to a federal constitutional document which makes the constitution supreme, creates the centre and states, and distributes power between the two levels of government. Though the formal federal structure cannot alone determine the federal process, its significance must not be ignored.

Political behaviour, has an enormous impact on the federal process. Voting behaviour, structure and operation, political parties and pressure groups, interaction within and between the political and administrative elite, the political issues, the process of policy making as well as the implementation and the effects of governmental policy shape the pattern of federalism. Federalism as a system cannot be studied without looking at the social and economic environment.

The Sociological approach is also applied by Wildavsky who distinguished ‘Social Federalism’ from ‘Structural Federalism’. Wildavsky cites the commonwealth of Australia as an example of structural federalism, a framework devised and adopted to retain the unity of the Australian people as a nation.

To him the United States serves a good example of social federalism, adopted because of the “social make up of territorial based groups”. In the
United States the underlying economic, ethnic, religious and other diversities, located in distinct-geographical areas, corresponded roughly to boundaries of the states which united under the constitution of 1787 to form the federation of the United States.

The Sociological view of Livingston and Wildavsky and others has not been spared of critical scrutiny. Firstly, critics opine that Livingston just enumerates the various diversities but does not explain the factors which generate the desire among the diversities for establishing a general government within a federal framework. Secondly, there is no casual relationship between a diversified society and a federal political system. The Wells, the Scotts and the Ulster Irish are instances of diversities inhabiting distinct geographical areas; Nevertheless, they are co-existing in the unitary system of the United Kingdom. The same holds good in France, China, South Africa, Ceylon and Indonesia. Thirdly, Geoffrey Sawer has pointed out that social attitudes and diversities as enumerated by Livingston, are not specific to federalism; they may result in any kind of constitutional and political system ranging from a confederal alliance to a centralised system with a good deal of defacto revolution.

The real deficiency of the sociological theory is that it lacks definite indices and criteria for drawing a line of demarcation between a federal and non-federal society. This has some times led to paradoxical claims such as one of Wildavsky portraying the United States as a federal society and the other of Riker who characterizes the same as sufficiently integrated to justify the abandonment of federalism in preference to a unitary system, provided the American leaders elected to do so. Therefore, considering the theory as unsatisfactory, Venkatrangaiya concludes that “the idea of federal society on
which the sociological theory rests is vague, and full of ambiguities, each scholar interpreting it and its bearing on federalism in his own way.\textsuperscript{44}

ii. Multiple Factor Theory:

This theory takes into account the necessary as well as the sufficient conditions of the birth of federal systems. K. C. Wheare and Karl Deutsch in particular have enunciated what may be called the Multiple-factor theory in order to explain the origin of modern federations.

Wheare lays stress on (1) the desire for union and the desire for establishing independent regional governments, and –

(2) the capacity to give reality to the desire.

The most noteworthy among the factors producing the desire for union are a sense of military insecurity and the need for common defence, a desire to be independent of foreign regime, a hope for economic advantage geographical neighbourhood, similarity of political institutions and previous political associations in a loose treaty system or confederal union. The desire for union must be coupled with a similar desire for independence of regional governments. This is produced by several factors namely, previous existence, as separate and distinct states or colonies, a divergence of economic interests, geographical factors favouring regional consciousness. Dissimilarity of social institutions (like the civil law of French speaking Quebec in Canada) and so forth. Given both the desire for union as well as the desire for regional independence and identity, right kind of leadership with the foresight and vision of a statesman would be necessary according to Wheare to devise a federal system for accommodating both the tendencies.
Although Wheare lays down no criteria to determine capacity, it might be taken to mean the capacity of the regional governments to raise the financial resources needed to maintain their autonomy.

Despite its emphasis on a combination of several factors that give birth to federalism, the multiple factor theory does not adequately explain the creation of federal systems by the process of devolution or disaggregation. It does not take into account the aspects of regulating the federal relations in a right direction.

iii. Political Theory of Federalism:

This theory presents a solution to what is essentially and primarily a political problem. The solution is political because it centres round power and stands for the division of political power. Hence, it is important to recognize the significance of political motives playing a dominant role in the origin of federal systems.

A very powerful exposition of the political theory is found in William H. Ricker’s Federalism: Origin, Operation and Significance. Wherein Ricker raises two questions and tries to answer them. The two questions raised by Ricker are (1) What occasions requires for the adoption of a federal government? and (2) What induces societies to maintain and preserve federal governments they already have?

Ricker puts forward that federalism is one way of solving the problem of government in expanding societies. The traditional method of imperialism i.e. by enlarging the area of political control and government by founding an empire has become unpopular and out of tune with the advancing human civilization. But the purpose is well served by federalism which provides for an
enlarged political community without the use of coercive and aggressive methods of imperialism. As a political solution, federalism is the result of a political bargain in the situation which follows either the collapse of an empire or which seeks to strengthen the enlarged political community while respecting and protecting the autonomy of the constituent units. Federalism reflects a bargain between those political leaders who desire to expand this territorial control over the whole area of the empire that collapses in order to meet military or diplomatic threat and unable to expand by conquest, and those who stand for the independence of the constituent provinces to whom concessions are offered. According to Ricker this constitutes the essences of the federal bargain.

The merit of the political theory is that it represents federalism as essentially a political solution to different situations that involve the potency of a political bargain.

The merit of the political theory is that it represents federalism as essentially a political solution to different situations that involve the potency of a political bargain. The theory successfully explains the origin of older federations like that of the United States, Switzerland, Canada and Australia as well as it explains the formation of the new federations since 1945 such as that of India, Pakistan, Malaysia, Nigeria, West Indies etc. The significance of the theory lies in the fact that it fills up the gap left by multiple factor theory i.e., it explains the origin of federations formed either by aggregation or by disaggregation. The case of India provides a nice example of this type. With the cessation of British rule in India in 1947, the provincial leaders, who had already tasted provincial autonomy, wanted to make it more real and substantial without losing the national independence to a new foreign power.
The threat of foreign aggression generated in them the desire to build up a common system of defence and protection. But it is amusing to note that, at the same time, they were not prepared to abandon provincial autonomy. The nationalists and advocates of centralism like Nehru, Patel and others wanted expansion for enlarged governments, unity and security and were prepared to achieve this through negotiation and concession. The outcome of this bargain was the federal system of the constitution giving the whole country a strong central government and regional governments of the former provinces and acceded princely states a large measure of autonomy. However, this theory stops short, merely at the formation of a central government as consummation of political bargaining among the political leaders operating at both ends, without ensuring any guarantee of security of the bargain. He has not been able to examine this deficiency found in almost in all federations.

2. FUNCTIONAL THEORY, PROCESS THEORY AND SYSTEM THEORY:

i. Functional Theory of Federalism:

The real significance of the study of the idea, “federalism” lies not in its emergence but in its movement. The trend of the increasing appeal of the federal idea is discernible throughout history. In 1935, Max Beloff noticed that federalism was enjoying “a widespread popularity such as it had never known before”45

The preceding origin theory of federalism explained the causes responsible for the creation and sustenance of a federal system of government. As has already been pointed out the origin theory fails to point out how federalism tries to persist in the face of new challenges that have raised their heads in the present century. The functional theory of federalism comes in to
fill up this gap. This theory has found a vigorous exposition in the hands of number of modern students of federalism.

The classical definition of federalism gave rise to the concept of “dual federalism.” A federal polity pre-supposes the existence of two co-ordinate and independent levels of government. The advocates of “dual federalism” claim that in a truly federal system the central and regional governments must have their respective demarcated spheres in which each can operate independently of the other, and that the maintenance of a functional division between the two levels of government is the key to the maintenance of a genuine federal system.

Severe criticisms have been labelled against the theory of “dual federalism.” It is argued that inspite of constitutionally guaranteed demarcation of the spheres of functions and powers between them, the two levels of government in federal system are no longer substantially independent of each other. In fact, the emphasis has gradually shifted to their partnership interaction, and inter-dependence in the performance of functions allocated to each of them. Dual federalism fails to stand the empirical test of relevance.

A degree of difference does appear in the traditional and modern interpretations of the term, “federalism.” True that a total policy output in a federal system comes as a product of complex process of interaction between central and provincial government which share decision making and decision executing process, the traditional interpretation of federalism, for the most part, implies an absolute situation of inter-relationship which is hardly in tune with the latest orientation of constitutional systems.

M.J.C. Vile and D. J. Elazar have rejected the theory of “dual federalism” as it does not apply to the American federal system. Both suggest
that the traditional conception of federalism as involving a sharp demarcation of responsibilities between two independent sets of sovereignties has never worked in practice in the United States. According to them in the nineteenth century, as in the twentieth century, administrative co-operation and political interdependence between federal and state governments was a dominant characteristic of the American federal system, inspite of the formal division of powers of the constitution.

A penetrating study of the principle of federalism reveals its flexible and co-operative character in such a way that neither level of government "is wholly dependent on the other, nor wholly independent of the other." Federalism in America for the founding fathers meant a political system in which two levels of government existed side by side neither of which was able to dominate the other, neither of which was subordinate to the other. Each level was to have sufficient autonomy to be able to make political decisions over a range of governmental affairs without having to obtain the express approval of the other level, but neither level would be sufficiently independent of the other that its decisions could be taken in a vacuum without regard to the political attitudes of the other. Thus was established a system of government which was dependent upon the maintenance of a balance between mutual independence of the two levels of government, moderated and tempered by their political and constitutional interdependence. Thus if the balance of power shifted towards states the integrity of the federal government would be threatened, and the break up of the federal system into a loose confederation, or into a system of quite distinct and separate entities would be the likely outcome; on the other hand, if the federal government became so powerful that the states were simply subordinate, whether in law or in political reality, the system would have
moved from a federal system to a decentralized unitary state. Federalism, therefore, represents the middle ground between these two alternatives. Its exact borders cannot be determined precisely, but once the real interdependence of the two levels ceases to exist so then does a federalism cease to exist.

Similarly R. L. Watts’ views also holds good in case of other developed federations such as Canada and Australia. This trend is also inherent in the structure and operation of the new federations formed after the second world war. An empirical study made by Watts of the six new federal constitutions of India, Pakistan, Malaysia, Rhodesia and Nigeria and West-Indies shows that, “Co-operative federalism” became the inevitable trend in their systems. Thus functional theory of federalism has given rise to several new concepts relating to federalism like, “Unitarian Federalism”, Co-operative and Bargaining Federalism.

It is wrong to assume that there is an absolute federal principle which should apply to all nations claiming to be federal. As a former solicitor general of Australia observed, if there is such a thing as a strict, pure and unqualified federal principle, there are no federations and no federal constitutions. Federal relations are fluctuating relations by their very nature. Federalism is a process, an evolving pattern of changing relationship; rather than a static design regulated by firm and unutterable rules.

It is unreasonable, therefore, to compare any federation with the American model. For federalism is now redefined in dynamic terms. It is viewed as a process and not as a mere constitutional division of powers. In the words of Carl J. Friedrich, “the development of federal relationships has
become a primary focal point as contrasted with the distribution and fixation of jurisdiction."49

Federalism as a process can be best understood in relation to social services which contributes one of the basic functions of modern society.

ii. Process Theory of Federalism:

An another variation of “Functional Theory” is the process theory of federalism. Accordingly, federalism cannot be viewed as a static institutional pattern. It should be seen as a dynamic process. The federal process is a complex one with no consistency in its course of development in history. Therefore, federalism is essentially seen as a process of federalizing a political community, that is to say, a process by which a number of separate political communities enter into arrangements for working out solutions, adopting joint policies, and making joint decisions of common problems.

According to Carl J. Friedrich, ‘the process of federalism is the organizational counterpart of communal development’ or the organized cooperation of groups. Moreover, he holds that this process is linked with a ‘territorially diversified pattern of values, interests and beliefs, overarched by joint values and beliefs’ and ultimately with constitutionalism and the rule of law.50 He disagreed with the critics who saw federalism in the United States as a mechanism for entrenching special interests while himself found that the benefits of federal organization had to be paid for in other ways.51 The most important contribution to the discussion of the nature of federalism was in his rejection of a ‘static’ and ‘rigid’ view of federalism in favour of seeing it as a process, a dynamic set of relationships through which a number of separate political communities work out joint solutions to problems and in doing so become progressively integrated.
However, his approach has been criticised as too general as it comprehends all, leaving nothing out of the picture. But it has been described in more definite terms as "a kind of metabolism of the federal body politic, that is, involved in all the process, chemical relations as well as physical phenomenon, pertaining to its organization, maintenance and growth as an organism." When seen as a process, loose confederations give place to dual federalism, and later to 'cooperative federalism' and may gradually turn into K.C. Wheare's quasi federations or even 'Unions.'

Thus, these theories try to peep into actual working of federations and find it as interdependence, cooperation or a dynamic process, As a process, it is moving, according to Friedrich, from 'dual federation' to 'quasi federation' even 'Union'. These scholars do not find any goals attached to federalism. It is, therefore, quite clear that these theories are not concerned with the effective and proper functioning of the federations. In a way they assiduously rationalize what is happening in various federal systems. They fail to rise above the common places and proverbs of federalism.

iii. Systems Theory of Federalism:

Systems theory caters to the complementary of different sciences and their overlapping nature while studying and observing a particular social reality. Talcott Parsons introduced systems thinking into social sciences. In connection with Weiner's cybernetics (The Human use of human beings) and its use by Deutsch. (The nerves of government) and computer technology, it experienced widespread acceptance after the second world war. Systems theory is a theory of integrating knowledge about social phenomenon. It analyses systemic relationship between findings of different scientific disciplines by tying them together in an abstract framework, mainly as input-out-put feedback
system. The system is 'a set of objects together with the relationships between these objects and their attributions'. According to Easton, a political system involves those structures and interactions of society by which authoritative decisions on values are arrived at. Systems linking analyses relationships and shows the functions that parts of systems have in connection with other parts and with the system as a whole. In this regard, both federalism and democracy as forms of governance are different but in several respects closely related. It analyses the role of both organizational patterns found in the political system as a whole, showing amongst other things the prerequisites for harmony and for conflict. It can be used as a reference model for interdisciplinary integration.

The state aims at the facilitation of the objects of society as a subsystem of society. But systems theory does not normally concern itself with the state but rather concentrates on the political system. The abstract end of a political system is self preservation for which all its structures and procedures have their role to play or have systemic functions to perform. These can be voluntary as well as willed functions. Voluntary functions relate to systems learning capacity and its stability. Willed functions move around autonomy system interaction, society assigns them through the political process to certain structures and procedures. Such functions, for example of guaranteeing individual liberties, participation in decision-making and so on, are systemic only in an indirect way. According to Talcott Parsons a society is self-sufficient to the extent that the institutions are legitimized by values that its member hold with relative consensus which are in turn legitimized by their congruence with other components of the cultural system, especially its constitutive symbolism. Willed or assigned functions relate to goals which are not strictly necessary for the systems maintenance but which give expression
to a society’s values and ambitions. Mostly these goals or functions are at the centre of political debate. This systemic frame of reference can be regarded as liberal in the traditional European sense, conservative and populist.

NECESSITY OF FEDERALISM:

After studying various theories of federalism, one question may arise in our mind that why federalism is needed? Is there any necessity of federalism? W. F. Willoughby thinks that federations were formed by historical reasons and not by judging the relative merits of the unitary and federal systems.53

The development and growth of political organizations have been directly aided by the scientific discoveries and inventions and the consequential modifications in economic and social relationships which have completely revolutionized life or by particular needs and environment of each age or epoch. In the ancient past, the Greeks had thought of a federal polity only to protect themselves from the external forces. The Romans also conceived of the federal system to make themselves free from foreign invasion.54

During the middle ages, men sought to live a communal life based on religious dogmas and doctrine. In the economic and political fields new relationships developed between the rulers and the ruled. The institution of feudalism continued for several centuries, assuming different forms in different territories due to different historical settings. On the ashes of feudalism rose an entirely different politico-economic system which founded the nation-state. A new sense of political relationships marked the pattern of society. Community of language, race, culture and loyalty to the land of birth all combinedly created as social consciousness and political awareness. The discoveries of the new world and the deeper penetration of the dark continent resulted in an ever-
increasing competition for empire building. The French and the English became the leading colonial powers in most of the continents. In their rivalry for supremacy, the centre of political activity was shifted, in the eighteenth century, to the new settlements in America. Social, economic and political ferment then needed stability and for this purpose thinkers and administrators contributed their share to the evolution of political contrivances based on varying conceptions of political development and evolution. It was then that modern federal ideas were developed.

New institutions and conceptions grew to meet the needs of each age without, however, completely breaking with the past, politically, economically or socially. The different political contrivances and methods were an attempt at delicate adjustments to new environments and factors of life. Professor K. C. Wheare says that desire for a federation is based on “a sense of military insecurity and of the consequent need for common defence; a desire to be independent of foreign powers and a realisation that only through union, could independence be secured, a hope of economic advantage from the union; some political association of the communities concerned prior to their federal union either in a loose confederation (as in the United States and Switzerland) or as parts of the same Empire (as in Canada and Australia) geographical neighbourhood and similarity of political institutions.”

A federation becomes a necessity in a vast country for the sake of administrative convenience. It becomes almost humanly impossible on the part of a single government to take into consideration the needs of each and every corner of a vast nation. The need for better administration and public welfare necessitate territorial decentralization of authority. It has been rightly said that the wearer knows where the shoe pinches. Federalism, thus emerges in a huge
state as a solution to the problems arising in the face of difficulties of administration.

A federation is looked upon as satisfactory solution for building up of a common state in a country where there are racial, religious, linguistic or other minorities who, while desiring to share a common government with the rest, are proud and sensitive enough not to lose their individuality. This is an application of the principle of self-determination in the national sphere Canada, Switzerland, United States and India are instances of such fusion.

It is also held that the roots of federalism lay in democracy, conversely, without the participation of the people, a federation becomes meaningless and, hence not durable, as will be evident from the failure of the Austro-Hungarian federation as well as the more recent federation of the United Arab Republic (of Egypt, Sudan and Yemen).56 In this view, therefore federalism becomes a subset of democracy57 with reference to the fundamental categories of 'power' and the 'people'. The federal relation in U.S.A. is structured according to the theory of balance of power, but the national consensus vests the arbitrating power in the federal judiciary federalism, as it emerged in British India by 1935, was the result of the pressure of the national movement demanding rights of the Indians in the imperial order.

Federalism, in the modern age, is necessitated by the principle of reconciliation between two divergent tendencies, the widening range of common interests and the need for local autonomy. This is why Lord Acton said: “of all checks on democracy, federalism has been the most efficacious and the most congenial. The federal system limits and restrains the sovereign power by dividing it, and by assigning to the government only certain defined rights.”58
The reconciliation that is established in a state between the individual self-sufficiency of the citizen and his allegiance to the state is, in a measure, federal in essence. According to Harold Laski, "Since society is essentially federal in nature, the body which seeks to impose the necessary unit—must be so built that the diversities have a place therein."\(^{59}\)

Thus, federalism, as has already ascertained, is necessitated by a necessity for the articulation and protection of federal qualities of a society.

Whatever may be the factors necessitating the establishment of a federation, the constitution-makers, while framing a federal constitution, should carefully examine the problems confronting a federation. They must see that the constitution provides as little scope as possible for people to enter into controversies. A federal government can function smoothly only when-

a. A satisfactory division of powers between the centre and the units is made;

b. Justice is done to all areas i.e., small units feel as secure as the relatively big ones;

c. Healthy relations are maintained between the centre and the units and between one unit and another,

d. The highest court of justice of the land remains impartial through thick and thin;

e. The constitution amending procedure is reasonable.

There are a large number of federations in the world today. The functioning of these federations reveals the most important fact that none follow a rigid pattern. Different geographical, historical and cultural factors
were in operation at the time of emergence of different federations. Therefore, each federal constitution embodies such provisions which serves the national interest best.

To sum up, federal practice in many countries of the world, both developed and developing, has by and large successfully overcome the paradoxes posed by federal theory and by the modernization of the last hundred years. Neither the growth of states and nationalism nor their occasional failure to grow have constituted more than a temporary barrier to the growth of federalism. Even the momentous urban-industrial transformations in the various stages of development have only succeeded in changing but not in stamping out federalism. The bonds of union continue to be honoured and will go on being honoured for a long time to come.
NOTES AND REFERENCES


2. Ibid, P. 2.


5. Ibid, P. 189.


8. Ibid.


24. Ibid.,


31. Ibid.


51. Ibid.

52. Ibid.


54. Ibid.


