CHAPTER II

THE CONCEPT OF FEDERATION: ITS MEANING, NATURE AND SCOPE

A classification of political constitutions has often been undertaken in the past, but not in a way very satisfactory to the modern period. Among the earliest attempts to make such a classification, Aristotle who went much more deeply into this matter than his master Plato, who is very confusing on the subject. Aristotle first divided constitutions into two major classes, Good and Bad or True and Perverted. According to Aristotle, Monarchy or Royalty, Aristocracy and Polity are the form of Good or True constitution, Tyranny or Despotism, oligarchy and Democracy are the form of Bad or Perverted constitution.1

In the middle of the 18th century, Montesquieu, divided Government into three classes - Republican, Monarchical and Despotic.1

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See Willoughby: Nature of the State Chapter I and II.
See also McIlwain, Charles Howard: Constitutionalism: Ancient and Modern: Chapter I and III.
Few years later, Rousseau, again classified the forms of Government into three - Autocratic, Aristocratic and Democratic.¹

A little later, Kant classified the forms of Government into two forms of Government, Republican and Despotic.¹

Modern political scientists like Lord Bryce², Prof. Edward Jenks³, Sir A.R. Marriott⁴ classified modern constitutions in different ways. Classification of constitution which have been classified by the above different writers is summarised by the C.F. Strong in the following way⁵:

1. Unitary or Federal constitution.
2. Unwritten or written constitution.
3. Flexible or Rigid constitution.
4. Parliamentary or Non-Parliamentary.

Thus, many types of constitution exist in the world. Constitutional writers classified them into many

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¹ Ibid.
⁴ Sir Marriott, A.R. : Mechanism of the modern State Vol.I Ch.II
⁵ Strong, C.F. : Modern Political Constitution-P.73
categories like written or unwritten, Rigid and Flexible, Unitary and Federal. Above classification has been done by the constitutional experts on the basis of enactment, process of amendment and location of powers.

Written constitution is a constitution which is created by persons or body of persons or any institution in a particular time and period. It is a work of conscious art and may be seen in a single document.

On the other hand, unwritten constitution is a constitution which is not a creation or enactment of a particular time and it is not a work of conscious art. It is a product of historical evolution. So it may be called developed constitution estate of created constitution. The source of such constitution is usage, customs, convention, statute and charters.

Flexible constitution is one under which every law of every description can be legally changed with the same case and in same manner one and the same body as the ordinary law is passed by it. In the flexible constitution, no special procedure has to be followed. In it there is only one procedure for the both purpose may it be constitutional amendment or ordinary amendment.
In case of a Rigid constitution, constitution cannot be legally changed with the same ease and in same manner as ordinary law. In it, there is fixed and special procedure which has to be followed strictly when a legislative body wants to change constitution.

The special machinery for constitutional amendment is the limitation of the power of the legislature by greater law than by the law of the ordinary legislation in the field of rigid constitution, but there is no such limitation in case of flexible constitution.

Unitary constitution is a constitution in which all powers are concentrated or centralized in a single hands or single body. There is sovereignty of the central or union government and all other governments are subordinate to central government. Source of all powers in central government and other governments have to obey the order of supreme government.

In unitary constitution, there is no division of powers between Central and State Governments, though there is internal divisions, but there is no division of powers. Central and State governments are not co-equal and sovereign, to each other.
On the other hand, Federal constitution is formed by the union of pre-existing states which give up some position of their sovereignty and powers for the common administration of certain matters of general interest to all the member states.

In Federal constitution, the source of power is constitution, for the both governments. Constitution is supreme authority over the central and state governments. They have to perform their work according the provisions of the constitution. In country like India there is one constitution for the both central government as well as state governments. whereas country like U.S.A. there are two types of constitutions one for Federal Government and second for State Governments.

In Federal constitution there is division of powers between Federal or Central Government and State Governments. Both Governments exist side by side without interferes with each other. Both are sovereign in their field and not subordinate to each other.

Thus, unitarianism means the concentration of the strength of states in the hands of one visible sovereign power, on the other hand Federalism means the distribution of the force of the states among a number of co-ordinate bodies.
In the common parlance 'Federal-Government', is construed as a 'Simple Association of States for the common purpose'. Constitutional experts, lawyers and jurist, whoever do not accept the above loose meaning of Federal constitution. In their view 'Federal Government' is 'more than simple Association of states'.

Though 'League of Nation', 'Confederation' and 'Federal Government' have an element of 'Association of States', but all are not alike in nature. Federal Government along with the element of 'Association of States' other elements are also required, such as supremacy of constitution, division of powers between central and state governments, equal existence of both governments, Rigid Amending Process, etc.

In 'League of Nation', so many states are associated for a common purpose but they do not closely bind each other in a simple body for administration of the country as in the case of Federal Government. In such association one state becomes supreme executive head and other are subordinate to it. There is no coexistence between all states. In this context Prof. K.C. Wheare observed:
"The Astro-Hungarian Empire and German Empire were organized upon the principle of a dependence of General upon the Regional Government, it does not need any agreement to show that this principle was clearly embodied in 'League of Nation'."

'Confederation' is also an association of so many states like a 'League of Nation', but it differs from it, because it takes part in administration of the Nations whereas league of Nation there is no chance of it. Though states members take part in General Government but they seem like an Agent. They have no co-equal existence as in a Federal Government, on this point D.D. Basu rightly observed:

"A confederation is a loose association of independent states which create a union or central government for certain limited common purposes, while the member states retain their principal powers of government and the very existence of central government depends on the will of the member-states. What is no less important is, that a confederation, the Central Government has not direct authority over citizens in the several states, whatever power it possess has to be exercised through the component states. ......... A confederation owes its existence not upon the terms of a constitution, but upon a compact from which they are free to which drew at will. The central authority in a confederation is a mere

agency of the members-states and the letter have powers superior to that agency. The Central Agency has a direct relationship with the people and the commands of agency would operate upon the people in each individuals state only to the extent the State Government so permits.7

The best example of confederation are American Confederation 1781 to 1789 and Swiss Confederation since 1219 to 1848. In both Governments there are no co-existence between Central and State Governments. So it would not become the Federal Government. To remove this defect and in order to convert confederation into a Federal Government, they adopted new constitutions.

Federalism is a strong association in which Central and State Governments co-exist, and do not subordinate to each other. They derive their Powers from the constitution and do not defend on the will of the states. D.D. Basu defined to Federalism thus:

"A Federal State, on the other hand, is a union of several states into a Central or Federal Government. After the Federation is formed, both the

Federal and State Governments, one of their existence and authority from the Federal constitution which distributes governmental powers between the Federal and the State Governments, which are to be exercised by them, according to constitutional distribution, independently of each other. 8

About Federalism A.V. Dicey said that there is 'union' of States, but there is 'no unity' in them as in 'unitary government'. Then he distinguished: 'unitary government' from 'Federal Government' in the following way:

"Unitarianism... means the concentration of the strength of the State in the hands of one visible sovereign power .... Federalism means the distribution of the force of the State among a number of co-ordinate bodies each originating in and controlled by the constitution .... and similarly the Federal Government in its turn, exercises its authority within the spheres defined in the same constitution." 9

It must be noted that A.V. Dicey did not use the word 'unity' for the 'Federalism' because he wanted to avoid the sense of centralisation so he used the word

'union' in place of 'unity' which means only association of states. He also gave emphasis on the element of co-existence between the Central and State Governments; which is completely absent in unitary Government.

Writers of constitutional History such as E.A. Freeman and S.E. Morison wrote about the development of constitution from confederation of Federal Government. E.A. Freeman expressed the view about the Federalism thus:

"The name of Federal Government may in their wider sense, be applies, as in U.S.A., to any union of component members, where the degree of union between the members surpasses that of mere alliance, however, intimate and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of merely municipal freedom." 10

S.E. Morison stated:

"...The General Government is a government supreme within its sphere, but those sphere is defined and limited." 11


K.C. Wheare\textsuperscript{12} appreciated the opinion of both the writers but he said that these opinions are opinions of historian who have a broad and loose approach on the topic. K.C. Wheare defined to Federalism specially in the light of United States of America:

"The Federal Government is more than simply association of States .... It is association of States in which government is divided between a general authority and regional authorities which are not subordinate one to another, but co-ordinate with each other."\textsuperscript{12}

On the basis of opinion expressed above it may be noted that 'Unitary Government' differs from the 'Federal Government'. In Unitary Government all powers are concentrated or centralized in single body. On the other hand, in Federalism there is decentralization of powers. There is division of powers and States are not mere agents of Central Government but they possess independent constitutional powers.

'A League of Nation' is an association of states in a loose sense and there is no creation of separate government as happens in Federal Government. League of Nation takes its existence for the time being and for

\textsuperscript{12} Ibid : at PP.-1 and 3.
solving a single purpose though it may be political or religious or economical. There is no complete organization as seen in Federal Government. On the other hand in Federal Government there is a separate new Government which consists of delegation of states representatives who forms a separate strong body of government for the administration of government within the purview which is determined by the constitution.

In Confederation and Federalism common factor is association of states but there is vast difference between them on the basic principles.

In Confederation Central Government derives its power from the component states. On the other hand in federalism, Federal Government derives its powers from the constitution.

In the confederation there is no strong central legislature or strong central government but in a federalism there is dual governments, a division of powers and both the Federal and Regional organisations have their own legislative, Executive and Judiciary.
A confederation remains an association of a plurality of sovereign states, because there is no unity. On the other hand, a Federation there is a single, separate and powerful union of states, which exercises its power directly over the citizens of various units, within the sphere allotted to them by the constitution.

In the Federation, the constitution is a legal instrument and supreme law, which defines the relationship between the union and states on the one hand and between the states themselves; as well as the rights and obligations of the people in relation to the union and state governments. A confederation owes its existence, not upon the term of constitution, but upon a compact from which they are free to withdraw at will. The article of association of a confederation constitutes, nothing but a contract, the constitution depends upon the will of the contracting parties. The central authority in confederation is a mere agency of the Member-States and letter have powers superior to that agency. The Central Government has no direct authority over the citizens in several states.

Science the constitution, in a federation, constitutes the supreme law which limits the powers of
both the Federal and Regional governments, cannot be altered by any means short of amendment of the constitution. Nothing like this is required the change the articles of confederation, which depends upon the will of the contracting states.

On the basis of aforesaid discussion it may be submitted that Federal union is a close union, then a Confederation, and Federal Government has a firm footing than the central government in a confederation. Federation is a developed reformed and polished form of League of Nation as well as confederation in response of the demand, time and civilized society.

**HISTORICAL PRELUDE**

Historically speaking, the earliest form of political organisation was not Federal but Unitary. The King exercised all the powers in practice and exercised his control over whole administration. He had unlimited powers. He was supposed to be a representative of the God on earth and therefore it was considered sinful and punishable to disobey or contravene his orders. It was a sin even to raise voice against the acts of the King.
King was responsible only to God, not to people. He had full control over the executive, legislative and judiciary. All three departments were in the hands of King.

In the medieval period, the movement against monarcy was started by the philosopher and politician. In 1690 John Locke\textsuperscript{13}:

"It may be too great a temptation to humane frailty, apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to exercise them, whereby they may exempt themselves from obedience to the laws they make and suit the law, both in its making and execution, to their own private advantage."

The doctrine of separation of powers was developed further by the French Jurist Montesquieu, who based his exposition on the British Constitution of the early 18th century as he understood it. The essence of doctrine of separation of powers has been expressed in the following way:

\textsuperscript{13} Locke, John : Second Treatise, Quoted by Wade and Phillips - Constitutional Law, at P.-34.
"When the legislative and Executive powers are united in the same person or in the same body of Magistrates, there can be no liberty, because apprehensions many arise, lest the same monarch or senate should enact tyrannical laws, the execute them in a tyrannical manner. Again, there is no liberty if the judicial power be not separated from the legislative and the executive. Where it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the Judge would be then the legislator. Where it joined to executive power, the judge might have with violence and oppression.

There would be an end of everything, were the same man or the same body, whether of the Nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the causes of individuals."14

The theory of liberty gave blow to the theory of divine power of King and Parliament and cabinet became more powerful. Legislative and Judicial powers were taken away from the hands of King and they became the part of Parliament and Courts. The executive power were wielded on the cabinet.

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Thus, with the growth of Parliamentary system Absolutism of crown disappeared and 'limited constitutional monarchy' was established. Now king was only a 'Golden Zero' or 'Rubber Stamp' in the hands of Parliament and its cabinet.

With limited constitutional monarchy area of Federalism started, but this type of Federal Government could not come within a day and it has long history behind it. Various Leagues, Confederacies and Federations were formed in ancient and medieval times and they converted into Federations in course of time.

The Amphyctyonic league and the Achaean League, are the earliest examples of Federal institutions in the history of Ancient Greece. In those days there were number of city-states in Greece, each enjoying the most direct form of democracy in which each citizen was entitled to vote and to exercise power over legislation and general administration. These city-states were autonomous within themselves and free from any encumbrance of allegiance to any external superior authority. But the fear of foreign domination sometimes forced them to come closer together for the primary purpose of self-defence. This need for alliance was felt
only in the degenerate period of Greek history. But other factors which contributed towards unity in Greece were a common language, a common religion and common manners. These unifying influences did not affect the city-states in the bright and brilliant period of their history, because each state wanted to remain absolutely independent. It was only when their freedom was threatened that they formed unions with varying degrees of cohesion. Even then, these unions dissolved as soon as the fear of foreign aggression was over but were reformed when the fear again appeared. Thus there was no continuity in them.

Amphietrynoic league is the name given to the association of independent tribes or city-states of Greece which gathered for purposes of common worship round a religious temple. So Freeman rightly observed:

"Council of the Amphieyong represented Greece as a ecelesiastical symod represented western christendom not as a Swiss Diet or an American Congress represents the Federation of which it is the common legislature."15

Curtius also called to this institution as:

"Such festival associations or Amphictyonies, are co-equal with Greek history or many even he said to constitute the first expressions of common national history."\(^{16}\)

It is true that Amphictyonic union was a festival or religious association; but it had one of the elements of federation, namely that associated states were free sovereign states combining for a particular purposes with an elaborate system of representation.

Another more valuable Greek instance is that of Achaean league. Although this league also met with the same fate as the Amphictyony, yet it was organised more efficient and applied federal principles to a greater degree than its predecessor. Though it was not purely federal but it is a best starts of federal elements, so it is correctly said by E.A. Freeman:

"...The constitution of Achaean league, more efficient than that of the Amphictyony, was purely federation character."\(^{17}\)

\(^{16}\) Curtius: History of Greece, Vol. I, P.-III.

The Medieval history of Europe is full of instances of leagues and confederacies formal between independent or semi-independent cities or states, which contained germs of federalism. The most important and illustrative of them are the Lombard league, the Hanseatic league and the confederacy of the Netherlands.

Towards the close of years 1167, the Veronese league and Lombard league numbering sixteen towns in all combined together and formed the Lombard society. During the period 1167 to 1174 the league grew in strength and popularity. By 1174 Pavia and Monerrat also threw off their allegiance and joined the league which now included thirty six towns and all the feudal lords of the Povalley. It was governed by a body of rectors who represented the various towards, it had a common army, and its chief object was to offer united resistance to all Imperial oppression. In the year 1250, when ultimate downfall of the Hohenstanfens removed the fears that had brought about the combination of the Lombard cities, brought the end of the Lombard league which had rested on the common fear of Imperial designs.

The towns on the shores of the Baltic sea and North sea formed the Hanseatic league gradually the
league bec~me so much strengthened, the seventy seven towns proclaimed themselves enemies of the king of Denmark. The war resulted in complete triumph of the league and the treaty which was concluded marks the high watermark of Hanseatic power. It recognised the league as a real political force piece of legislation makes it abundantly clear that the dread of Spanish arms had dictated the necessity for so close an alliance which was effected for ever writer like A.P. Newton called it a: "Loose confederation"18 but writer like E.A. Freeman called it as: 

".....League of Nation created for the purpose of commercial and war purpose."

The third and most organised confederation of medieval period was the confenderacy of Netherlands. It was formed of seventeen provinces, on the extreme north-west of central Europe, which were either parts of the lottering holy Roman Empire or were drawn from the non-imperial domains.

No doubt the Act of union of the united provinces of the Netherlands was complete in all sorts of details

in theory but was not carried out in practice with the same precision with which a modern federal constitution is carried out.

History of Modern Federal states, clearly shows that prior to their Federal they have been either loosely connected in a Confederation or League of Nation.

When the AMERICAN COLONIES began their resistance to Britain, they drew up in 1777, the Articles of Confederation of United States of America, which constituted not a true Federation, but a confederation. The next was taken in 1787 when a convention of Philadelphia drew up the Federal Constitution, which was adopted by the Thirteen states and became effective in 1789. On this point C.A. Beard observed:

"The change was extremely important as the confederation which was only an alliance between the states was now changed into a National government established by the people of the United States of America as a whole."20

Regarding the American Confederation Prof. Munro expressed his view in the following way:

"... Especially it (confederation) was weak because it lacked four things which every strong National Government must possess: ability to raise revenues by taxation, to borrow money, to regulate commerce and to provide adequately for common defence by raising and supporting armies. And these rather significantly; were the four greatest power given to the congress of United States by the new constitution which in 1787 replaced the old Articles of Confederation." 21

Lipson also said:

"It was the weaknesses of the system of the loose union of a confederation which the United States had since 1781 that led to the formation of the federation under the constitution of the U.S.A., in 1787." 22

K.C. Wheare considered the constitution of U.S.A. as the Model of Federal constitution and pointed out:

"The difference between the present constitution of the United States and the Articles of confederation lies in the fact that the present constitution replaces the principle of the General Government being subordinate to the Regional Governments and dependent upon them by the principle of the General and Regional Government being co-ordinate and independent in their

respective sphere. The characteristic which we have discovered in the present American Association of states in quite clearly a characteristic which distinguishes it from its predecessor."23

SWISS CONSTITUTION was also a confederation, when it was recognised as independent and sovereign by Treaty of Westphalic in 1648. At that time it was a loose league of states with no strong control power and so it remained as it continued its chequered career though the storms and confusions of the French Revolution and Nepoleonic Europe. Even in the general settlement of 1815 it did not find its final basis of stability. It was still too loose, as was shown in a short civil war begun in 1847 by Seven Roman Catholic cantons, which like the South confederacy in the United States in 1861 attempted to secede from the general body. Revision of the constitution in immediately followed the defeat of seceding cantons, and the constitution of 1848 transformed the old confederation into Federal state. The constitution of 1848 was radically revised in 1874 and the constitution of the year, subsequently amended in certain features, is the one under which Switzerland is governed to day.

Swiss constitution calls itself a 'Confederation' under the provisions of constitution;\textsuperscript{24} and reserves the 'Sovereignty' of the cantons. So far as their sovereignty is not limited by the Federal constitution\textsuperscript{25}, the Swiss constitution is regarded by the scholars\textsuperscript{26} as a "Full-fledged Federal constitution, next to the American constitution."

Federalism has a long history in GERMANY. After the death of Charles the Great in 1814 his Empire fell to pieces and when the German section of it was restored it was never again so centralised as it had formally been. Although the congress of Vienna failed to revivi the old German Empire into the German Confederation composed of Thirty Nine states. The war of 1866 in which Austria was completely defeated and expelled from the confederation. Bismarck annexed all smaller states that had sided with Austria. He then formed the 'North German Confederation'. Four year later 1870 the Franco-Prussiar war broke out. The enthusiasm aroused by the war enabled the four states to South German states to join to

\textsuperscript{24} Constitution of Switzerland : See Preamble, Art. 1,2,5,6, etc.
\textsuperscript{25} Ibid, Article 31.
confederation. The confederation was renamed the 'German Empire' 1871. First world war destroyed not only the power of Prussia but the dynasties of all the states which had federated in the German Empire. The Revolution of 1918 changed completely the aspect of German internal policy, it led to the abdication of Kaiser and dethronement of Princess in different states and the advent of the socialist party. The National constituent Assembly met at weinar on February 6, 1919 for creating the New constitution which was put in force by executive order of August 11, 1919.

After the fall of the German Reich in world war II, East German, which was occupied by the U.S.S.R., opted to retain the unitary structure in the constitution of German Democratic Republic. On the other hand, West Germany which was occupied by the Allies, declared itself a Federal Republic in the constitution of West Germany, 1949. This difference in attitude was due to the fact that the Allies, after their occupation, had set up regional governments in territories carved out for that purpose, called the lander. It is these lander which formed the foundation of the federal republic. According to C.F. Strong:
"This Federal plan, though so designed as to be ultimately applicable to the whole of Germany, was necessarily confined at first to the eleven western states, which contained about three-quarters of the total German population. The draft constitution shadowed a legislature of two chambers – a lower house, the Federal Diet (Bundestag) and an upper house, the Federal Council (Bundesrat) with a President to be elected by absolute majorities of both houses, to which he would be respondent."^27

The colony of Canada was founded by the French colonists in year 1608. It was governed autocratically by the French King as a Province of France. When the seven years war broke out in Europe, the English and French began to fight. Canada was then placed under the rule of British military commanders and continued to be so governed till the treaty of Paris signed on February 10, 1763. In 1774 American Revolution changed the aspect of Canadian politics. When the Revolution subsided, Carleton, who had now been raised to peerage as Baron Dorchester and appointed for a second time as Governor General in 1787, again took up the question and succeeded in getting the constitutional Act (Canada Act) of 1791, passed. The country was divided into Lower Canada and Upper Canada. On the recommendation and effort of Lord Durham, Lower and Upper Canada was united by the Act of

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1840. By this Act two Provinces were united and the legislature, consisting of a council and an Assembly, was established. A Governor of the Provinces of Canada was appointed who was authorised to appoint his deputy or deputies to assist him in the administration. This system failed to satisfy the colonists who to fell the great necessity of a federal form of government. The representatives of the colonies went over to England and discussed the plan of the resolution with Her Majesty's Minister. After fruitful discussions an Act of Parliament (29 March 1867) was passed which conferred upon the colonists a Federal form of Government which was in fact, more responsible in Nature than what was recommended by Lord Durham. According to K.C. Wheare:

"Yet if we confine ourselves to the strict law of the constitution, it is hard to know whether we should call it a Federal constitution with considerable unitary modifications or a unitary constitution with considerable federal modifications. It would be straining the federal Principle too far. I think, to describe it as a Federal constitution, without adding any qualifying phrase. For this reason I prefer to say that Canada has a Quasi-Federal constitution."28

The original constitutional Act of Canada, the British North America Act 1867, did not contain any provision for its amendment so that it could not be amended otherwise than by the British Parliament. In 1949, the British Parliament amended the Act 1867 and authorised the Canadian Parliament to amend the British North America Act except as regard the legislative authority of the provinces and the rights and privileges of provinced legislatures.

By enacting the Canada Act 1982, the British Parliament has now abjured all its authority over Canada and has made elaborate provisions for amending the Constitution of Canada, without the need for an Imperial Act.

At first the whole continent of AUSTRALIA was under one central administration at Sydney, but the increase of population necessitated the separation of colonies from the mother colony. It was Sir Honry Parker, who encouraged the tendency of Australian Federation. At that time several other events helped him in pushing forward this cause. Among them were the occupation of New Guinea by Germany, the escape of convicts into Australia from the French penal settlement in New Calendonia and
the intention of France to appropriate the New Herbrides Group of Island. These enactments aroused intense enthusiasm for some kind of union between the colonies. Accordingly in 1883 Parliament passed 'The Federal Council of Australia Act 1885. The Act established in Australia a Federal Council whose powers were defined. Major General Bevan Edward recommended organization of military forces of the several colonies under one command as an Australian army in 9th October, 1889. Similarly Sir Henry Parkes on 15th October, 1889, made another attempt to organization of military, relaxation of tariff barriers, uniformity of legislation on some points and required them for federating the colonies. An inter-colonial conference of ministers met at Melbourne which was followed by Convention of Sydney on 1891. The convention prepared a draft of the Commonwealth Bill, but it could not get popular support. The federal leaders realised the necessity of educating the people on the point. Accordingly they established a Federal League and toured the whole country carrying on intensive propaganda in support of Federal cause. Accordance with this programme several colonial parliaments passed enabling Acts for choosing delegates by popular votes, to meet in a convention. In 1897 the convention of these delegates met at Adelaide and drew up a draft constitution based on
that of 1891. Mr. Reid of New South Wales, who had all along been opposing the idea of federation. But with the joining of Queensland on 2nd September 1899 and Western Australia 31st July, 1900, there was secured practical unanimity among the colonies and the time was ripe for seeing the fruition of movement after the bitter struggle lasting well over a decade. Representatives of the colonies went to England and prevailed upon the British cabinet to accept their draft constitution almost in toto. Mr. Chamberlain introduced the motion for acceptance of constitution in the House of Commons, and while commending it to the approval of the House, he paid glowing tribute to the memory of Sir Henry Parkes, whose ceaseless efforts had borne fruit after his death. Parliament finally passed with very little change the measure, which became the Act of Parliament establishing the Commonwealth of Australia, 9th July 1900.

According to P.H. Lane:

"Our Federation, the Australian Federation was modelled partly on the Canadian Federation but mostly on the United States Federation. The Founding Fathers who drew up the Australian Constitution were more taken by the United States constitution than the Canadian Constitution because the Canadian Constitution did not seem to give as much independence to the member states of the united states constitution did."29

The Dutch were first the colonise SOUTH AFRICA. The war between Holland and England resulted in the passing of the Dutch colonies in South Africa into English hands. These and other English colonies there continued to be governed by their separate governments as crown colonies. But the general change in British colonies policy later affected the administration of these colonies to which self-government was subsequently granted. The need of union then began to be felt as neither there were any physical barriers between the several colonies nor was there any difference of economic interests. In June 1871 the Cape House of Assembly passed a resolution appointing a commission to draw up plan of dividing the whole of British South Africa into a number of provinces and establish over then Federal Government. This step encouraged the movement for federation. In 1884 the formation of Affrikaadad National Party with object of uniting all European Nationals under one union Government further encouraged the movement for federation. Many Inter-colonial conference took place in 1886, 1903 and 1908 union. In response to these resolutions the National Convention of delegates from each colony, elected by their respective legislatures, met at Durban, Cape Town and then at Bloemfontein from 12th October to 11th May 1909. In its various secret
sittings it debated to question of establishing a federal union. The difficulties before them were many, there were two distinct European races, the English and the Dutch, inhabiting the different colonies and speaking two different languages. But the convention met with the firm determination to solve the problem and succeeded in composing the differences by the enacting the Act of 1909.

On this point R.H. Brand observed:

"... Convention met with the firm determination to solve the problem and succeeded in composing the differences, in sweeping away the existing Provincial Governments, and in setting above all a strong Central Government with vast powers, reserving to the Provinces only subordinate powers of legislation." 30

On the other hand, writer like Prof. C.F. Strong did not agree with the above opinion and observed:

"This, as we have shown earlier, is a federation only in appearance, not at all in fact, for, although the power of the provinces are indeed stated, they are hardly distinguishable from what we understand in this country as those of

local authorities and the provinces do not hold these powers as of right, but only subject to the will of the Union Parliament."31

The same opinion was expressed by the K.C.Wheare:

"In South Africa the Regional Governments are subordinate to General Government. When the self-government colonies of the Cape, Natal, the Orange River and the Transvaal United in 1909, they established a parliament for the whole union and four elective councils, one for each of the uniting colonies, now provinces of the union. These provincial councils were empowered to make ordinance on a list of subjects set out in the constitution. The list included, education, agriculture, hospitals, municipal institutions, roads and other matters of a local or private nature. But these ordinances were subject to the approval of the Union Government and they are valid only in so far as they did not conflict with an act of the Union Parliament. That Parliament had power to override the provincial councils at only time, to increase or decrease their powers, or to establish them altogether. There is clearly no question here of Regional Governments being co-ordinate, with the General Government as in the United States."32

Thus it may be submitted that the history of growth in South Africa is not a Federation in strict sense of the world but, it may be called Federation due

to co-existence of State and General Government in same sense.

For long RUSSIA was ruled by Czar dynasty and on the eve of the First World War it was Czar who occupied its throne. The Revolution of February-March 1917 swept away the Czar and his regime. They demanded to establish a government dominated by peasants and workers. Lenin and Trotsky were their leaders. On 26th October 1917, the Provisional Government ceased to exist and Bolsheviks became the masters of Russia and Lenin proclaimed for establishment of socialist order. In 1918 the Central Executive Committee of the Bolslevik party set up a commission to draft the constitution. The commission laboured under the direct guidance of Lenin and Stalin. The constitution thus drafted, was submitted for ratification to the Fifth All Russian Congress of Soviets on 10 July 1918. The State which the constitution created came to be known as the Russian Socialist Federated Soviet Republic. The constitution of 1918 was Federal in character. The Second constitution came into force in 1925. This was the replican constitution of 1918, except that three new bodies - the all-union congress of Soviets, the All-union Central Committee and the All-union Presidicium were now created. The first two five years plans aimed at socialist reconstruction, and
eliminating completely all capitalist elements in the economic and political structure of the country. In 1935, a commission of 31 members under the chairmanship of Stalin drafted a constitution. In 1936, Soviet Democracy and the new constitution, which was the third in the Soviet series of government structure, had come to be established. The Stalin constitution, as it was officially known, was the embodiment of the First and Second Five years plans. It come into force in 1937. The constitution of 1977 has been adopted to further that aim and to preserve the continuity of the ideas and principles of earlier constitution. So Topornin rightly observed:

"... The supreme goal of Federal Soviet State in the building of a classless communist Soviet."33

He also called the constitution of U.S.S.R. as a purual Federal Constitution. But on the other hand writer like Prof. Neumann did not consider to constitution of U.S.S.R. as a Federal Constitution and said:

"Constitution of USSR is not a Federal constitution because the division of power under the Soviet constitution is only 'theoretical', being overshadowed by the domination of the same political party."34

On the above opinion he excluded the constitution of U.S.S.R. from Family of Federal constitution.

Writer like D.D. Basu also admitted this fact, but he did not exclude constitution of U.S.S.R. from the Family of the Federal constitution.

INDIA had a thoroughly unitary constitution until the Government of India Act 1935. The Provincial Governments were virtually the agents of the Central Government deriving powers by delegation from the latter. To appreciate the mode of formation of federation in India may be seen in Government of India Act 1935. By the Act of 1935, the British Parliament set up a federal system in the same manner as it had done in the case of Canada. It did so by creating autonomous units combining them into a federation by one and the same Act. It did not emerge out any 'Federal sentiment nor did it come into being as a result of contract or agreement between existing states to delegate some of their powers to a common Government. All powers hitherto exercised in India were assumed by the crown and redistributed between the Federation and the Provinces by a direct grant under this system, the Provinces drove this authority directly from the crown and exercised legislative and executive powers,
broadly free from central control, within a defined sphere. Nevertheless, the centre retained control through the Governor's special responsibilities and his obligation to exercise his individual judgement and discretion in certain matters, and the power of the centre to give directions to the provinces. The peculiarity of thus converting a unitary system into a Federal system can be best explained in the words of the Joint Parliamentary Committee on Indian Reforms:

"Of course in this converting a unitary state into a Federation, we should be taking a step for which there is no exact historical precedent. Federations have commonly resulted from an agreement between independent or at least, autonomous governments, surrendering a defined part of their Sovereignty to a new Central organism. At the present movement the British Indian Provinces are not even autonomous for they are subject to the both administrative and legislative control of the Government of India and such authority as they exercise has been in main developed upon them under statutory rule-making power by the Governor-General in council. We are faced with the necessity of creating autonomous units and combing them into a federation by one and the same Act."35

Later on, in pursuance of the Indian Independence Act 1947. Government of India Act, 1935, was amended by the Adaptation orders, both in India and Pakistan, in

order to provide an interim constitution to each of the two Dominions until the constituent Assembly could draw up the future constitution. By the Act of 1947 sovereignty of British Parliament was abolished. The crown was no longer the source of authority. The Governor-General and Provincial Governor became as constitutional heads and sovereignty of the Dominion legislature was established. The Act divided United India into two independent Dominions India and Pakistan. Under the Act the constituent Assembly of each Dominion was to have unlimited power to frame and adopt any constitution and to repeal any Act of the British Parliament including the Indian Independence Act. As the result of the partition a separate constituent Assembly was set up for the Indian constitution. Present Indian constitution was drafted by this constituent assembly on 26th November 1949 and came into force on 26th January, 1950.

The most remarkable achievement of the Indian constitution is to confer upon a federal system to strength of a unitary government. Though normally the system of government is federal, the constitution enables the federation to transform itself into a unitary state.

"The constitutional system of India is basically federal, but of course, with striking unitary features."

[40]

Of the recent constitutions, notable in the present context are those of Malaysia and Nigeria.

The constitution of MALAYSIA, 1963, simulates the constitutions of the U.S.A., Switzerland and Australia, in having two constitutions, one for the Federal and a separate one for each of the 13th States. The Federal constitution of 1963 not only assumes the existence of

Neumann: European & Comparative Govt. 1960, P.-679
separate constitutions for the states, but guarantees the existence of such constitutions subject to certain condition under Article 71. These conditions are elaborately laid down in the 8th schedules. Though there is division of powers but the supremacy of the Federal constitution over the state constitution is ensured.\textsuperscript{41} The lower of Judicial review is given to courts because the constitution is declared to be supreme law, but exclusive jurisdiction is vested in the Federal court\textsuperscript{42}. Full-fledged judicial review thus obtains in the Federation of Malaysia.

Besides, wide powers have been conferred by Federal constitution to meet with abnormal situations taking place in any part of the Federation. These extraordinary powers are given in under Articles 149 and 150. These provisions are more drastic than its counterpart in Article 250 of the Indian constitution.

The constitution of NIGERIA, 1979, like Indian constitution, provides a single constitution for the

\textsuperscript{41} See Article 71(3)(4), 74, 75 and 4 Constitution of Malaysia.

\textsuperscript{42} See Ibid Article 128.
Federation as well as states and makes parallel provisions for the executive, legislature and the Judiciary for the Federation and States. Like Indian Constitution there is no separate citizenship in Nigeria.

The supremacy of the constitution is ensured under the section 1(1),(3),(4) and section 4. A constitutional question may be raised in any court of law but the question may be decided only by the superior courts by reference Supreme Court has exclusive original jurisdiction to decide disputes between the states inter se or between the Federation and the state. For the external and internal aggression President has power to proclamation of emergency like a President of India. Section 11(3) of the Nigerian constitution 1979, empowers the Federal Parliament to make laws on state subjects during any period, when the Federation is at war. At the same time Federal National Assembly also has wide powers of overriding the normal distribution of powers. So Akande rightly said:

"Wide powers are conferred upon the Federal National Assembly in this behalf by a simple but comprehensive provision in section 11(4) of the constitution of Nigeria."43

All these features of Nigerian constitution are present in Indian constitution so it may be said that Nigerian constitution is also "Quasi-Federal' like the Indian constitution.

Seeing the above history of Federation, it may be summarized in the word of D.D. Basu:

"Historically, the earliest form of political organisation was not Federal but unitary. But it is the pressure of economic, political, and social circumstances which impelled unitary states (generally monarchial) to enter into alliance with other states for meeting common problems with initially, related to defence. It is with the adoption of the constitution of the U.S.A. in 1787 that the concept of a federal state emerged in defence shape.

Subsequently, the adoption of the federal form in Canada, Switzerland and Australia gave a great impetus to federalism and a number of federal constitutions have cropped up since World War I and II, notable amongst which are - the U.S.S.R., West-Germany, India, Malaysia (1963), Nigeria (1979)."44

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FACTORS THAT HAVE CONTRIBUTION TO THE GROWTH OF FEDERALISM:

The history of Federal Governments makes it clear that different countries, in different periods of history, adopted federal forms of government for varied reasons. They had various problems of their own to solve and the solution should be found in acceptance of Federalism.

The various factors that have contributed to the growth of Federalism are as follows:

The First factor which helps to create Federal Government is Neighbourhood. From the most ancient times right up to the present day political union of federal character has been successful only between states whose boundaries touch each other. Thus we see that physical neighbourhood and contiguity of country have always been most important, even an essential, factor in the formation of federations. A persual of the history of federalism could indicate the all federal constitution have association of neighbourhood.
R.H. Brand gave illustration on this point:

".....the various provinces of South Africa united in 1900 as the geographical contiguity of the country proved more powerful than racial animolities and other strifes."45

Similarly Hamilton expressed his view on this point regarding the United States of America:

"It has often given me pleasure to observe, that independent America was not composed of detached and distant territories, but one connected, fertile, wide-spread country was the portion of our wester sons of liberty."46

The Second factor, which helps to create federal government is ethnological ties. Ethological ties naturally exercise great influence on the life of individuals and to no less extent, on the life of nations in unifying them. The language, literature, religion and culture of neighbourhood states give chance to come nearer and ultimately they tie in one union. So many illustration may be given from the old history of federal

government in which religion, language, literature and culture played a very vital role in unifying the neighbourhood states. On the other hand these elements created so many problems and difficulties in unification of the various part of country where there were differences between them on the point of religion, language, literature and culture.

The population of thirteen colonies of America about the year 1770, contained a very large population of Anglo-Saxons though other European Nations were also represents. The two Anglo-saxon nation very often come together and exercise that wholesome influence which proceed from union; the same factor enabled the colonies to federate together in 1787, and to grow into the world's richest country and one of the most powerful nations. 47.

Sir Henry Parkes was conducting his campaign in favour of the Australian federation he had appealed to the racial sentiments of people. This words 'the crimson thread of kinship runs through us all' touched the hearts of the people and thence forward the movement for federation increased in volume and importance. 48

47. See Federalist No. II, P.-68.

French and English were fighting against each other Lord Durham wrote on this point:

"At the root of disorders of lower Canada lies the conflict of the two races, which compose, its population, until this is settled, no good government is possible."49

The history of Switzerland also tells the same tale. Here three races have successfully withstood all tests of National existence and the confederacy.

Similarly language and literature also play a vital role in formation of unions and federations. On this point Sir G.C. Lewis said:

"The great mass of mankind never acquire a language by study, they only know the language which they imbibe during infancy and childhood. It is no more possible for a government, by the expression of its will, and by offering rewards of threatening punishments, to change suddenly the language of its subjects, then to add a cubit to their stature or to give them sixth sense."50

The problem of religion offers great difficulties in the unification of the various parts of country divided on religion basis. If one state follows

one religion and another a different religion, a unitary government seems unworkable. True, in modern days religion has ceased to excite as much interest as it did in old days and modern history is free from the bloodshed of crusades and religious wars. Modern states are not formed on religious grounds, and generally they keep politics free from religious encumberances, yet the religious interest is by no means extinct.

The Third important factor for the evolution of federal government is problem of Defence and threat of war. The presence of common danger by showing the need for common defensive measure has effectively influenced the moulding of the character of political societies and directly helped the cause of federalism.

For quite a long time the Australian colonies had kept on well under their separate independent governments without thinking of closer union. It was the menace of foreign powers who threatened the peace of Pacific, that hastened the necessity for federal union. Viscount Bryce remarked:
"However after 1883 the general scramble among the great European powers for unoccupied territories all over the world began, when it extended to the western Pacific, to bring external affairs to the minds of the Australians, who felt that their interest in the island, especially New Guinea and the New Hebrides, which lie North and North-east of them, could be more effectively pressed if the whole people spoke through one authority. This helped to revive the protect, often previously discussed, of creating a federation of all the Australian colonies, a scheme naturally indicated by commercial and fiscal considerations but retarded by the jealous case with which each community sought to guard its local independence."51

The same need of common defence had brought into existence the Lombard League and to some extent the Hansentic League. The swiss cantour would have remained under their separate governments if the aggressive designs of the Hapsburgs had not goaded them into uniting, if not for other purposes, primarily for self-dence. In the Prewar (1914) Austro-Hungarian confederation one of the three common subjects of the joint administration was the Army and Foreign Affairs. The confederacy of the Netherlands was formed with the primary object of opposing the attack of the Spanish King

on their liberies. Similarly, in the United States of America to much importance had been given to defence against the imperialistic attitude of European Nations.

Thus, it may be stated that the presence of common danger by showing the need for common defensive measure has effectively influenced the moulding of the character of political societies and directly helped the cause of federalism.

The Fourth important factor for emergence of the federal government is commercial outlook. The member-towns of Hansentic League formed themselves into a union for the commercial purposes, the monopolise the trade of the North-Sea and the Baltic Sea. Similarly, the advantages of common tariff, internal trade, fisheries and foreign trade went a great way in federating the states of America in 1787. Hamilton, discussing the commercial advantages of union wrote:

"There are rights of great moment to the trade of America which are rights of the union - I attend to the fisheries, to the Navigation of the western lakes and to that of the Mississippi. The dissolution of the confederacy would give room for delicate questions concerning the future existence of these rights, which the interest of more powerful partners would hardly fail to solve to over disadvantage."

52. Hamilton: Federalist No. XI.
In Canada, too, New Brunswick, Nova Scotia and Prince Edward Island joined the Dominion of Canada as they saw in that union great advantages to their commerce in the creation of greater and better communications, railways and lakes, seaports and mercantile marine. Lord Durham said:

"....The union of upper and lower Canada opened the prospect of a better arrangement of customs and tariffs."53

Similarly economic factors were playing an important part in creating an Australian Commonwealth. Two commercial principles - Protection and Free trade were the main demand of Australian federation which were fulfilled at the time of federation.

When the different colonies of South Africa were to unite, the two questions that were in the front were railways and sea-ports, the possession of which was considered to be question of life and death to the colonies as affecting their future prosperity. But the economic gain that was to come to them as a result of the union ultimately dismissed all other objections and affected the union.

Another factor for the growth the federal government is political motives. For achieving the political issue or goal neighbour states come nearer to each other and form federal government against the other political group. It was for this reason that Bismarck had formed the German Empire, Buest and Francis Denk had confederated Austria and Hungary, that Australians had united together, that the South Africanders and overcome the strong disruptive forces, and the efforts of them all had resulted in the making of bigger and more powerful nations. It was, in fact, the glory of enjoying the privileges of being the citizens of big states that the people of these countries knowingly and purposely formed union even by overcoming the enormous difficulties which lay in their path. Similarly the same view prevailed with the people of Switzerland when the three races inhabiting that small country united to form a federation and since the Switzerland has commanded a respectable position in all European politics. The sentiments guides the proceedings of the Assembly of Nova-Scotin which sowed the first seeds of formation of Dominion of Canada.

The fact is indisputably correct that a bigger state by virtue of its greater numbers, larger area, and wider resourcefulness commands greater respect than a
smaller one. Therefore in all international matters the views of a big state often prevail. Jay had devoted a large space in the Federalist to this aspect of the question and he had very wisely warned his countrymen against the dangers of dividing the confederacy into smaller independent states or into two or more confederacies. He wrote:

"One government can ablest men, in whatever part of union they may be found. It can move on uniform principles of polity. It can harmonise and assimilate and protect the several parts and members and extend the benefit of its foresight and precautions to each. In the formation of treaties, it will regard the interest of the whole, and the particular interests of the parts as connected with that of the whole. It can apply the resources and power of the whole to the defence of any particular part and that more easily and expeditiously than State Governments or separate confederacies can possibly do for want of concert and unity of system."54

On the above statement it is clear that there is no particular set of circumstances alone which helps the growth of federalism. In fact there are various factors, geographical, economical, radical, cultural, religious, linguist and political have contributed to the growth of

54. Jay: Federalist, No. IV.
federalism. It also deals with the nature of the federalism and the future of federalism.

NATURE AND SCOPE OF FEDERALISM

As early as 1863, a liberal and loose meaning of 'Federalism' was taken by the historian like Freeman in the following way:

"The name Federal Government may be applied to any union of component members where the degree of union between the members surpasses that of mere alliance, however intimate, and where the degree of independence possessed by each other member surpasses anything which can fairly come under the hand of mere municipal freedom." 55

But modern writers including Prof. K.C. Wheare, however, not agree to accept the loose meaning of Federal Government that is merely association of states, which has been formed for certain common purposes, but in which the member, states retain a large measure of their original independence. According to K.C. Wheare:

"By the Federal principle, I mean, the method of dividing powers so that the General and Reasonal Governments are each, within a sphere, co-ordinate and independent." 56

K.C. Wheare does not agree with the view that 'Federal Government Means — merely an alliance or association of states for a certain common purpose'. According to K.C. Wheare simply association or alliance or union of states is not necessary, Federalism is more than association of states. Austro-Hungarian Empire, German Empire, the United States of America and the Union of South Africa — all are associations of states but each differ in form each other despite there is element of association of states. Austro-Hungarian Empire and German Empire were organized upon the principle of the dependence; it does not need any argument to show that this principle was clearly embodied in league of Nation. The constitution of union of South Africa embodies a quite a different principle of association from those of the Articles of confederation in which the regional governments are subordinate to the general government. But in United States of America — regional government is not subordinate to general government in — state the regional and general governments are co-ordinate to each other.

Writer like S.E. Morison holds that the federal principle consists in the division of power in such a way that the powers to be exercised by the general government are specified and the residue is left to the regional governments. Prof. K.C. Wheare does not agree with this

test of federalism and says:

"In my view this test of federalism concentrates on a relatively superficial characteristic of the American constitution. 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."\(^{58}\)

It is clear enough that there is a difference between associations of states organized so that the general government is dependent upon the regional government or vice-versa. But essence of the federalism is that both regional and general government must be co-equal supreme within its sphere and not subordinate to each other though residuary powers are left in regional government or general government.

Further, writer like Lord Charnwood finds the essence of federalism is that general and regional governments operate directly upon the people. He says:

"One important part of government is discharged by a number of different authorities belonging each to one district or province of the country,\(^{58}\) Wheare K.C. : Federal Government, P.-13.
and another part of the government is discharged by a single authority distinct from all the others and belonging to the whole country.... thus regional and general governments operate directly upon the people."59

But Prof. K.C. Wheare does not agree to this test and he says:

"What is necessary for the federal principle is not merely that the general government, like the regional governments, should operate directly upon the people, but, further, that each government should be limited to its sphere and within that sphere should be independent of the other."60

In support of above view he gives the illustration of South Africa. In South Africa the general government of union and the provincial governments all operate directly upon the people, just as do the general and regional government of the United States. Yet there is difference is that in South Africa the regional governments are subordinate to the general government and in the United States they are co-ordinate. This difference is fundamental, and this is the difference which provides real distinction between the two.

Thus mere direct operation of both government upon the people is not necessary but with it division of power must be in such a manner that both government are co-equal in rank and not subordinate to each other.

**TYPICAL FEATURES OF FEDERAL POLITY**

A closer study of various constitutions and actual working of all federations shows that there are certain elements common to them which distinguish them from unitary constitution. Modern views it is generally accepted that a federal constitution usually has the following essential characteristics:

1. **Association of autonomous units**: A Federation is an association of so many states for the common purpose, in which states combine to establish a new general government retaining at the same time a place and status for themselves inside the new organisation. In the federation the general or federal government having control over nation-wide problems, extending over the entire federal territory while the regional governments control matters within respective regions only.
(2) **Dual Government:** While in a unitary state there is only one government, namely, Central or National government. But in a federal constitution there are two governments - the national or central or federal government or general government and the government of each component state. Though a unitary state may create local sub-divisions such local authorities enjoy autonomy of either own but exercise only such powers as are time to time delegated to them by the national government and it is competent for the national government to remove the delegated powers or any of them at its will. On the other hand, a federal state is the fusion of several states into a single state in regard to matters affecting common interests, while each component state enjoys autonomy in regard to other matters. The component states are not mere delegates or agents of the federal government but both the federal and states governments draw their authority from the same source that is called constitution of land.

(3) **Distribution of powers:** The distribution of powers between national government and state governments, is an essential feature of
federalism. Under the federal constitution there is distribution of powers between states and national government. The basis of such distribution of powers is that in matter of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to union and matters of local concern remain with the states.

(4) Co-equal existence of dual governments: Only division of power is not necessary for the federal constitution, but division of powers must be in such a way that general and regional governments are each within a sphere co-ordinate and independent. Both federal and the regional governments are co-ordinate and independent in this spheres and not subordinate to one another. The existence of co-ordinate authorities independent of each other in the gist of the federal principle.

(5) Both governments operate directly upon the people
In a federal government both general and regional governments operate directly upon the people. In the federation union need not address its commands through the state governments but union government operates directly upon the persons and property of the people within the same territory.
(6) **Supremacy of the constitution**: The creation of federal government is a consequence or right of the written document which is called a constitution. A federal constitution is an agreement between a number of states that combine together to establish over themselves a new government to which they by mutual agreement and of this free will, assign a certain part of this authority. The federal constitution which thus comes into being by this deliberate resignation of some of their powers by the component states, contains the terms and the conditions of the contract between those states on the one hand and the newly established central government on the other. So that when the federation has been established each government, whether state or central, exercises its authority just in accordance with the provisions contained in the constitution and is not supposed to go against any of its provisions. Hence any act done by the federal or state government, which is inconsistent with the constitution, must be invalid. For this reason there is supremacy of constitution in the federal government.

(7) **A written constitution**: Since a division of powers between two governmental authorities is an
essential attribute of a federation, it is evident that such division must be effected by a written constitution with specific terms. A federal system thus postulates a written constitution which sets up two governments - National and regional, and demarcates the powers that may be exercised by each of them. Each of these governments derive their powers from the constitution of federation.

(8) An Independent of Judiciary: An independent judiciary is called an essential element for the federal government, is a consequence of above two federal principles those are, the supremacy of constitution and the co-existence of two governments. The federal constitution being the supreme law of the land, embodying the definite terms of contract between the federating states and the co-existence of two governments involving a division of powers specifically assigned to each, it is necessary that there must be some agency to uphold the constitution and to keep the two governments within proper limits. So question arise, who should then guard against this transgression of authority? To guard the provisions of constitution and to keep the two governments within proper limits an independent
and impartial judiciary in established in the federal constitution. The distribution of powers made by the constitution must be guarded by the judiciary, which is to interpret the constitution as the fundamental law of the land and the enforce its provisions against both the federal and regional governments and to invalidate any of this acts which transgresses the limitations imposed upon them by the constitution.

(9) **Separation of powers:** For the maintenance of the independent and impartial judiciary it is also necessary there must be separation of power between executive, legislative and judiciary. The different functions of government, executive, legislative and judicial, should be performed by different persons, organised into distinct institutions, each independent of the other and should not interfere in the field of each other. The existence of independence of judiciary is totally rest on the doctrine of separation of power. If executive or legislative body interfere in the field of judiciary then it can not safeguard to the supremacy of constitution and can not keep to both governments within limits prescribed by the constitution.
Amending Process of the constitution should be rigid: A Federal Constitution is the consequence of the agreement between the associated states to federation, giving rise to new state, namely, the federation. When federation is a creation of the agreement than it may be varied or changed according to necessity or demand of the nation or circumstances, so there is necessity of amending process in the federal constitution. But it is essential in a federal government that if there is a power of amending the constitution, that power, so far at least as concerns those provisions of the constitution which regulate the states and powers of the general and regional governments should not be confided exclusively either to the general government or to the regional government and it should be rigid. It has been the nature of the amending process itself in federations which has led political scientists to classify federal constitutions as rigid.

For being "real" federal constitution, there must be above essential features, but modern research workers do not agree with the point that all these element must be in a federal government. As Prof. W.T. Wagnes\(^61\) says

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that the question whether a state is federal or unitary is one of degree and the answer will depend upon 'how many federal feature is possesses'.

Everybody regards the United States as an example of federal constitution. When the question arises that whether constitution is federal or not at that time generally that constitution is compared and determined by the constitution of United States of America. But it is impossible to find all the elements of the constitution of United States of America. If American pattern is strictly followed then it should be impossible to cover so many constitution in the federal family. So writer Sawatr says that if the traditional mode of formation as seen in U.S.A. is followed then a Union of Canada shall be excluded from the family of the federal states.

Expressing his view about federalism Livingston observes:

"Federation is more a functional than an institutional concept ... and it takes different shape in a different social and cultural environments."

64. Ibid: Page 30.
Keeping in view the complexities of federal structure certain modifications have been suggested by some authorities. They prefer to call Canadian federal structure as Quasi-federal, so is the case with India. The same view is expressed by K.C. Wheare:

"These are substantial modification of the federal principle ... I prefer to say Canada a Quasi-Federal constitution."66

The same view is also expressed by the K.C. Wheare about the Indian constitution and he calls it "Quasi-federal".67

Writer like Neumann68, included Canada as well as India in a federal government but he excludes U.S.S.R. from federalism on the ground that there is a division of power between the union and the states in Canada and Indian constitutions, while in U.S.S.R. the division of power under the Soviet constitution is only theoretical being overshadowed by the domination of the same political party.69

Keeping in view all these varieties D.D. Basu says:

"Once this realistic attitude is taken, it would appear that in the modern world, there is no cast iron would which a constitution must fit in, in order to be dubbed federal. On the other hand the varieties of this type of a political system are so many that using a hyperbole an American author Earle Valerie has labelled his work on Federalism with the title 'Federalism : Infinite, variety in theory and practice'."

It would therefore appear that strict view of American pattern has been abandoned and liberal view is taken to cover so many constitutions in Federal Family.