CHAPTER – I

FEDERAL GOVERNANCE

Introduction
Political scientists hold a common view that Federal Governance is a system of government of a country under which there exists simultaneously a Federal or Central Government (Legislative and Executive) and several States or Provisional legislature and governments which are contrasted with unitary state. Both federal and state governments derive their powers from a federal Constitution which describes the functions and the powers of each while both the federal and States are supreme in a particular sphere. Also, there is a consensus among political scientists that a true federal system is that which involves the union of several autonomous political entities for common purpose binded by federal Constitution which divides powers between federal and state governments where federal government is assigned with having control over nationwide problems, extending over the entire federal territory, such as external affairs, defence, economic and financial policies, while the states are assigned with matters within their respective boundaries. The distribution of powers vested in the Constitution must be guarded by judiciary which would be entrusted by the interpretation of the Constitution and by enforcing the provisions against both the federal and state governments. The distribution of powers under the Constitution cannot be changed or amended unilaterally either by federal or state government. According to Halthoru B. Guy (1963), the essence of federal system is the distribution of powers between the federal government and state and the Constitution provides for basic division of powers. The dynamic nature of the federal system is illustrated by judicial and political interpretations that make it possible for national problems to be solved by unilateral action on the part of federal government, through the cooperation of the federal government and the states or by cooperation among states. This implies that the component states are not merely agents of the federal government but both derive their authority from the same source i.e. the Constitution of the land. The units
under the federal system are co-ordinate and not subordinate to the federal government.

Much has been said and written about the nature and dynamics of federalism ever since its inception, but no unique model has emerged that can suit all countries for all times. At the same time, debates over the purpose and functioning of federalism in different countries keep on changing or evolving in the context of prevailing or emerging socio-cultural, economic, political or historic factors. In addressing federal governance as a system of government, a reference would be made to the concept of state, nation, federalism and nation-building which are interrelated and complementary in giving its true shape and dimensions of federal government. The reference would be made in brief as follows:

1.1 State : Meaning and Attributes

Having its root in the latin word status, which means state of being, the word state acquired political connation for the first time in the prince of Machivelli and ethical expression in Hegel. Between State as political category and as ethical community, there is a wide range of state theories wherein purpose, attributes and nature of the state have been differently treated. There is no any precise definition of State. But there is a common belief that State is borne out of a nation and it is the political embodiment of the nation. Since the 17\textsuperscript{th} century, the phenomenon of state-nation has emerged as principal mode of organizing the social space unifactorially along language, ethnicity, religion and culture.

State is componentially defined as organized politicised expression of a community living in a defined territory with relatively stable boundary, having a government of its own, a set of rules and institutions, to provide order, stability and progress to the constituting community. The commonplace meaning of State is that it is a distinct political entity possessing land, “territory” people (nation) government rule and sovereignty to issue command. In this context State, nation and nationalism are interrelated expressions aiming at the assertion of sovereignty. Hobbes and John
Locke argue that State came into being out of a voluntary will and association of individuals who otherwise feed unsecured and unsafe in their state of nation.

Thus state is essentially conceived as providing order and stability in the society through social contracts. The relationship between state and society is marked by a mutual exchange under which people give up some of their natural rights in favour of a state regulated ordered and civilized existence. For Hobbes such state is absolute in power and authority to regulate the domain of public. David underlines three important aspects of Hobbes theory of state. First, the state is regarded as pre-eminent in political and social life. Second it's the self-seeking nature of individual behaviour and patterns of interaction that makes the indivisible power of the state that is the sovereignty of the state necessary to be able to act decisively to counter the threat of anarchy. Third, the state are what all it does, can and must be considered legitimate.

Locke conception of state argues for a system of constitutional and representative government in order to protect individuals from the arbitrariness of states authority. The great end of the state is to the interest of common "public good" and the great ends of man's entering into society being the enjoyment of their properties in peace and safety. The state is legitimate till it does not betray the trust of the civil society. Government by consent or trust becomes two cardinal of Locke's theory of state.

Andrew Heywood identified the following features of a state: a) the State is sovereign in exercising absolute and unrestricted power; b) State institutions are recognizable public; c) the State is an exercise in legitimation, its decisions are binding; d) the State is an instrument of domination regarding its authority and obedience of its rules. A monopoly of legitimate violence is therefore the practical expression of the State sovereignty; e) the State is a territorial association and it is considered as an autonomous entity.

Michael Mann identified four main elements that the State contains:

a) A differential set of institutions and personnel embodying;

b) Centrality in the sense that political relations radiate outwards from a centre to cover;
c) A territorially demarcated area over which it exercises; and
d) A monopoly of authoritative binding – rule making.

In this mode of thinking the autonomy of state power is underlined to perform four broad categories of functions namely, a) maintenance of internal order, "social peace and security"; b) external defense; c) infrastructure development and networking and d) economic development. The significance of each of the constitutive elements of the state can be considered as follows. The first elements of territory makes the state a space bound phenomenon marked by boundary and boarder. The external boundary relatively remains stable while internal boundary may be flexible and socio politically adjustable according to the recurring imperatives of nation-state relationships and the emerging dynamics of administrative – managerial perspectives. It is believed that territory is directly linked to sovereignty to mould politics into a fundamentally state-centric social process. Territory and population go along to constitute a state. State borders and population also fuse to produce a distinctive anthropological category of a nation marked by a common identity history and interests. State happens to be a passage through which it transforms into a political community known as nationality. Such a nation may either be a homogenous or plural, depending upon circumstances of history and constructedness of individual and group identity. It is argued that State creates nation through the mechanisms of invention creation and of commonness among its subject people, who otherwise share a common geo-social space government is usually described as the institutional embodiment of the state through which one feels the essence and existence of the state without government, state becomes an abstract idea therefore, government is the authoritative agency of the state.

State in order to be a state needs to be sovereign – but is the sovereignty of state - socially limited or it is socially exclusive, there is a wide range of differing theories and perceptions. David argues that the state is not a unified entity – it is a multidimensional phenomenon the nature of which varies across time and space. Any attempt to understand the state must consider the spatial and temporal dimensions, the horizontal stretch of the state across territory, the depth of the state intervention in
social and economic life and the changing form of all these things overtime. There are four main theories of States namely, liberal theory of state, neo-liberal theory of state, Class theory of state and pluralist version of state. These will be referred to briefly in the following:

**Liberal Theory of State**

According to the liberal theory, State came into being out of voluntary will and association of individuals who otherwise feel unsecured and unsafe in their state of nature. Thus, the State comes into existence through free and equal will of the people of the social contract. In this context the relationship between state and society is marked by a mutual exchange under which people give up some of their natural rights in favour of a state that regulates ordered and civilized existence on contractual basis to lay down the foundation of a strong secular state. In Locke’s theory of state, state suppose to have a Constitution, sovereignty and representative government and the members of the society possess the right to dissolve government. J.S. Mill argues that the state should be the least interfering and its interventions in the affairs of the society is permissible and justified only when the freedom of one does not harm the equal freedom of others.

**Neo-Liberal Theory of State**

The Neo-liberal theory questions the moral validity of the extensive and interfering state (Hayek’s Milton, 2002). Therefore, a laissez-faire or free market society is the key programme and the central concern of neo-liberals. According to neo-liberal theorists like David Held and Anthony MacGrew, governments become coercive if they interfere with the people’s own capacity to determine their interests. Therefore, the authoritative capacity of government must be restricted to the minimum required for upholding justice and government activities in compass service function. Thus, the neo-liberal theory of state advocates of minimalist type of state that maximises the individual freedom, power and capacity through a system of market exchange mechanism.

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1 Ajay Kumar Singh, Centre for Federal Studies, 2005, Hamdard University, New Delhi
   et al ed. State and Societies (Oxford : Martin Robertson, 1983)
Class Theory of State

In contrast to the liberal and neo-liberal theory of the state, class theory of the state emphasises the class struggle between the ruler and ruled as propagated by communist manifesto. Karl Marx (1821) claimed that State hardly represents the interest of the all, rather of propertied class. Engles (1848-1859) in his book ‘Origin of the Family’, argues that state as a rule remains the state of most powerful, economically dominant class which through the medium of the state becomes political dominant class and thus holding down and exploiting the oppressed class. He further adds that the class theory of state even in its progressive and developed forms (Parliamentary Democracy) the state remains to be deeply embedded in socio-economic relations, linked to particular interest and remains synonymous with bureaucracy as a key to the organization and exercise of state power.

Pluralist Version of State

The pluralist version of state asserts that a society consists of several interest groups, which are constituted for serving different socio-economic and political interests. These interest groups become the primary unit of power distribution. In this context, pluralist state is a decentralised state where power is shared and exercised by many interest groups (David Held). The remarkable contribution of the pluralist theory is its emphasis on group and a decentralised system of government.

Wild Culture – Garden Culture

This theory considers culture as a major constituent of a nation. In Ernest Gellner\textsuperscript{3} Perspective nation is said to be constituted when there occurs a fusion of will, culture and politics. By referring of agrarian societies, culture is marked by system of stratification where each stratum may have its own set of intellectuals or elites that articulate there distinctiveness and separate identity. In such structurally differentiated society Gellner identifies two cultures i.e. Wild Culture and Garden Culture. Wild culture is that which is produced and reproduced spontaneously and carried from generation to generation as a part of life. Garden culture is the one cultivated and

\textsuperscript{3} Gellner, Ernest, Nations and Nationalism (Oxford: Basil Blackwell, 1983)
constructed high culture of elites and of specialised institutions. This gap of communication between the development segments and under developed segments of the same society may prevent creation of a cohesive community and total identity.

The views of the theorists of liberal and neo-liberal states on the one hand, and those of class theory represent the two extremes with regard to the arguments and debates on the impact of globalization and WTO the core subject of this study. Liberal and Neo-Liberal theorists of laissez-faire or free market economy are the strong hypo-globalizers who emphasis individual freedom both economic and political and the role of government is seen as an essential forum to determine the (rules of the game) and to interpret and reinforce the rules. On the other hand, the theorists of class theory are the strong opponents of globalization and WTO, who view it as a prescription — ideology not a reality and the whole process is lopsided, suppressive and harmful to most people in most countries.

It is rather difficult to identify at present a typical pluralist version of state or Wild Culture or Garden Culture state. Yet, interest groups and stratified segments of the agrarian society exists as constituted elements of state society and can affect the political decision. Organizations of civil societies, non-governmental organizations for various purposes which are growing in number of impact and is one of the good examples. In the long-run the majority may influence global as well as country decision. On the other hand, Wild-Culture – Garden Culture and the communication gap in the agrarian society is still relevant in the most of the developing countries specially the Least Developed Countries and this is why socio-economic development on those countries is almost stagnant because of the lack of political dynamics of society and because of the existing intra-societal and inter-society relations and conflicts.
1.2 Nation, Nationality and Nation-building

It is hardly to find a universally accepted formulation and lexicographic convergence on the meaning and theories of nation, nationality and nationalism. The conceptual divergence is mainly because these being interrelated phenomenon the object of which varies from society to society. Nation is a contested phenomenon of people's grouping and identity formation while nationality can be understood as political construction of nation. The motivation for nationalist upsurge was provided by the subsequent assertion of liberal theory of liberty, equality and self-determination, that each nationality should form a state. Nationality was invented mainly along language, folk tradition and culture.

The main proposition of historical natural theories of nationalism referred by Smith (2001) as a core doctrine can be summed up in the following.

According to J.S. Mill, nationality forms an important principle of political organization, it can not be the sole basis of political formations and extensions of loyalty. Beyond nation-state, other organizations may exist with which people can associate themselves. Nationalism is only one more step in the history of human progress but ultimate is the civilization. On the other hand, Carton Hayes (1933) actor considers state is not an end and also he rejects the formation of state exclusively on cultural basis; in other words, he rejects one nation—one state theory of nationalism. In order to analyse the process of nation, nationality formation the subjectivist—objectivist continuum theory or school of thought can help. The basic question that the theory addresses is how identity national/regional is formed? To answer the question, the potential significance of different objective maker like religion, language, culture territory were examined.

According to the theory, it is nationality that constitutes nation. Carton Hayes (1933) nationality designates 'a group of people who speak either the same language or closely related dialects, who cherish common historical tradition' and who constitute

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2 Hayes, Carton. Essays on Nationalism (New York: The Macmillan, 1933)
or think they constitute a distinct cultural society. And nationality becomes nation only when it acquires political unity, sovereignty and independence. Heyes specified objective markers which constitute people into a nation. He accords much importance to language, culture, history and religion as objective makers. For him, language is the most important factor in group identity formation as it performs multiple functions of storage, retrieval and expression of common faith and culture. Moreover, it records event, which in time and space undergo as history.

History is also an important determinant of identity as history is a process of recording events, traditions, personalities, myths and symbols. It is through history that memory is carried from generation to generation. But history remains a dead wood of records unless it is idealized — through a process of generating consciousness of being distinct. Further, when history is enjoined by distinct cultural and belief patterns, customs, traditions, the people emphasis a separate group identity. A group sharing distinct language, religion, history, culture is crystallized into nationality by political act. It is said that nationality is not a one-time-one-stroke phenomenon, but it is a dynamic phenomenon of construction and change. This is why, Heyes says that nationalities wax and wane, rise and fall appear and disappear. In this context it can be mentioned that identity formation is a complex process of rehearsal, invention, construction and change. Therefore, the relative importance of identity variables may vary from time to time and from space to space.

Through rehearsal, old cultural system and belief pattern can be rehashed in a new form. Through invention social and cultural symbols can be invented from the memories of the masses. Likewise through construction, new values symbols and myths about group past and present can be created. Similarly, through change deficit value system can be replaced and should be accommodative and inclusive of all shades of opinion and belief patterns of the people. Also it is important to refer to the fact that identity is a relative term. Therefore, individual identity can not be in total convergence with overall group identity, hence while harmony promotes group cohesion and languages are said to be in harmony when they become coterminous with each other.
1.3 Nation – State and Nation - Building

According to historical natural perspective, the main proposition of Smith (2001) as a core doctrine states that “nature has divided people into separate nations with distinguish characteristics”. Each nation is described to have a state of its own and state is needed for self-realization and full expression of cultural identity. Once state is formed loyalties to state should override other loyalties. According to nation nationalist assertion, is the process of imitation and importation and to be free every individual must belong to a nation and every nation requires full self expression and autonomy and global peace and justice require a world of autonomous nations.

Thus state, nation and nationalism are interrelated expressions aiming at the assertion of sovereignty. Hobbes and John Locke argue that state came into being out of a voluntary will and association of individuals, who otherwise would feel unsecured and unsafe in their state of nation.

The contested phenomenon of people’s grouping and identity formation is known as nation—but what constitutes nation remain till yet a problematic as well as nationalism and since sovereignty of the state lies with people, sovereignty could also lie with nation. Heterogeneity and homogeneity of the people’s grouping and identity societies as well as their constituting element affects the sovereignty of the state over its citizens, territories, resources and of being intact. Therefore, state in order to be state needs to be sovereign and whether the sovereignty of state is socially limited or it is socially exclusive depends on a wide range of different theories and perceptions. This is because the nature of the state varies sharply from society to society. David Held’s submits that the state is not unified entity rather it is a multi-dimensional phenomenon, the nature of which varies across time and space and any attempt to understand state must take into account its spatial and temporal dimensions. The horizontal stretch of the state across territory the depth of the state intervention in social and economic life and the changing from all these things over time.
In Locke's theory of state there are three important accounts of a liberal state. Firstly, the state is preceded by a constitution of a civil society which organizes state to preserve the right to life, liberty and prosperity. Secondly, as sovereignty ultimately lies with people, the members of society possess the right to dissolve the process of nation and nationality can be best analysed by the school of through subjective, objective theory. The main concern is how identity is formed national or regional. There are different objective makers like religion language, culture are identified to from a nation government. Thirdly, representative government with separation of powers is more democratic than any other form of state government. Government by consent or trust becomes the cardinal of Lock's theory of state.

The most important hypothesis of this theory is that objective makers do not naturally transform culturally similar people into a politically assertive community. Subjective consciousness of we feeling is constructed by elites, intelligentsia, leaders and by political leaders – it is further shaped by the forces of modernization, development, inter-community relations or conflicts and the different government policies, specially, cultural policies. The theory argues that it is nationality that constitutes nation – for Carlton Hayes, nationality designates a group of people who speaks either the same language or closely related dialects which cherish historical traditions that constitute a distinct cultural society. Nationality becomes nation only, when it acquires political unity, sovereignty and independence. For Hayes group identity in an attitude of human culture. He accords much importance to language, culture, history and religion and language is the most subsidies are inevitable because agriculture is an industry that is associated with everlasting risks – it is the source of the entire nations.

Important factory in group identity formations is language because language performs multiple functions of storage, retrieval and expression of common faith and culture. It records events which in time and pace undergo as history. Nationality or identity is not a one time-one stroke phenomenon – it is a dynamic phenomenon of construction and change – it is probably the reason Haye's says: nationalities wax and wave, rise and fall, appear and disappear. In this context, it can be said that identity formation is
a complex process of rehearsal, invention, construction and change. Therefore, the importance of identity variables may vary from time to time and from space to space. Rehearsal, here means rehashing old cultural system and belief concern pattern in new form. Invention means inventing symbols social and cultural from folk memories of the masses, especially of those which is hitherto un invented construction means the creation of new values, symbols and myths about groups past and present change contextually means replacement of value system by a new one which should also be accommodative and inclusive of all shades of opinion and belief patterns of people.

It is also important to assert that identity is relative and it can not be in total convergence with our all group identity. Moreover, identity presumes a set of identities within, which may either be in conflict or in harmony with each other. While harmony promotes group cohesion, conflict weakens it. Therefore, the two variables culture and language can be both in harmony and conflict. What becomes important is the degree of representativeness of each variable.

1.4 Federalism

Historic Background
The word federal, federation, federalism have etymological roots in the Latin term "foedus", which, according to Lewis Latin Dictionary, has at least eight meanings: alliance, association, compact, contract, league, treaty, trust, union. Its historical meaning have varied depending upon actual existential experiences. There are records to indicate that ancient Chinese in 6th Century BC applied some sort of federal principle to ward off foreign threat. Three Italian leagues of Etruria, Latium and Samnuim have been cited as early experiments in federalism.

The medieval union of Western and Northern Europe evolved varied patterns of federal arrangement. The German Imperial Confederation of 1871-1918 and the earlier federation of the United Province of the Netherlands, established in 1576, constituted a different format of division of power. But the classic experience of federalism has been that of Switzerland – the oldest continuing federal system in the
world that was lastly revised in 1874. With the establishment of the first democratic modern federation in the United States of America after its independence in 1776, the federal idea in modern shape gained clarity, obtained a defined democratic content and republican form. Between 1851 and 1961, seventeen federations were established in various parts of the world including, Switzerland, United States, Argentina, Mexico, Canada, Brazil, Australia, Venezuela, Germany, Austria, Russia, India, Pakistan, Malaysia, Nigeria, Cameroon and Tanzania.

Federalism has been employed on a larger scale only during the last two centuries. With emergence of modern countries or nations with their peoples having different cultures, races and languages and ideologies, the unitary form of government has become somewhat difficult and problematic in dealing with the prevailing social, economic and cultural diversities the main source of conflict in one nation.

The federal idea gained momentum from the mid nineteenth to the mid twentieth century – between 1851 and 1961. Seventeen federations were established globally covering the continents of America, Europe, Asia and the Pacific and Africa.

All federal polities, with exception of Switzerland, have emerged in countries marked by three characteristics: largeness of territory, socio-cultural diversities of the people and density of population. It can be postulated that the dismantling of the centralized authoritarian colonial rule over large contiguous multi-ethnic regions resulted either in the creations of many small states as happened in the case of Ottoman Turkish empire and the Austro-Hungarian Empire of Central Europe or it took the form of a new federal state in conditions of freedom, reconciling a new sovereign identity with regional and local autonomies.

Federal dispensation is the mode of the present and the wave of future, in humanity’s quest for an egalitarian, just and equipoise pattern of collective existence. It seeks to reconcile two basic imperatives of liberty and order in a world of variety and diversity. The defeat of the British Colonial rule in its North American colonies, in the last quarter of eighteenth century gave first to the first modern federal democratic
state the United States of America. The vigorous demand for autonomy within the British Commonwealth resulted in the establishment of systems in Canada and Australia. Likewise, the liquidation of British imperialism in South Asia gave rise to the emergence of two large federal states namely, India and Pakistan in 1948. By the same token, the decolonization of some African countries in the decades of fifties and sixties gave rise to three federal states namely, Nigeria, Cameroon and Tanzania.

All federation in the last two centuries exhibited a strong propensity for centralization of power and decision making. This is because of the need for stability of the system, territorial security, political integration and requirements of integrated market – system for faster growth. While this strengthened the sovereignty of the federal states, it vitiated the federal balance between the centre and the federating units, eroded the necessary autonomy of the states and weakened the democratic ethos at the grass-root level.

By the twentieth century, the situation seemed to have radically changed. A new world-wide demand for human rights, democratic culture, regional autonomies and independent initiatives had resulted in the thrust of cooperative federalism, based on demand for independence of the federating units, as a necessary preclude for better new federal union which was envisage as less rigid and more flexible to accommodate socio-cultural diversities almost in the mould of confederation. The mosaic of federalism globally had changed in the last two centuries twice: first form empire to centralized federations and powerful unions, and then in recent times it has been changing towards a pattern of decentralized cooperative and equi-poised federation.

**Meaning and Attributes**

It is rather difficult to find an agreeable definition to federalism. Yet political scientists hold a common view that federal government means the division of powers between two sets of governments, namely, the federal and State Governments. The term federal, federation and federalism have etymological roots in the Latin term Cloedus, which according to Lewis Latin Dictionary have eight meanings: alliance, association, compact, contract, league, treaty and trust. Federalism is a modern
concept and the theory and practice of such government is not older than the American Federation which came into existence in 1797. In order to give more insight to federalism and what it entails some definitions as quoted as follows:

Elliot, Pierre (1968) definition states that “Federalism by its essence a compromise and a pact. It is a compromise in the sense that when national consensus on all things are not desirable or can not readily obtained, the area of consensus is reduced in order that consensus on some things be reached. It is a pact or quasi treaty in the sense that the terms of compromise can not be changed unilaterally. This is not to say that the terms are fixed, but only that in changing them, every efforts must be made not to destroy the consensus on which the federal nation rests. Elliot stresses the need for a compromised binding consensus on matters that concern the peoples of the nations. Similarly Carl I Fredrick views federalism as primarily the process of federalizing a political community, that is the process by which a number of political communities enter into arrangements for working out solutions, adopting joint policies and making joint conversely, differentiated into a federally organized whole. Where R.C. considers federal government is a form of government in which the sovereignty political power is divided by the central and the regional or state government and they are co-ordinate and independent within their own spheres, Hathorn, B. Guy (1963).

Dicey (1962) considered federalism as a legal system of government in which neither the national government nor the regional government is subordinate to other. For Dicey, a federal state is formed if two conditions are available. First, the existence of pre-existing bond among federating units. Such a bond can be attributed to territorial common race and other factors that can generate a feeling of common nationality. The second condition is that people must desire union and not desire unity because if there no desire to unit, there is no clearly basis for federation.

Federalism, is thus a system of government of a country under which there exists simultaneously a federal or central government (legislature and executive) and several states or provisional legislatures and governments which are contrasted with unitary
state. Both federal and state governments derive their powers from a federal constitution and both are supreme in particular spheres.

Federalism is believed to be appropriate to large countries where government from one centre would be complicated and difficult and could be readily out of touch with the needs and desires of widely separated areas, and in countries where, particular parts are racial linguistic, legal or there particularities which they deserve to have safeguarded.

A federal state requires a written constitution or basic constitutional act appropriating governmental responsibilities between the Central Government and the State Government, and conferring the balance on the States, or conversely.

Federal government is one of three prevailing government systems. The other two forms are unitary and conferral state. With unitary state all powers are vested in a single Central Government without imposing any constitutional limitations upon its authority, and the local authorities operate as administrative agencies of the central government which exercise powers as central government delegates to the state so that there is a sphere of autonomy. Thus, unitarianism means the concentration of the strength of the state in the hands of one visible sovereign power while federalism means the distribution of the force of the state among a number of co-ordinate bodies each originating and controlled by the constitution (Decye). The third form of governing is confederation. The confederation system is a loose association of independent states which creates a union or Central Government to certain limited purposes (such as defense) while the member states retain their principal powers of government. The vary existence of the Central Government depends on the will of the member states. The confederation owns its existence not upon the terms of a constitution but from a compact from which they are free to withdraw at will and Central Government has no direct relationship with the people in each individual state and only to the extent that the state government permits.
Federalism has its own advantages and disadvantages. The advantages of federalism are that it frees the Central Government for consideration of national and international issues, and gives state or provincial government a measure of independence and ability to derive their own solutions for local problems. The advantage is that it creates a fairly complicated and legalistic structure, with much opportunity of disputes between federal and state governments on powers and their exercise. Finance, taxation and commerce give rise in particular to difficulties as well as command on national resources.

A federal state requires a written constitution which sets up a dual government – one government the federal or national government having authority over the whole territory of the country or nation which adopts the constitution and government for each of the regional units of which the federation is composed. The written constitution distributes government powers between federal and regional. The distribution of powers made by the constitution can not be changed or amended unilaterally either by federal or regional government. The distribution of powers vested in the constitution must be guarded by the judiciary which would be entrusted by interpreting the land and by enforcing the provisions against both the federal and regional governments and to invalidate any of their acts which transgresses the limitations imposed upon them by the constitution. The name federal government may be applied to any union of component members where the degree of union between the members super passes that of mere alliance. Pr. W.T. Wagner (1950) assents that whether state is federal or unitary is one of degree and the answer will depend upon how many federal features it possesses. Livingston (1956) argues that federation is more a ‘functional’ than an institutional concept.

There is a consensus of opinion amongst writers on political science that a true federal system involves the following essential features:

a. **Union of Autonomous Units**
A federation involves the union of several autonomous political entities for common purposes. Subject to exceptions or modification there is one feature common to all
federal constitution which divide powers between federal and regional governments. The federal government having control over nation-wide problem, extending over the entire federal territory, while regional governments control matters within their respective regions only.

b. Dual Government
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 derive their authority from the same source that the constitution of the land. With in the limits demarcated by the constitution, the units under the federal system are co-ordinate and not subordinate to the federal government.

c. Direct Authority Over the People of Both Governments
In a federation the union government operates directly upon the persons and property of the people within the same territory, in other words the union need not address its command through the State Governments.

d. Written Constitution
Since the division of powers between the 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, which are capable of being interpreted and enforced by some authority specified by the constitution for this purpose. The reason is that such distribution of powers and their organs, in order to be workable and stable and the limitations upon them to be enforceable, must be precisely defined by a written instrument.

e. Supremacy of the Constitution
As a federal state derives its existence from the constitution every power executive, legislative or judicial whether it belongs to the federation or state components in subordinate to and controlled by the constitution. Hence any act done by the federal or state government, which is inconsistent with the constitution must be invalid when a
federal polity possesses two constitutions, one for the federation and the other for each state and in case of any conflict between the two constitutions, the federal constitution shall prevail because of its supremacy.

f. Authority of Court
Division of powers between federal and state government vested in the constitution of the land is secured in the state courts to interpret the constitution and to nullify any action on the part of any of these authorities which transgresses the limits imposed by the constitution. The power of the courts are vested in the federal court which stands at the head of the hierarchy of court which has the final authority in interpreting the constitution under the various federal constitutions and its decisions are binding on the state court.

Federalism and Nation-building
Most importantly and in the thematic context of federal nation building, federalism is treated not merely as a functional category of dividing powers and authorities among the different units of federation but also as a grand design of integrating society and polity in a lasting federal union. In the process, the basic emphasis is to be laid on those aspects of integration by which diversities are accommodated within the structure and process of federal state and accorded due to legitimacy. Ajay Kumar Singh\textsuperscript{6} pointed out that loose application of federalism merely as statism has compounded the confusion for countries, and consequently undermined the significance of federalism as a theory of nation and state building. Therefore, the immediate concern of federalism has to be maintenance of both unity federalism structures difference into institutionalized cooperation and competition. To Raymond Breton, a federal structure is probably the most consistent with multiple identities and identification because it is designed to embrace entities that retain a certain degree of autonomy. Federalism allows for a mixture of autonomy and integration into a larger system conducive to optional conditions for the protection and enhancement of each level of collective organization. Further more, it is a system that can mitigate inequalities, it is also a regime that permits different types of identities and identifications to exist

\textsuperscript{6} Ajay Kumar Singh, From Federalism to Federal Nation Building, Perspective on Building Society and Polity
simultaneously but at different levels in the overall system. Therefore, by nature a federal policy is a contractual arrangement in which unity of polity and of society are reconciled.

Thus the State-Society relations become significant in examining federalism and federal nation building. This is because if social diversities operate entirely at one level, and polity at another level, the overall federal structure is likely to be unstable. To consider the modern federal subject, the examination of centre-state relations, in relation to sociological foundation of a federal polity, and consequently economic and political dynamics of state-society relations is essential. Therefore, the principle of legitimacy becomes an important tool in analyzing federal policies. It is hypothesized that if both society and polity legitimize each other, there is a federal stability. But, if there is over-legitimization or deligitimization of either of them, the federal equilibrium gets disturbed and at extreme, there is likelihood of dissolution of federal union. For maintaining a federal union, federal theories stress on structure and processes special in the case of those having political salience in generating cooperation and conflicts. Thus, in the framework of federal nation-building Carl J. Friedrick pointed out that not seen only as a static pattern or design characterized by a particular and precisely fixed division of power between government levels. Federalism is also and perhaps primarily the process of federalizing a political community, that is the process by which a number of political communities enter into arrangements for working out solutions, adopting joint policies and making joint conversely, differentiated into a federally organized whole. Other processes of critical relevance to federal nation building are regionalization, democratization and secularization. While regionalization as a federal political process refers to the territorial distribution or devolution of federal functions, powers and authority, the democratization when viewed as a socio-political process lays down the foundation of a socially accountable and responsive state. On the other hand secularization stands for a non-discriminatory socio-economic and political order. In nutshell, federal nation building as a valid theory of state-society building seeks to establish a tripartite
relationship between nation, state and territory on the one hand, and democracy, nationalism and federalism on the other.

There has been a major shift in the federal theories. Federalism as a value concept and as a political design of building society and polity has undergone a paradigmatic shift from mere statism to federal nation building which weaves together the culturally discreet groups into a federal polity which retains, protect and articulates the federal qualities of the society through structuring of the state society relationships in such a manner as each of them legitimizes the other and at the same time retain their respective identity, autonomy and integrities within a generalized pattern of governance based on consensus, cooperation and coordination of activities in the areas of commonality. Whatever may be the origin of federalism “biblical theology or Greek’s sympoliticia, it had always been an integral part of thoughts on nation-state, democracy, sovereignty, autonomy and constitutionalisation. In the early modern political thoughts during 17\textsuperscript{th} and 18\textsuperscript{th} century, it was as a measure of peace and security stressing that federal-confederal arrangements always needed to be covenant based, reconciling the twin process of maintenance of liberty and constitutional public order. The first ever systematic treatment of the subject was provided by the German theorist Johannes Althusius (1557-1638). Althusius holds that every human association is formed by “pactum expressum vel tactium”. The pact or convenant is the first fundamental principle of symbiosis that is ‘living together’. He viewed symbiosis as the fundamental pattern of political life that determines the character of all human associations from the family as the smallest symbiotic community to commonwealth as the universal political association. ‘Living together’ as a political principle gives politics a very prominent social aspect as the state is seen as the symbiotic institutions that coordinates social and economic spheres in an integrated manner and not as a political institution that governs and controls. It is the principle of symbiosis that laid down the theoretical consideration of federalism as a form of political organization. Thereafter, Hugo’s emphasis was on territorial division of powers between two-state forms. Hamiottton Madson and lay invention of federal state in America; Tocquville distinction between two kinds of centralization namely governmental and
administrative; and French stress on personalism which envisages general application of federalist principles in all areas of society. Proudhonian integral federalism which advocates for demonopolization of the nation-state internally through regionalization and redefinition of local commune in respect for linguistic and cultural diversity and its accommodation in a network or federal institutions to ensure autonomy and integration. Dicey and Wheave considered federalism strictly as a legal system of government in which neither the national government nor the regional government is subordinate to other. For Dicey a federal state is formed if two conditions are available. First, existence of pre-existing bond among the federating units. Such a bond can be attributed to territorial contiguity, a myth of shared history, common race and other factors that can generate a feeding of common nationality. The second condition is that people must desire union and not desire unity because if there is no desire to unite, there is no clearly basis of federalism. In case there is a desire for unity, the will naturally find its satisfaction, not under a federal, but under Unitarian constitution. For federalism to work for federal union building, federal constitution must take into consideration the social engineering by which a federal balance in society on the one hand, and between society and polity on the other is attempted. This is why the constitution in the framework of federal nation-building is to be a dynamic instrument of change, neither too rigid nor too flexible. A decisive shift in federal studies took place in 1950s when Livingston observed that the essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology but in the economic, social, political and cultural forces that have made the forms of federation necessary. This is because federalism, like most institutional forms, is a solution or an attempt to solve a certain kind of problem of political organization as federal governments arise in response to certain stimuli to solve the problems represented by these stimuli. For him, federal government is a device by which the federal qualities of the society are articulated and protected. His observation had a far reaching impact on reorienting the federal studies from its legal and constitutional shadings to sociological and political inquiry of the structure and process of nation-building and state formation. This had advantages in terms of (i) stress on interdisciplinary approach; and (ii) on bridging the gap between state and
society by accommodating diversities in the structure and process of a union type federal polity; and evolving federalism as a way of life, a world view and a philosophy of living together.

Once the essence of federalism is located in society, the next step is to territorially group them 'cultural groups' on the principle of maximum homogeneity within the maximum identity. It is here, the political geography intervenes to broaden the methodology of federalism which includes the analysis of spatial interaction pattern among regionally specified diversities. In connection with this, Peter H. Markel made his observation that 'a federal system is characterized by at least two patterns of communities; one all-inclusive and the other composed of several mutually exclusive sub-communities. Therefore, the geographical nature of community pattern, specially the location of the boundaries among the sub-communities and around the whole community are crucial to the federal system. It is this federal stress on terrorization of diversities that helps to distinguish federal nation from plural nation; also between functional pluralism and 'federal pluralism'. It is said that federal nation, in this framework of analysis, is essentially a territorial political construct rejecting national homogeneity but promoting composite cultural national identity.

The territorially grouped diversities are politically arranged in the institutionally framework of federal polity on the principles of Daniel J. Elazar phrase 'self-rule plus shared rule'. Federalism defined in this manner involves some kind of contractual linkage of presumably permanent character that provides for power sharing, cuts around the issue of sovereignty and supplements but does not seek to replace or diminish prior organic ties where they exist.

The matrix design of federalism puts emphasis on a network of institutions which help to structure the differences into cooperation and to constitutionally document. The state-society relationship in the manner that helps to retain the individual identity of the participating group in the union, and at the same time helps them to transcend as citizens of a federal state.
Vile defined federalism as a system of government in which central and regional authorities are linked in a mutually interdependent political relationship, in this system a balance is maintained such that neither level of government becomes dominant to the extent that it can dictate the decision of the other, but each can influence, bargain with and persuade the other.

1.5 The Nature and Working of the Federal System

Carl J. Fredric considers federalism as primarily the process of federalizing a political community by allowing a number of political communities entering into arrangement for working out solutions, adopting joint policies and making conversely differentiated into a federally organized all (i.e. civil societies, political parties and others). For Dicey, a federal state is formed if two conditions are available. First, existence of pre-existing bond among the federating units. Such a bond can be attributed to territorial continuity, a myth of shared history, common race and other factors that can generate a feeling of common nationality. The second condition is that people must desire union and not desire unity because if there is no desire to unity, there is no clearly basis of federalism. Livingstone observed that the essential nature of federalism is to be sought for, not in the shading of legal and constitutional terminology but in the economic, social, political and cultural forces that have made the forms of federation necessary. This is because federalism like most institutional forms, is a solution of or an attempt to solve a certain kind of problem of political organization as federal governments arise in response to certain stimuli to solve the problems represented by these stimuli. For him, a federal government is a device by which the federal qualities of the societies are articulated and protected. His observation had far reaching impact on reoriented the federal studies from its legal and constitutional shadings to sociological and political enquiry of the structure and process of nation-building and state formation. This thought could bridge the gap between state and society by accommodating diversities in the structure and process of

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7 Livingstone, Federalism and Constitutional Change, (1956), pp. 6-7
a union type federal polity and evolving federalism as a way of life and a philosophy of living together.

By considering the views of Carl J. Fredric, Dicey and Livingston, nation-building is the most important factor that can secure a coherent federal system which ensures and promotes cooperation between federal government and states. In the thematic context of federal nation-building, federalism besides being treated as a functional category of dividing powers and authorities among different units of federation, it is also treated as a grand design of integrating society and polity in a lasting federal union. The basic emphasis is to be laid on those aspects of integration by which diversities are accommodated within the structure and process of federal state and accorded due to legitimacy. For Raymond Breton the structure is to be designed to embrace entities that retain a certain degree of autonomy and allows for a mixture of autonomy and integration into a large system conducive to optional decisions. It is also argued that federal system is the system that can mitigate inequality and can permit different types of identities and identifications to exist simultaneously but at different levels in the overall system. Thus, for federalism to work for federal union building, federal constitution must take into consideration the social engineering by which a federal balance in society on the one hand and between society and polity and on the other hand, is attempted. This is why the constitution in the framework of federal nation building is to be a dynamic instrument of change, neither too rigid nor too flexible. Other factors of federal nation-building are regionalization, democratization, and secularization. Regionalization refers to devolution of federal functions, powers and authorities. Democratization is viewed as social process by which state becomes socially accountable and responsible whereas secularization stands for a non-discriminatory socio-economic and political orders.

From the above cited views and facts, it is apparent that the proper working of the federal system depends on the ability and flexibility of federal system to weave

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8 Friedrich, Carl J., Constitutional Government and Democracy : Theory and Practice in Europe and America, New Delhi, 1974
9 Dicey: Law of the Constitution, Ch. III 138 (1952)
together the cultural discrete groups into a federal polity which retains, protects and articulates the federal qualities of the society. This can be made through structuring of the state society relationships in such a manner as each of them legitimizes the other and at the same time retain their respective identity, autonomy and integrities within a generalized pattern of governance based on consensus, cooperation and co-ordination of activities in the area of commonality. James Althusius concept of symbiosis or "living together" as a political principle gives politics a very prominent social aspects as the state is seen as symbolic institution that co-ordinates social and economic spheres in an integrated manner and not as a political institution that governs and control.

The examination of state centre relations must take into account the sociological foundation of a federal polity and consequently the economic and political dynamics of state society relation. For maintaining a federal system, federal theories stress on the structure and processes, especially in the case of those having political salience in generating cooperation and conflicts. For Carl J. Frederic, federalism is also and perhaps primarily the process of federalizing a political community by allowing a number of political communities entering into arrangement for working out solutions, adopting joint policies and making conversely differentiated into a federally organised all "civil societies, political parties" and others.

The exercise of the legislative and executive powers of federal and state government vested in the Constitution might jeopardise the very existence or nature of the federal system unless issues of co-operation, co-ordination, autonomy and harmony are assured through the nation-building process. Therefore, special limitations or prohibitions are required, so that in the exercise of their legitimate powers, decisions or actions might not operate against the federal system or the national interest. In order to achieve and maintain this, general safeguard and limitations upon federal and state powers are necessary. Such limitations or safeguards are to be imposed either by the Constitution itself or evolved by the judiciary. Some important safeguards or limitations can be referred to briefly in the following:
a. Reciprocal Obligations for Mutual Existence

The federal system can’t survive unless the existence of the central government and the states is ensured against mutual aggression, secession or domestic upheaval. The reciprocal obligation can cover the following:

- duty of the federal government to protect the constitutional or republican form of government in the states,
- duty of the union to protect the state against invasion, and domestic violence,
- duty of the states not to cede from the federal government,
- mutual immunities of instrumentalities,
- duty of the federal to maintain the constitutional form of government of the states, and
- Obligations of federal government not to interfere with the representation of states in federal legislature

b. Other obligations are:

- Obligations not to discriminate between or against states in finance, taxation, commerce and trade. Federal government should not exercise its power under the Constitution in such manner that causes discrimination between the states.
- Also the obligations of federal government not to interfere with the territorial integrity of a state without its consent and it is the duty of the federal government to protect the constitutional system in the state.

Such safeguards can help in building the trust between the federal government and the states and consequently the promotion and strengthening of co-operation, co-ordination, autonomy and harmony.