INTRODUCTION

Issue

The primary focus of the present work is to examine the efficacy of federalism and federal system of governance in managing environmental questions in the contemporary federal polities. In 20th century environment has emerged as one of the areas of major concern. Average temperature of earth’s surface has increased by 0.74 % Celsius since 1750. It is estimated to increase by 2% to 4% Celsius by the end of 21st century. If average temperature will increase in such a rapid manner than it may lead to many drastic changes in the ecosystem. Many biological species are undergoing the process of gradual extinction. Shifting nature of eco-balance is causing frequent occurrences of devastating storms, floods, and drought. Further the agricultural belts are shifting due to rising global temperature. Even agricultural production is expected to drop in tropical and sub-tropical region. These changes may disrupt the land use and food supply. Another major impact of rising of temperature is rise in sea level by 18 to 59 cm in 21st century, causing serious consequences such as submergence of many island and coastal areas. Rapid industrialisation and urbanisation are also causing serious concerns of pollution, deforestation, natural and man made disasters etc. From biological perspective one can also notice gradual shifting of plant and animal ranges towards the pole and areas of higher elevation, for example in India apple growing belt is shifting towards the
higher altitude since last three decades. One also witnesses change in the life cycle patterns of many species.

It is in this context that environmentalists are demanding recognition of nature's right. We find two different perspectives- homocentric and ecocentric. Homocentric perspective holds that all issues should be explored from the perspective of man's own interests. On the other hand, ecocentric perspective emphasises that man should owe responsibility to nature. But how to define the right of nature is a problematic issue. Positively it entails retention and maintenance of diverse component of environment. Negatively it prevents exploitation of environment in any form. It has been argued by the political theorist that nature has its own right and man has moral responsibility to protect nature's right. Importance of these rights has been recognised nationally and internationally. Internationally many initiatives have been undertaken to make nations aware of environment and evolve international cooperation for the protection and promotion of environment e.g. United Nations Conference on Human Environment 1972, Earth Rio Summit 1992, Kyoto Protocol 1997, World Summit on Sustainable Development 2002 and recently held Climate Change Conference at Copenhagen. At the international level we find divergent perspectives of developed and developing countries. Developing countries generally argue that world wide environmental degradation has taken place due to excessive exploitation of natural resources and industrialisation by developed countries. On the other hand developed countries argue that as
environment is shaped by each nation, therefore each owes equal responsibility of environmental protection.

At the national level environmental question requires concerted effort and coordinated action among different levels of government. It is not the sole responsibility of any one level of government, but of all. As environment has inter-regional and transnational ramifications, there is an urgent need for federal management and sharing of responsibilities. It is in this context that federal system of governance assumes critical resilience in addressing to the question of environment.

Before we proceed further, it is worthwhile to mention that environment as a discipline of knowledge, as a political theory, as ideology of interests, is only of recent origin. Most of the historical studies are value-loaded, though they succeed in situating environment in divine prescription of retention of 'nature'. Environment as a self-conscious field of academic inquiry emerged mainly in 1970s with the publications of *Ecology and the Politics of Scarcity* (1977) by William Ophuls, *Ecology of Freedom* (1982) by Murray Bookchin and John Dryzek's *Rational Ecology* (1987). These studies mainly revolve round the question of 'ethics', a normative theory of environment. However, Andrew Dobson's essays titled *The Politics of Nature: Explorations in Green Political Theory*, (1993) is considered as pathbreaking study, presenting a Political Science of environment (better read political theory of environment). Dobson presents three sets of arguments (1) natural world affects, and is affected by political decisions; (2) politics of environment is closely linked to
theory of equity and justice in a society; and (3) environment constitutes a critical site of inquiry, introspection and policy investment. Subsequent studies are marked by great paradigm divide-liberal-capitalist, and Marxist ecology. Central analytical concern of both schools of thought is to situate ownership of natural resource. For former, protection, preservation and development of environment is by and for the market, but the latter seeks to retrieve environment from the site of state to society or people, a subaltern mode of ownership and control. In-between divided paradigm, we find a plethora of textual studies where efficacies of laws on environment have been examined. Most of the Indian studies belong to this category. Corelationship between law, environment and governance (federal) has hardly been studied. Narrow-pedantic view could not serve the cause of nature. It is in this context that the present study marks a modest departure form previous studies. No specific study here has been referred to for reasons of loss of generality of understanding. One finds a complex interplay between environment as a political theory and federalism as system of government. Together they standardize the policy networks on environment. In other words, a policy study approach is recommended for understanding the complex question of environmental governance. It is in this context that there is urgent need to explore federal theory of environment.

As generally understood, federalism provides for a system of 'self-rule plus shared-rule'. Its strength lies in institutionalisation and
constitutionalisation of each dimension of governance. It has participatory stress. Entire federal governance is subject to the division of competence on the basis of recognition of two federal rights (i) Right to decide and (ii) Right to act. While "Right to decide" refers to the decisional autonomy of the units of government, "Right to act," means executional autonomy. The two forms of autonomies are expected to produce efficient governance (of environment), which otherwise is not possible within the traditional system of public administration, marked by undue hierarchy, subordination and desk failure.

A federal system is marked by different degrees of constitutionally protected and coordinated noncentralisation, decentralisation and deconcentration. Exercise of allocated powers follows a predictable path of decision and action by each level of government or structure of authority, and better management of time, space and resources. As a matter of fact federalism is key to the core concept of good governance. As UN definition maintains good governance consists of the mechanisms, processes and institutions through which people and civil society articulate their interests, exercise their rights, and mobilise themselves to ascertain political accountability and transparency. Intrinsically good governance is always participatory.

Objective and Scope

The present work explores the feasibility of federalism as a system of good governance in managing environmental issues. Canada and India have been selected for drawing comparative lessons. In a way present study, uniquely
examines environmental governance from hitherto unexplored perspective of federalism. It simultaneously, for better conceptual understanding, examines the different theories of federalism and modes of distribution of powers, authorities and functions. Accordingly, it prioritises the discipline of federalism from environmental perspective. Given the symmetrical federal experiences, India and Canada naturally qualify as domain of study. Issues of environment have been factorised and classified according to their critical significance in terms of policy choices. The combinatorial structure has been evaluated in terms of better federal management of environment. In the process, many new dimensions of federalism and environment have emerged, which may probably, contribute to critical mass of knowledge on the subject.

**Working Hypothesis**

The crucial hypothesis of the present work is that the federalism as a system of governance is better suited to deal with environmental questions. It has been tentatively assumed that federalism can provide an effective solution to the emerging concerns of environment. This is because federalism essentially provides a model of disaggregated governance without any extensive and intrusive mark of hierarchy. Environment at once is concern of the society and polity on the one hand, and territorial diversification of law, economics and administration on the other. As environment is a post-industrial development, therefore classical federalism is not sufficiently equipped to address to the question of environment. As we
know, classical federalism is based on dual-system of rule and disengaged governance, it is therefore the theory of federalism needs to be explored differently but according to its generic spirit of living together'. In the process, the question of centralisation or decentralisation has been contextually analysed. It has also been attempted to show if centralisation (or better read as nationalisation of environmental governance) is not a virtue, it is also not an evil. Rule making in order to standardise policy outlook and to meet treaty obligation may witness concentration of power at one pole, but its execution can be diversified. Similarly local resources can be aggregatively and creatively planned and mobilised to meet national fiscal deficiency. Lastly it has been shown that federalism as a system of 'self-rule and shared-rule' still holds value importance in dealing with the problematique of post-industrial and post-capitalist development. Meta narratives of the work have been constitutionally structured where structure of 'authority' has been critically explored.

Methodology

The present study applies four different modes of analysis, or methodology namely historical, descriptive, analytical and comparative with case-specification. Following methodology of historical structuration, the philosophy of federalism has been explored in order to delineate its central axioms, and its contemporary relevance in governing critical issues like environment, a post-capitalist and industrial phenomenon where complex relation between man and nature has significantly changed. A polity has its
own historicity, it is therefore evolution of Canadian and Indian federalism has been briefly examined in order to discern analytical tool of dealing with vexed question of environment. Historical methodology by implication is descriptive; therefore critical narration of constitutionalism becomes necessary tool for analytical understanding. Surely the canvass of research includes text and context of policy documents. Case-study techniques have been suitably applied to in order to confine the domain of present work. A virtual field trip through the universe of web has also been attempted. Web-sources have been used to collect and collate primary and secondary data, particularly those posted on official web addresses. This is besides other published sources available in different knowledge centers located in national capital. Lastly comparative framework of analysis has been used to draw lessons from comparable data and cases.

Chapter Plan

The present work has been divided into five chapters. The first chapter “Idea of Federalism” makes a modest attempt to situate the theory and philosophy of federalism in order to delineate its central techniques of distribution of competence and its applicability from the perspective of environmental governance. Further, the different perspectives have been classified as legal, sociological, spatial and political. It also presents a model centric analysis of two polities particularly with reference to their distinctive mode of distribution of powers. This generically helps federal governance of environment in their respective polities. Second chapter “Governing
Environment" analytically situates the key concerns of environment from a federal perspective. The issue of environment has been analysed through critical appraisal of legal constitutional provisions, policy framework and institutional mechanisms in two polities. Similarly the third chapter, ‘Disaster Management and Governance’ a late entry in federal discourse has been exhaustively analysed, and comparative experiences have been suitably explored. In the similar vein, the Hazardous Waste Management has been dealt with in fourth chapter. The last chapter looks into the fiscal dimensions of the problem under study. Conclusion, though brief, has been structured in a manner as to add to the further growth of critical understanding on federalism and environment. It is a modest confession that the present work might have overlooked many other important dimensions, but given the scope of the study, an attempt has been made to generate a systematic explanation and a model centric view of the subject. Explanation follows commonsensical and structuralist format of understanding.
CHAPTER-I

THE IDEA OF FEDERALISM

Growth and Evolution

Federalism is a dynamic theory of state and nation building. From a political perspective, it means constitutional division of powers between federal and provincial governments on the one hand, and between state and communities/societies on the other. In federal polity, power is distributed in a way that matters of common interests are put under shared governance and the matter of local importance are assigned to the unit-government. Originating from its Latin root “Foedus” meaning a “covenant”, federalism by nature is always compacted or contractual. Being contractual means, governance by consent. It is therefore, Daniel J. Elazar, cryptically summarises essence of federalism as ‘self-rule plus shared rule’,\(^1\) a ‘grand design of’ living together.\(^2\) Division or sharing of sovereignty, and institutionalisation of state-society relationships are the two founding principles of federalism. Federalism reconciles opposites. Two divergent but self-governing societies or communities share common political space, form one economic union and one social comity. As a matter of fact, “federalism constitutes a complex governmental mechanism for governance of a country. It has been evolved to bind into one political union several autonomous, distinct, separate and disparate political entities or administrative units. It seeks to reconcile \textit{unity with multiplicity, centralisation with decentralisation} and \textit{nationalism with localism}. The two levels of
government divide and share the totality of governmental functions and powers between themselves (emphasis added). Desire for the union, security, autonomy and integration are some of the driving forces of the formation of a federation. In order to delineate, systematic understanding of federalism, critical mass of knowledge has been classified as under the following heads.

**Federalism as a Theory of Peace**

Though Elazar traces the origin of federalism in Biblical theology, the first ever systematic treatment of federalism is found in Johannes Althusius (1557-1638) much celebrated work, *Politica Methodice Digesta* where he holds that "politics is the art of associating (consociandi) men for the purpose of establishing, cultivating, and conserving social life among them. Whence it is called "symbiotics". The subject matter of politics is therefore association (consociatio), in which the symbiotes pledge themselves each to the other, by explicit or tacit agreement, to mutual communication of whatever is useful and necessary for the harmonious exercise of social life." Symbiosis, holds Thomas Hueglin, is the most original contribution of Althusius. In his construction, a polity is formed when symbiotes communicate with each other for common ends and common purposes. A federal community is one which recognises the principle of 'self', and simultaneously upholds the principles and practice of common citizenship. Federal polity communicates 'things', services and common rights. Symbiosis is a principle of living together. Althusius considers federal union as a symbiotic construct of various communities (political). His principle of
symbiosis lays down theoretical foundation of federalism as a form of political organisation. For Althusius, state is not merely seen as a political institution 'which governs and control a completely separate sphere of social and economic activities, but is itself the symbiotic coordination of these activities.' Seminal contribution of Althusius lies in construing federalism as 'Grand Design of Living Together', a doctrine of 'peace', especially generated in the federal political process.

Living together also constitutes one of the key elements in Rousseau's theory of 'Peace'. His idea of federalism is best expressed in his work "A Lasting Peace through the Federation of Europe: Exposition and Critique of St. Pierre's Project" (1782). He recommends federalism as union of small republics, and as 'league', a confederation of large republic, where "the contracting sovereigns shall enter into a perpetual and irrevocable alliance, and shall appoint plenipotentiaries to hold...a permanent Diet or Congress, at which all question at issue between the contracting parties shall be settled and terminated by way of arbitration or judicial pronouncement." Such a league, as Rousseau holds, shall be governed by rotation of Presidencies. He further writes that "the federation shall guarantee to each of its members the possession and government of all the dominions which he holds at the moment of the Treaty...." Rousseau counts the following advantages of federalism:

I. Certainty of settlement of all disputes without war; in other words, a peaceful resolution of conflict.

II. 'Law of succession recognized by the custom of each province'.

III. Security of negotiations between rulers. In other words, executable guarantee
of treaties and 'engagements'

IV. Reduction in the military expenses

V. ‘A notable increase of population and agriculture, of the public wealth and the revenue of the prince’

VI. Freedom of trade and overall enhancement of ‘public wealth and happiness’.

Rousseau advances the cause of European federalism, but fails to reconcile federalism with persistent caprices of nationalism. His grand design of federalism fails both at the national and international levels. National federalism is vitiated by the hostilities of small republics, and international federalism for reason of him recommending ‘violence’ as means of peace. ‘Engagement of Prince could but produce an autocratic order of league governance’. However, his theory of federalism surely advances the cause of federalism as ‘discipline of peace’. As Riley points out, “however defective they may be, nonetheless, Rousseau’s federal theories remain quite instructive, because they show that contrary to much modern opinion-federalism does not necessarily go hand-in-hand with democracy in terms of direct participation by all citizens in the making of all fundamental decisions.”

Rousseau, Kant and Montesquieu, whose main philosophical engagement was with the idea of nation-state, are considered as providing a normative text of federalism, where federalism is critically shaped as a system of government where opposites unite to form one union for achieving the goal of ‘perpetual peace’, which otherwise was not possible due to a particular state of nature. Thus, Montesquieu in his much-celebrated work *Spirit of Laws* (1748) advocates a confederal form of government consisting of small republics. Such a
confederation combines the advantages of small republican and democratic state, and at the same time it has the intrinsic power to withstand the external threat from big monarchies. He provides a 'democratic-republican' model of federalism. His ideas reverberate in Kant's *Towards Perpetual Peace* (1795). For him, the first definitive principle for 'Peace' is the establishment of a republican constitution—"A constitution established, first on principles of the freedom of the members of a society..., second on principles of the dependence of all upon a single common legislation..., and third on the law of their equality..." The second principle of Peace is: "the right of nations shall be based on federalism of free states." The kind of nation-state that Kant advocates is that of a federal nation—one state with multiplicity of nations within, constituting one 'Nation'. In other words, a federal nation is *Nation of nations* and a *States of states*. This is morally superior, democratically plausible, and practically feasible political order, which would eventually replace 'politics of war' with 'perpetuity of peace'. A federal state could not but be a *pacific league* (foedus pacificum), "what would distinguish it from a *peace pact* (pactum pacis) is that the latter seeks to end only one war whereas the former seeks to end all war forever. This league does not look to acquiring any power of a state but only to preserving and securing the freedom of a state itself and of other states in league with it, but without these being any need for them to subject themselves to public laws and coercion...." A federal state is civil social union where collective wisdom lies in the recognition of the right of nations, a free will association of equals. If one closely analyses Kant's federal philosophy, one is fairly convinced that he offers
a normative theory of rights—right of a nation; right of a state; and cosmopolitan right. What he lays down is the ‘pure concept of duty of right’ a principle of mutual recognition of rights of each other, whether it is nations, or states, or people. It is therefore text of a federal constitution should thoroughly conform to the principle of duty of right, because it is morally superior and ethically right to overcome the evils of imperfection, which ‘state of nature’ unleashed during war of all with all. “But”, writes Kant, “Any rightful constitution is with regard to the persons within it,

I. one in accord with right of citizens of a state, of individuals within a people (ius civitatis),

II. one in accord with the right of nations, of states in relation to one another (ius gentium),

III. one in accord with right of citizens of the world, insofar as individuals and states, standing in the relation of externally affecting one another, are to be regarded as citizens of a universal state of mankind (ius cosmopoliticum). This division is not made at will...but is necessary with reference to the idea of perpetual peace.

From Althusius to Kant, federalism was essentially conceived as a grand design of living together, a theory of peace, a just political order combining the virtues of democracy and republicanism. Mankind has no other sureties of peace than federalism. It is a form of government whose constitution rightfully recognizes the principle of ‘sharing self’. What they concluded is that federalism is feasible both nationally and internationally, a covenanted bonding of people, nation and state—a state of perpetual peace. Montesquieu sees confederation as a republic which stands as a popular government and blends the advantages of monarchy and republicanism as he says “it is very probable...that mankind would have been obliged, at length, to live constantly under the government of a single
person, had they not contrived a kind of constitution, that has all the internal advantages of a republicanism, together with the external force of a monarchial government. I mean a confederal republic.” Montesquieu maintains that such confederation is an outcome of convention in which several smaller states give their consent to become a new large state. This new state is capable of providing security to confederal republic, as Montesquieu says “a Republic of this kind, able to withstand any external force, may support itself without any external force, may support itself without any internal corruptions. The form of this society prevents all manner of inconveniences.” Further he states if any single member, within the confederation, tries to rise as a supreme authority then he can be prevented from doing so by other members of the confederations. However Montesquieu maintains that at the time of urgency the confederation may be dissolved and members can retain their sovereignty.

Legal Theory of Federalism

As the idea of federalism developed in the debate on ‘sovereignty’, we find legal shadings in the works of K.C Wheare and A.V. Dicey. They do not provide explanation to what federalism is, but their concern is what a federal constitution ought to be. In their construction, a federation is one whose constitution is premised on the legal maxim that two orders of governments are independent but coordinate to each other. They directly act upon their citizens. Drawing analytical reference from the working of U.S. constitution, K.C. Wheare in his famous work, Federal Government, 1947, writes that in a federation “field
of government is divided between a general authority and regional authorities which are not subordinate one to another, but to cooperate with each other."¹⁶ For Wheare, mere division of function does not constitute federalism. Division must conform to the principle of equality and autonomy of jurisdictions. What is, then, divided is sovereignty where one government acts upon one element of authority, and other government on another element. Two orders of government are neither superior nor inferior. Their sovereignty is limited by none, but by the territoriality of writ of orders. Two governments together constitute one government process. They are co-ordinate partners. Thus for, Wheare, "federal government means...a division of functions between co-ordinate authorities, authorities which are in no way subordinate one to another either in the extent or in the exercise or in the exercise of their allotted functions."¹⁷ What Wheare recommends by way of conclusion is a kind of non-intrusive polity, duly codified and governed by a written constitution with not-to-amend (a highly rigid process of amendment) features.

On the other hand, Dicey holds that federalism aims to combine national unity with state rights. Thus a federal constitution is designed in a manner as to accommodate different claims of national sovereignty. Constitutional division of power ensures that matters of common interests are to be governed by national government and matters of local importance should be assigned to the constituent units. This is because nature of division of authority is consequent
upon societies' will to share or not to share. The two preconditions for formation of a federal polity are:

I. Existence of pre-existing bond among the federating units. Such a bond may be because of the territorial contiguity, a myth of shared history, common race, and other such factors (probably the objective markers of identity), which may to an extent generate a feeling of common nationality.

II. People must desire union, and not desire unity.\textsuperscript{18} Because, writes Dicey, "If there be no desire to unite, there is clearly no basis of federalism.... (Similarly) if... there be a desire for unity, the wish will naturally find its satisfaction, not under a federal, but under a unitarian constitution...."\textsuperscript{19} It is probably this paradox of reconciling 'national unity and power with the maintenance of state rights' that a rigid constitutionalism was advocated by him\textsuperscript{20}. Dicey further maintains that a developed federal state incorporates three essential characteristics namely (i) supremacy of the constitution; (ii) divisions of power; and (iii) independence of judiciary.\textsuperscript{21}

Legal theory suffers from strict regimentation of government. It hardly situates federalism as theory of concord; therefore we hardly find any advocacy or recommendation for structure of coordination. For them, a federal constitution should be based only on upholding the idea of sovereignty, and lest to building of a federal nation. They hardly offer any explanation to the process of nation-building within a federal system. In their mode of explanations, nation and state are hardly synthesised to generate any perspective of federalism as theory of rights. Legal theory, in nutshell, is sociologically deficient, yet their contributions lie in crystallising the idea of federal constitutionalism.
Sociological Theory of Federalism

William S. Livingston and Will Kymlicka have elaborated upon federalism from sociological perspective. They attempt to retrieve federalism from the legal orthodoxy of K.C. Wheare and A.V. Dicey. Livingston contribution lies in situating federalism and federal explanation in society; a process of federalising society where 'freedom' is maximised within overall framework of social union. He says that "essential nature of the federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces-economic, social, political, cultural-that have made the outward forms of federalism necessary. Federalism, like most institutional forms, is a solution of, or an attempt to solve, a certain kind of problem of political organization. Federal governments and federal constitutions do not grow simply by accident. They arise in response to certain stimuli; a federal system is consciously adopted as a means of solving the problems represented by these stimuli."22 Therefore essence of federalism lies in society than in political institution. Federal governance is a means to explore, articulate and protect the federal quality of a society. Sociological differences and cultural diversities in a society need to be territorially organised and represented. Livingston holds that federal arrangements are not the reflection of constitutions but of societies. It is therefore "federalism is...not an absolute but a relative term; there is no identifiable point at which a society ceases to be unified and becomes diversified. The differences are rather of degree than of kind."23 Social diversities, maintains Livingston, that demand federal arrangement can be of
many types such as religion, race, economic interest and language etc. However such demands are accompanied with counter tendencies of unity. Therefore federalism tries to strike a balance between these two demands. These opposite demands are not only accommodated in constitution but in the complete system of instrumentalities accepted out of demand of society. Therefore, Livingston holds, “federal government is a form of political and constitutional organization that unites into a single polity a number of diversified groups or component polities so that the personality and individuality of the component parts are largely preserved while creating in the new totality a separate and distinct political and constitutional unit.”

Livingston’s argument can be put simply as federalism is a consequence of social process. It seeks to bridge structural gap between society and polity.

For Will Kymlicka federalism is a “political system which includes a constitutionally entrenched division of power between a central government and two or more subunits, defined on a territorial basis, such that each level of government has sovereign authority over certain issues.” She examines utility of federalism from the perspective of two contemporary issues i.e. immigrants and national minorities. Accommodation of immigrant groups become federally challenging because there is no defined territory or homeland of immigrants. These groups are demanding accommodation of their cultural identity and self governance. Similarly accommodation of national minorities is another important issue. In a multinational state, Kymlicka holds, national minorities attempt to secede if their demand of self-governance is not fulfilled. She argues
that one possible solution for such problem can be located in federalism. If national minorities are regionally concentrated than territorial boundaries can be drawn and territorial distribution of power emerges as possible solution for it, Canada and Switzerland are appropriate examples of it. She opines that federalism by virtue of being a theory of peace and accommodation holds great promise for multicultural societies e.g. India, Malaysia, Spain and Belgium etc. Initially it was held that modernisation would convert cultural minorities into a ‘citizen’ where group identity and cultural practices would have only secondary importance. Since this proved wrong, ‘claim to identity preservation and protection is best secured when these groups have self governing rights. It is precisely the reason that federalism emerges a grand promise, to be worked out from region to region and from time to time. As federalism does not have any fixity of definition; surely it has core message and design of living together, and specification of institution; expect bare minimal order of governance and constitutionalism, it holds great hope for national minorities and immigrants. However she outlines three major concerns in this regard: “(i) mere fact of federalism is not sufficient for accommodating national minorities-it all depends on how federal boundaries are drawn, and how powers are shared. Indeed, federalism can and has been used by majority groups as a tool for empowering national minorities, by rigging federal units so as to reduce the power of national minorities. We need therefore to distinguish genuinely multinational federations which seek to accommodate national minorities from merely territorial federations which do not; (ii) federalism is not as flexible as its
proponents often claim. Where the subunits of a federal system vary in their territory, population, and their desire for autonomy, as it often the case, developing an “asymmetric” form of federalism has proven to be very complicated; and (iii) Finally, even where federalism is successfully working to accommodate the aspirations of national minorities, its very success may simply lead minorities to seek even greater autonomy, through secession or confederation.”

Thus Kymlicka maintains that mere adoption of federalism is not the answer to the problem rather it should work genuinely to accommodates national minorities. What she offers is a blueprint of multinational federalism, where ethnic minorities’ right to reclaim their ethnic origin and prior organic ties are secured.

**Spatial Theory of Federalism**

Spatial theorist questions the institutional efficacy of sociological theory of federalism as advocated by Livingston. They opine that mere recognition of diversity is not sufficiently federal; they need to be converted into self-governing units. It is therefore need for _territorialisation_ and ‘_territorial indoctrination_’ can hardly be overlooked. Its two fold advantages are: (i) it helps in diversification of administration; and (ii) it helps in building a federal nation where multiple diversity lives in peace and harmony with each other. R.D. Dikshit and Duchacek have mainly advocated spatial theory. For Duchacek territorial indoctrination is an important concept in spatial distribution of power. It is also known as territorial socialisation, a process of emotional attachment with
culture, economy and polity of a territory. He maintains that all territorial authorities evolve their territorial symbols, and separate anthems etc. to make their territory a distinct one. Therefore territorial difference presents a case for distribution of power. A federal polity, Duchacek holds, strives to facilitate participatory pluralism. Duchacek further outlines many benefits of territorial formation of societies and polities such as it relieves central authority from the burden of local territorial issues, better mobilization of local resources, and better communication between local, regional and national authorities.

However there are four possible advantages of territorialisation of society and polity:

I. It facilitates institutionalisation of interest and identities.

II. Institutionalization formats mutual cooperation at a more formal level than informal arrangements lacking legal credibility and legitimacy of decisions and actions.

III. Political moderation of conflict and negotiated settlements become easy due to flexibility inherent within a federal system and also due to the adequacy of institutional spaces and

IV. Territorial distribution of authority reduces democratic deficits from which other forms of polities suffer.

Through the process of territorial indoctrination and institutionalisation of diversities a federal nation is created whose constitution “admits of the existence of several component territorial communities and their refusal to merge with the rest into one uniform whole. Neither of the two sets of government is ready to abandon its sovereignty and yield fully to the other: uniformity is ruled out but so is secession. It is a conflict combined with a keen awareness of mutual dependence...“a brotherhood of tempered rivalry”...A
federal constitution may therefore be seen as a political compact that explicitly admits of the existence of conflicting interests among the component territorial communities and commits them all to seek accommodation without outvoting the minority and without the use of force. Or, in other words, a federal constitution expresses the core creed of democracy, pluralism, in territorial terms.31

R.D. Dikshit has further elaborated spatial dimension of federalism. He underlines the virtues of territorialisation from the perspective of integration. He distinguishes federal integration from other societies namely: “(i) military societies, where political integration is achieved through compulsion; (ii) industrial societies, which achieve integration through voluntary cooperation; (iii) lower societies, which achieves integration through ‘mechanical solidarity’ based on penetration of such collective values as hereditary and station in individual consciousness; and (iv) higher societies, which achieve integration through the process of organic solidarity arising from differentiation of individuals according to the social functions they perform.”32 The federal political arrangement provides for territorial autonomy along with multiple social, political and economic advantages. Dikshit further maintains that there are two reasons that federalism is considered as the most geographically expressive of all forms of government; first it facilitates sense of locality as different cultures come together for having common benefits from all; and second, federalism provides for dual political organisations securing regional autonomy to constituent units.33
Political Theory of Federalism

As a political principle, federalism is primarily concerned with finding a balance between autonomy and integration through political and constitutional means of power sharing. A federal political system is one which articulates the interests of all through different measures of representation. It is therefore John C. Calhoun writes that “those who make and execute the laws should be accountable to those on whom the laws in reality operate—the only solid and durable foundation of liberty.” He further writes that without right to suffrage representatives are considered oppressor, in the similar manner in the absence of right to self protection the majority is considered exploiters of minority. DIssimilar geographical interests are more likely to come into conflict. Therefore diversified interests need to have political space of their own in order to exercise their intrinsic natural right to self-protection. Multitier arrangements become imperative for federal governance. In such an arrangement, states act separately on local and specific interests, on the other hand, issues of common interests are collectively governed. One finds a notion of federal equity in Calhoun’s work on federalism.

Pierre Joseph Proudhon analyses federalism from the perspective of liberty and authority. He holds that all political arrangements ranging from monarchy to federalism are based on the correlation of authority and liberty. Federalism by virtue of being contractual is more protective of liberty and it is extensively democratic. Proudhon refers such a political contract as federation. Thus
federal political arrangement guarantees the federal units their sovereignty, authority over territory, liberty to their citizen and right to settle their disputes. Proudhan writes that essence of federal contract lies in the fact that "the authority responsible for its execution can never overwhelm the constituent members; that is, the federal power can never exceed in number and significance those of local or provincial authorities, just as the latter can never outweigh the rights and prerogatives of man and citizen." The essence of federalism is that it retains more powers for citizen than for state, and local and provincial authorities retain more power than central authority. Proudhan maintains that according to the logic of principles and natural arrangements of things authority gives way to prevalence of liberty providing a solution of conflict between them. He further emphasises that constitution of society is always progressive as it promotes liberty. However he cautions that the primary condition for the achievement of this goal is that authority shall be arranged from down to top (a federal system) manner rather than in a top to down hierarchy. The whole essence of federal constitution is summarised by him in three propositions: "(i) form groups of a modest size, individually sovereign, and unite them by a federal pact; (ii) within each federated state organize government on the principle of organic separation; that is, separate all powers that can be separated, define everything that can be defined, distribute what has been separated and defined among distinct organs and functionaries; leave nothing undivided; subject public administration to all the constraints of publicity and control; and (iii) instead of absorbing the federated states and
provincial and municipal authorities within a central authority, reduce the role of the centre to that of general initiation, of providing guarantees and supervising, and make the execution of its orders subject to the approval of the federated governments and their responsible agents—just as, in a constitutional monarchy, every order by the king must be countersigned by a minister in order to become effective.”

Proudhon, to put in brief, propounds the theory of integral federalism.

Daniel Elazar summarises federalism as ‘self-rule plus shared-rule’. Elazar maintains that some features of federalism can be traced in consociational polities, unions, and leagues as these political arrangements try to accommodate diversities and preserve self rule, or autonomy to constituent units. Therefore various principles of federalism are adopted and practiced in different societies and polities. Federalism thus defined in this manner “involves some kind of contractual linkage of presumably permanent character that (i) provides for power sharing; (ii) cuts around the issue of sovereignty; and (iii) 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, especially in the area of ‘self rule’, which helps to structure differences into cooperation through ‘institutionalization of particular relationship among the participants in political life’. Unlike the centre-periphery model, the matrix model lays stress on autonomy and ‘noncentralization’. Being
covenantal federalism "prevents tyranny without preventing governance." And political integration is strength of the matrix, and not of centre.

Ronald L. Watts treats federalism as one form of political partnership, a settlement among individual states where each desires authority from constitution. He classifies various political arrangements as union, confederation, federation and associated states. For him, confederation and federations are broad categories of political associations that involve self-rule and shared rule. In federation, federal government and federal units derive their sovereign power from constitution which cannot be amended unilaterally. On the other hand, confederations as union of states derive their powers from a treaty, and units retain their respective national sovereignties. Also while federations are directly linked to their people in terms of legislation, execution and taxation, confederations are indirectly related to people. It deals directly with member states than with people. Lastly federations are irrevocable, i.e. once it has come into being it cannot be dissolved, but confederations are dissoluble when member-state resolve to do so. For Watts, federalism is characteristically devolutionary following different modes of delegation and sanction of powers. There cannot be any exclusive model of federalism. Federalism is always text and context specific. It is the constitution which provides model variations besides social compositions defining and determining the characteristics of divisions of power.
One finds a model-centric analysis in Alfred Stepan's "Federalism and Democracy: Beyond the U.S. Model". Stepan provides three different assumptions of federalism. First, it is influenced from Riker's perspective that every longstanding federation is a result of bargain where different states are ready to pool their sovereignty. Stepan calls this type of federalism as *coming-together federalism*. But all federations cannot be clubbed under this model. Historical differentiation suggests another model, termed by him as *holding-together federalism* e.g. India, Belgium and Spain. He says that the one possible way to hold a country together is democratic devolution of power, codified and sanctified by a written constitution. Therefore Riker's view is not applicable in all the federal political set up. Second category is termed as "*demos-constraining*", which resembles more to American style of federalism. Stepan writes that in a multinational, multiethnic and multilingual state federalism becomes seminally important because it provides in-built checks to majority rule. However, he argues, that all federations are not demos-constraining in the same degree as the U.S and Brazil are. On the other hand, some federal arrangements can be termed as *demos-enabling* e.g. Germany and India. He says that three constitutionally embedded variables can be used to measure all federations. They are: "(i) the degree of overrepresentation in the upper chamber; (ii) the policy scope of the territorial chamber; and (iii) the sorts of policy issues that are off the policy agenda of the demos because they have been allocated to the states or subunits." Stepan further shows that while mononational countries such as Austria, Germany, Australia, the U.S. and
Brazil are symmetrical, multinational federations such as Canada, Belgium and India are asymmetrical.

This classification is analytically relevant in pinning down the process of federal nation building both in a monocultural and multicultural society. However for our purpose federalism can be defined as a political arrangement between two coordinate authorities to serve the common cause. As a political principle it is a dynamic process of negotiating and renegotiating discord into accord. In the process of negotiation executive-administrative considerations, besides fiscal considerations, assumes critical relevance in providing insight into vexed question of ecology or environment. As the form of federalism is considerably linked to the structural process of negotiation of competing claims, therefore, legal-constitutional codification of agreement becomes key instrument of federal governance. Rules are made according to the need of a subject. It is therefore differential loadings become key characteristic of a federal polity. It is in this context of understanding that subsequent analysis of environmental governance has been attempted.

**Distribution of Federal Competences**

In federal literatures one hardly finds any fixed formula of competence distribution. However ‘territoriality’ and ‘subsidiary’ are two basic principles applied across federal polities for this purpose. Other variables include
economies of scale, efficiency in governance, identity concerns, policy harmonisation and standardisation, and equity and justice. Generally federal government retains exclusive competence over national defence, foreign affairs, transport and communication, currencies, coinage and banking, inter regional equity and social justice. Further issues of inter-regional and transnational importance such as environment and public health are generally assigned to federal government, or they are partly shared. Matters of local import are generally assigned to regional or provincial governments.

However in contemporary time distribution of competences generally mean “differential loadings in different areas for different purposes.” Further competence can be defined as a capacity to take and implement decisions independently of any externalities. Competence can be of three types namely exclusive, limited and shared. For a better understanding of distribution of competences, Fernandez Segado classifies competence as the following:

I. **Integral competences:** those in which a single authority - usually the state - has attributed all kinds of public functions regarding a particular matter;

II. **Exclusive but limited competences:** those in which one authority enjoys full competence, but only to a certain extent in a particular manner. Hence it is not the function, but the matter that is fragmented;

III. **Shared competences:** those in which both the state and autonomous community are entitled to exercise complementary parts of the same function over the same matter. This would be case-rather frequently-in matters in which state has reserved for itself basic legislation, and the autonomous community has taken up legislative development;

IV. **Concurring competences:** those in which the competences of the state and those of the autonomous community are distinct, but converge on the same physical object;

V. **Indistinct competences:** those awarded both to the state and to the autonomous community without any sort of distinction, and which enables them to deal with a matter in different ways.
Extent of autonomy is determined on the basis of availability of two rights of constituent units namely *Right to Decide* and *Right to Act*. While the former refers to decisional legislative autonomy, the latter refers to administrative executive competence to implement decisions. In other words, competence distribution is a process of differentiation of powers and functions. Dietmar Braun identifies two major categories of differentiation, *functional* and *segmentary*. Competence, in nutshell, means elaborate functional abilities of a government over an item. Competence involves disaggregating a subject into functions. Thus it is function which is divided. In this context, one can also possibly understand the distinction, as outlined by Dietmar Braun, between functional and segmentary differentiation. In functional differentiation 'Right to Act' and 'Right to Decide' is shared between federal government and regional governments. In this case federal government is enabled to take decisions while their implementation rest with the regional governments. The objective behind functional differentiation is to achieve the goal with greater efficiency. Segmented differentiation relates with the separate jurisdiction of federal government and regional governments. In second category, federal government and regional governments may be allocated different degree of *Right to Decide* and *Right to Act* over a subject. However, overlapping of jurisdictions may result in confrontation between the federal and regional governments. What appears from the analysis is that more a subject is differentiated less is the confusion over functions and actions. The differentiation of power also involves the manner in which the competence is to be exercised. The extent of power can
be measured from the numbers of policy areas in proportion to financial resources to federal and regional governments. It is also equally important that federalism provides for power sharing at process level which *inter alia* means consideration of concerns of different interest groups and stakeholders. It means a kind of public-private partnership on the issues of public interests. However, it needs to be taken into consideration that private entity works in an informal way and tries to use various kinds of influence such as lobbying to influence policy in their favour.

Almost all federations provide for an associative framework for governing environmental issues. For the sake of present work, it is also important to clarify the meaning of good governance. Contextually it refers to good economic and political management especially of those subjects which have bearings upon human civilization. As a concept, good governance relocates the role of market, state and civil society in the governance of a nation. An interesting caveat that may be added here is that the concept of good governance marks an important break with neo liberalism. "It recognises that markets are not the whole answer. It rehabilitates the state which is given central social and economic responsibilities. And it promotes human rights, democracy and the rule of law because these are seen to be requirements of a modern market economy and a well-managed state." The World Bank in its report *Governance and Development 1999* has simplified the notion of Good Governance as "a public service that is efficient, a judicial system that is reliable and an
administration that is accountable to the public.\textsuperscript{51} It has identified the following four pillars of good governance.

\textbf{Accountability:} It ensures that decision-makers in the government as well as in private sector and civil organisation are accountable to their stakeholders and public. Accountability differs on the basis of nature of organisation and also upon whether decision is internal or external to an organisation.

\textbf{Transparency:} Free flow of information is the basic source of transparency. It ensures that processes, institutions and information are directly accessible to those who demand for it and sufficient information is provided for better understanding and monitoring on them.

\textbf{Predictability:} There should be an open policy discourse information which should be available to people. It ensures the involvement of people in discussion on policy matters.

\textbf{Participation:} It provides that all men and women should have a voice in decisions making, which can be either direct or through legitimate intermediate institutions. This kind of participation can be achieved by freedom of association and speech along with capacities to participate in constructive manner.\textsuperscript{52}

What appears from above is that the good governance is an open-ended participatory process of decisions and actions in which state and non-state actors collaboratively work upon a policy area. However, good governance cannot be efficient governance if the element of federalism is missing. It would not be an exaggeration to say that federalism besides being a formal theory of decentralisation provides a framework of associative democracy and polity. Therefore good governance cannot be but federal governance. In the federal arrangements governance is associated with territorial identification of the units of government, decentralisation of powers and functions, participatory mode of decision-making, deconcentration of executive functions and off-loading or differential loading of activities. It is with this understanding that the present work seeks to analyse issues of environmental governance in India and Canada.
In subsequent section a model centric analysis of Indian and Canadian federalism has been attempted.

**Salient Features of Indian and Canadian Federalism**

Indian constitution provides for a ‘union model of federalism’ which characteristically combines the centre-periphery and non-centralised matrix model of power sharing arrangements. Being a dynamic document of nation and state building, it critically blends or negotiates otherwise opposite tendencies like unionism and regionalism, autonomy and integration, symmetry and asymmetry, centralisation and decentralisation. As a matter of fact, one can find traces of the features of dual federalism, cooperative - collaborative federalism, and interdependent and organic federalism.\(^{53}\) It is therefore distribution of power does not follow any specific mode of interpretation; it all depends on how we assign value to each feature of Indian federalism. For some scholars Indian federalism is a classical example of unitary polity with federal features. This does not hold any substantive ground if one evaluates the working of Indian federalism in last six decades. It is true that many jurisdictions have been assigned to federal government but that does not deter Indian polity to be characterised as one of the models of federalism. It has been categorically stated by B.R. Ambedkar in the Constituent Assembly on 25th November 1949 that

> The basic principle of federalism is that the legislative and executive authority is partitioned between the centre and the states not by any law to be made by the centre but by the constitution itself. This is what constitution does. The states under our constitution are in no way dependent upon the centre for their
legislative and executive authority. The centre and the states are coequal in this matter. It is difficult to see how such a constitution can be called centralism. It may be that the constitution assigns to the centre too large a field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that the residuary powers are given to centre and not to the states. But these features do not form the essence of federalism. The chief mark of federalism... lies in the partition of the legislative and executive authority between the centre and units by the constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is; therefore, wrong to say that states have been placed under the centre. Centre cannot by its own will alter the boundary of that partition. Nor can the judiciary. For as has been well said: “Courts may modify, they cannot replace. They can revise earlier interpretation as new arguments, new points of view are presented, they can shift the dividing line in marginal cases, but there are barriers they cannot pass, definite assignments of power they cannot reallocate. They can give a broadening construction of existing powers, but they cannot assign to one authority powers explicitly granted to another.”

From the constitutional recognition of sovereignty of jurisdiction, Ambedkar also provides rational for having a strong centre.

For it is only the centre which can work for a common end and for the general interests of the country as a whole herein lies the justification for giving to the centre certain overriding powers to be used in an emergency. And after all what is the obligation imposed upon the constituent states by these emergency powers? No more than this – that in an emergency they should take into consideration alongside their own local interests, the opinion and interests of the nation as a whole.

Ambedkar further maintains that besides coordinating with centre, states also have

Plenary authority to make any law for the peace, order and good government of that province. Now, when once the constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a federal constitution.

Need for a strong centre was further emphasised by Balkrishan Sharma during the debate in the report on the Union Powers Committee on 21st August 1947, when he argues that strong centre is needed because centre should be in a position to think and plan for the well being of the country. It means that centre
should have power not only to coordinate the activities of provinces in time of need but also to have capacity to direct provinces for the economic development of the country. For him strong centre also assures the better administration of provinces by providing them ‘necessary assistance in time of need’. Strong centre, he holds, is good for industrial and economic development of the country, besides protecting national sovereignty.57 “Centre is not strong by virtue of its power but it is strong because of its large numbers of responsibilities it carries towards federal units”.58 However members like T.T. Krishnamachari were reluctant to assign too much of developmental responsibilities to the centre. It is expected to coordinate the activity of the state and not to rule them. Strong centre vitiates federal spirit.

Division of authorities at the time of framing of the constitution was mainly guided by then prevailing political, communal and economic conditions in the country. An overloaded centre was need of the hour, and strong centre was considered as best guarantee of national progress and security. For founding fathers, federalism was means to an end—, i.e. building India as strong unified and developed nation. For them federalism did not mean equal division of powers between centre and state, but recognition of the principle of sovereignty of jurisdiction. It is in this background that in the subsequent section key elements of Indian federalism has been briefly but analytically described.

Article 1 of the Indian Constitution describes India as “Union of States”, meaning an indestructible organic nation with adjustable internal boundaries.
It is the organicness of Indian Union that no provision for dual citizenship has been made. People as citizen enjoy equality of status and opportunities. Yet constitution validly accommodates the principles of pluralism. As constitution is not the result of a covenant therefore dual judiciary has also been avoided. Further common administrative system is adopted to provide uniform administration all over India. In this regard two points are worth mentioning; first states do not have any say in regulation of All India Services, and second Council of States (Rajya Sabha) is empowered to create any new All India Services (Article 312).

Within the union model we find, two types of centralisation, classified by A.K.Singh as, (i) centralisation to maintain constitutional order, and to protect unity and integrity of India and its parts; and (ii) centralisation for securing the larger national public interests. Centralisation under first heading can be divided into two categories namely (I) circumstantial centralisation and (II) consensual centralisation. Further the circumstantial centralisation can be applied in different situations such as (a) protection of federal units from external aggression, internal disturbance and any type of armed rebellion against the state; (b) for the breakdown of constitutional order resulting from hung assembly or instability of government due to frequent defections rendering state government dysfunctional; and (c) to maintain the sound financial order in India. The centralisation provides Union with extraordinary power to legislate on the matters of state list. Further, “the executive power of the union shall extend to the giving of direction to any state as to the manner in which the executive
power thereof is to be exercised.⁶⁰ The union, in order to give effect to the objects of proclamation, can initiate such provision for "suspending in whole or in part the operation of any provisions of this constitution relating to any body or authority in the state" (Article 356(c). Union may also give direction to states to apply such directions issued by it such as reserving all money bills for the Presidential consideration.

Second category i.e. consensual centralisation has been provided under Article 252 which reads “if it appears to the legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States... should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards.” The Wild Life (protection) Act 1972, and The Water (Prevention and Control of Pollution) Act, 1974 has been enacted by the centre on the basis of consent of the states.

Centralisation for serving and securing national interests and public welfare has been provided under Article 249 which says that “if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matters enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make
laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force”.

Within the union model, distributions of competences have been made territorially and functionally. We find both symmetrical and asymmetrical distribution of powers. In different field, we also find ‘differential loading’. Seventh Schedule distributes subjects for legislation by different orders of government. List I provides 97 subjects over which union has exclusive legislative competencies. It includes subjects such as defence, foreign affairs, citizenship, currency, national communication including national highways, waterways, banking, weights and measurement etc along with 13 exclusive items of revenue raising and resource generation. State list i.e. List II enumerates 66 subjects mainly of local importance such as police and public order, public health and sanitation, local communication, agriculture, fisheries and water department, etc. In this list, minor tax source of the states have also been identified. Third list, known as concurrent list, in which union and state share competences includes subjects like civil and criminal procedures including marriage, divorce, wills, succession etc., forest and protection of wild life, economic and social planning and education etc. However in case of overlapping of jurisdiction on concurrent matters union law generally prevails over the state laws.

Constitution also provides that executive powers of the union and states are co-extensive with their legislature competence. However states executive
competence is subject to the 'doctrine of territorial nexus'. Further in the context of executive powers, as D.D. Basu observes, "It is in the concurrent sphere where some novelty has been introduced. As regards matters included in the Concurrent Legislative List, the executive function shall *ordinarily* remain with the states, but subject to the provisions of the Constitution or of any law of Parliament conferring such function expressly upon the Union."\(^1\)

However states may invite central action if they do not abide by its direction in its executive sphere. *Union can give direction to states for maintaining uniformity of laws, national security and protection of the minorities, and other disadvantaged groups.* Range of union’s directive may include (i) exercise of states power in such manner as not to interfere with executive power of the Union; (ii) to ensure construction and maintenance of means of communication for national and military purpose; (iii) to ensure protection of railways within state; (iv) directive to ensure instruction in mother tongue; (v) to ensure the development of Hindi language in the state; and (vi) directing states to function in accordance with the provisions of the constitution.

The union-state administrative relations are based on the principle of division, coordination and cooperation in the areas of policy formulation and planning. Union retains administrative powers on certain issues and delegates rest to the states. However this provision does not create subordination of states rather it is an example of cooperative and complementary federalism. In this context, it needs to be maintained that "in actual practice the states exercise a large
measure of executive authority even within the administrative field of the Union
government".62

The 73rd and 74th constitutional amendments have added third tier to Indian federalism. As a matter of fact, these amendments mark the beginning of decentralised governance within the overall framework of union model. It strives to create a three tier structure at local level, Zila Parishad at district level, Panchayat Samiti at block level and Gram Panchayat at village level. There is provision for 'District Planning Committee' (Article 243 ZD) to prepare a development plan for the whole district. Gram Sabha has been constituted to strengthen the roots of Indian democracy. It brings into action elements of direct democracy within Indian federalism. Panchayats have evolved as a means of economic development, social justice and social change. The three-tiered structure of federal governance still lacks proper institutional and constitutional coordination. For funds it has to mainly depend on central grant and for delegation of power and authorities on the state government. We find also incidence of centre bypassing state, which states see as encroachment on this constitutional competence.

Conflict Resolution Mechanisms in India

We may find Indian federalism deficient on many counts, but it provides an excellent model of resolution of conflict through judicial, semi judicial, executive-administrative, and political mechanisms. Jurisdictional conflicts between the units of federation are resolved by the Supreme Court through appropriate
application of different doctrines such as *doctrine of colorable legislation*, *doctrine of pith and substance* and *doctrine of territorial nexus*. Intent, content and interpretation of federalism has been subjected to (i) upholding of the basic scheme of the constitution; (ii) original intent of the federal distribution of powers; (iii) doctrinal application of the principles of separation of powers; and (iv) primacy to right to life and other provisions of the Fundamental Rights, and (v) to the doctrine that says that legislature cannot delegate different policy issues. Further the Apex Court in *Ujagar Prints (II) v. Union of India* holds that “entries in the legislative lists... are not the sources of legislative power, but are merely topics or fields of legislation...Each government has exclusivity of jurisdiction.’

Within the overall framework of Indian constitution, the Supreme Court has applied the doctrinal innovation of ‘pith and substance’ to demarcate the areas of jurisdictional competence of federal and provincial government vis-à-vis entries of the 7th schedule. As and where necessary doctrinal application of the principles of ‘colourable legislation’ has been made to limit any transgression of legislative competence by any order of the government.

The principle of territorial nexus has been invoked particularly in the tax matter. By an large, the Supreme Court has upheld prerogative of the ‘Union’ in many of the concurrent matters, and allowed prevalence of the federal laws over states laws on such matters like industrial and economic development even though falling within the exclusive domain of the state governments. The legally constructed phrases like ‘national interest’ ‘larger public interests’, have been
frequently applied to widen the power domain of federal government. In the other words, 'public good' has served as doctrinal instrument in nationalising (read centralisation) public policy, and consequently delimiting the constitutional competence of provincial government even on literally local public good.

**Semi Judicial Mechanism**

Parliament is empowered under Article 262 to appoint a Tribunal, 'a semi judicial authority' to resolve conflicts over sharing of water of inter-state rivers or river valleys. Union government has enacted the Inter State Water Disputes Act (ISRWD), in 1956. Section 3 of the Act provides that if a state believes that water dispute cannot be resolved by negotiation then state may request central government to refer any river dispute to a tribunal for adjudication. Further Section 4 of the Act provides that “when any request under section 3 is received from any State government in respect of any water dispute and the central government is of opinion that the water dispute cannot be settled by negotiations, the central government shall, within a period not exceeding one year from the date of receipt of such request, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute. Section 11 of this Act excludes the jurisdiction of the Supreme Court with regard to a dispute referred to a tribunal. However in the *Tamilnadu Cauvery Sangam vs. Union of India in 1990* the Supreme Court has held that it is obligatory for central government to appoint a tribunal if state has referred the dispute to it. Also it retains the right to review any procedural and
constitutional issues involved in the working of the tribunal. In the post award period, the state may approach the Supreme Court for the execution of award and also to examine the constitutional propriety, if any. Tribunals constituted under Article 262 are as following:

<table>
<thead>
<tr>
<th>River(s)</th>
<th>States</th>
<th>Date of Constitution of Tribunal</th>
<th>Date of Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>Krishna</td>
<td>Maharashtra, Andhra Pradesh, Karnataka</td>
<td>April 1969</td>
<td>May 1976</td>
</tr>
<tr>
<td>Godavari</td>
<td>Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Orissa</td>
<td>April 1969</td>
<td>July 1980</td>
</tr>
<tr>
<td>Narmada</td>
<td>Rajasthan, Madhya Pradesh, Gujarat, Maharashtra</td>
<td>October 1969</td>
<td>December 1979</td>
</tr>
<tr>
<td>Cauvery</td>
<td>Kerala, Karnataka, Tamil Nadu and Union Territory of Pondicherry</td>
<td>June 1990</td>
<td>Report u/s 5(2) received 5.2.2007</td>
</tr>
<tr>
<td>Krishna</td>
<td>Karnataka, Andhra Pradesh and Maharashtra</td>
<td>April 2004</td>
<td>30 December 2010</td>
</tr>
<tr>
<td>Vansadhara</td>
<td>Andhra Pradesh &amp; Orissa</td>
<td>2009</td>
<td>To be awarded</td>
</tr>
<tr>
<td>Model/Mandovi/Mahadayi</td>
<td>Goa &amp; Karnataka</td>
<td>2010</td>
<td>To be awarded</td>
</tr>
</tbody>
</table>

Source: The above table has been computed from the information available at www.india.gov.in/sector/water_resources/river_water

Critiques however, point out the excessive delay in pronouncing award as one of the shortcomings of the working of the Tribunal. Also politics of water unduly affects the constitution of Tribunal. Excessive technalities and procedural complexity in the working of any Tribunal are yet another area of criticism.
Inter-State Council

Resolution of conflict has been constitutionally grounded in Article 263 which reads

"if at any time it appears to the President of that the public interest would be served by the establishment of a Council charged with the duty of-

(a) Inquiring into and advising upon disputes which may have arisen between States;

(b) Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or

(c) Making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

It shall be lawful for the President by order to establish such a council, and to define the nature of the duties to be performed by it and its organisation and procedures."

On any methodology of interpretation of above provisions one can fairly conclude that not one but several councils-general or subject specific- can be constituted by the federal government. Like Canadian Primer’s conference, council is composed of the key decision makers of the federal and provincial governments. The inter-state council, the first constituted in 1990s, comprises of the Prime Minister as its chairman, “Chief Ministers of all the States and Union Territories having Legislative Assemblies, Administrators of Union Territories not having Legislative Assemblies, Governors of States under President’s rule and six Ministers of cabinet rank in the Union Council of Ministers, nominated by the Chairperson of the Council...Five Ministers of Cabinet rank/Ministers of State (independent Charge) nominated by the
Chairperson of the council are permanent invitees to the council. The inter-state council was last constituted on 21.08.2009.66

Being a recommendatory body, the issues discussed in the council include: (i) building consensus on the recommendations of Sarkaria Commission, constituted to review the working of Centre-State relations in India; (ii) contract labour; (iii) formulating national guidelines on good-governance; (iv) disaster management; (v) atrocities on social classes like Schedule Castes and Schedule Tribes; (vi) royalty issues on natural resources; (vii) 'appraisal of measures taken to implement the Directive Principles of State Policy.' etc.67 Working mechanisms make the Council an interesting forum for building national consensus on key issues of federal governance of public policy. Its decisions have more political sanction than legal. It has been gradually institutionalised as one of the key departments of the Union Ministry of Home Affairs, charged with the responsibilities of centre-state relations.

Chief Ministers' and Governors' Conference

Besides above stated constitutional-institutional mechanisms of resolution of conflicts, executive-informal mechanisms have constructively contributed for building departmental and political consensus among federal partners on key issues of national public policies. Of particular importance is the Chief Minister's conference and Governor's conferences. In Chief Minister's conference generally national issues of common concerns are addressed to. Some of them are listed below:

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(i) judicial reforms and e-governance;
(ii) pension reforms;
(iii) internal security;
(iv) prices of essential commodities and; and
(v) joint action against price rise.

On the other hand Governors conferences also aim to evolve a consensus for different national and local issues besides building uniformity on constitutional matters. Recently discussed issues include:

(i) Inclusive economic growth;
(ii) internal security and insurgency;
(iii) bilateral relationship with our neighboring countries; and
(iv) police modernisation.

**Inter State Trade Council**

Inter State Trade Council has been set up in 2005 by an order issued by Director General of Foreign Trade (DGFT), Ministry of Commerce and Industry. It is an advisory body recommending “measures for providing an international trade enabling environment in the states and to create a framework for making states partners in India’s international trade and export effort to achieve the objective of boosting India’s exports.”

48
The Council is headed by Commerce and Industry Minister besides Chief Ministers of the States or State Cabinet Ministers nominated by Chief Ministers; Lt. Governors/ or Administrators of the Union Territories or their nominees; Secretaries to Government of India: (i) Secretary, Department of Commerce; (ii) Secretary, Department of Revenue; (iii) Secretary, Ministry of External Affairs; (iv) Secretary, Department of Industrial Policy & Promotion; (v) Secretary, Department of Agriculture & Cooperation; (vi) Secretary, Department of Shipping; (vii) Secretary, Department of Road Transport and Highways; and (viii) Secretary, Ministry of Power; Chairman, other Co-opted members related to the field of trade, commerce, industry and banking.69

The terms of reference of the Inter-State Trade Council inter-alia include:

"(i) To identify impediments that affect exports adversely;

(ii) To evolve uniform practices across different States in respect of trade facilitation;

(iii) To identify issues relating to State Governments in regard to WTO capacity building, infrastructure development and creating an overall supportive Policy and fiscal environment for international trade;

(v) To create a framework for making States partners in India’s export effort;

(vi) To commission studies in furtherance of the above objectives; and

Any other related issue."70

Similarly Article 307 empowers Parliament to appoint a statutory authority (semi-judicial in nature) to investigate into various matters related to trade and commerce such as freedom of trade, commerce and intercourse and power
sharing between Parliament and state legislature to impose any restrictions on trade, and commerce etc.

**Canadian Federalism**

Federalism has come a long way in Canada to evolve as one of the distinct model of collaborative federalism. Many innovations can be discerned while analysing the growth of federation to its present form. Its growth can be divided into four stages. First stage is of *classical federalism* where, the balance of power worked in favour of provinces where they enjoyed considerable economic authority of industrial development. Second stage beginning from 1945 was marked by *cooperative federalism*. In this phase Ottawa had initiated many programs related to health and welfare on cost sharing basis. Interestingly with exception to some instances there was hardly any conflict between federal and provincial governments. Third stage is known as *competitive federalism* where provinces claimed for more and more decentralisation. Quiet Revolution in Quebec was an important event that marked the competition between provinces and federal government. This phase had also witnessed the enactment of the Constitutional Act, 1982. *Collaborative federalism* is marked as fourth phase in the contemporary working of Canadian polity. The emphasis in this model is on equal partnership, greater transparency and accountability in the governance of critical areas like environment, social security schemes etc.\(^{71}\)

The present constitution of Canada owes its origin to British North America Act, 1867. The confederation that emerged out of BNA, 1867 contained many
features of centralised federalism; however regional autonomy was an acknowledged political principle of Canadian federalism. Section 91 of BNA Act empowered federal government to make laws for "peace, order and good government of Canada" and to legislate on all those issues which were not expressly assigned to the provinces. Being a noncovenantal federal polity, there is no provision for separate constitution of provinces. Both tiers of government draw its power and authority from single constitution. Another distinguishing feature of Canadian federalism is the successful fusion of federalism and parliamentary system. Such a fusion is marked by public scrutiny, institutional accountability and sovereignty of parliament, duly suited for good governance and protection of liberty of the people.72

Canada has a bicameral parliamentary system. Senate shares co-equal power with House of Commons except money bill and constitution amendment bill. Money bill cannot be introduced in Senate; however, Senate can defeat the Bill.73 It is interesting to note that lower house cannot violate Senate's veto except in the case of constitutional amendments where it exercises suspensive veto. However, being an appointed house Senate is not in a position to exercise its power efficiently. Senate's inefficiency to accommodate regional aspirations has resulted in a kind of regionalisation of House of Commons. There is absence of emergency provisions in Canadian constitution. However one can locate two different provisions dealing with temporary emergency legislation. Firstly Judicial Committee of Privy Council (JCPC) has interpreted the clause of Peace, Order and Good Governance (POGG) as a power to enact temporary emergency
legislation. This clause of POGG was a residual clause and it enabled federal government to access more power in the name of welfare of Canadian federation. Secondly during the First World War Canadian Parliament enacted *War Measures Act* [74] The application of which led to the suspension of division of power between the federal government and federal units, thereby rendering Canada into a unitary form of government. This Act states that all orders and regulations passed by the Governor-in-Council would have the force of law and the proclamation of emergency can remain in force for any period of time.

The founders of Canadian federalism had visualised a strong federal government, so that the unity of the country can be maintained and unnecessary discontent may be prevented. The strong central bias in Canadian federalism can be seen in different provisions pertaining to the division of legislative competence under section 91 and 92. The federal government has been assigned all important powers in matters related to trade and commerce (section 91.2), exclusive power over criminal law (section 91.27), and rights regarding any form of taxation (section 91.3). Residual power is also vested with federal government (section 91). The federal government has various mechanisms to influence and control provincial governments. The Lieutenant Governor, representative of the crown in every province, is to be appointed by the federal government (section 58). The Lieutenant Governor has discretionary power to reserve a Bill for getting the royal assent so that the federal government can examine it. According to section 56 of the Canadian constitution, the federal government has disallowance power to annul provincial
bill. Ottawa has authority to bring local works under its jurisdiction by
declaring it for the general advantage of Canada. Federal government is also
empowered to enact “remedial legislation if it thinks that provincial jurisdiction
has encroached on the freedom of denominational religious school existing at
the time of confederation.”

As a matter of fact federal government has been assigned enormous legislative
power over 29 subjects namely, regulation of trade and commerce,
unemployment insurance, the raising money by any mode or system of taxation,
the borrowing of money on the public credit, postal services, the census and
statistics, militia, military and naval services, and defence, allowance of civil
and other officers of the Government of Canada, beacons, buoys, lighthouses,
and stable island, navigation shipping, quarantine and the establishment and
maintenance of marine hospitals, sea coast and inland fisheries and currency
and coinage, banking, incorporates of banks, and the issue of paper money,
saving banks, weights and measures, bills of exchange and promissory notes,
interest, legal tender, bankruptcy and insolvency, patents of invention and
discovery, copyrights, Indians, and lands reserved for the Indians,
naturalization and aliens, marriage and divorce, the criminal law, except for the
constitution of courts of criminal jurisdiction, but including the procedure in
criminal matters, the establishment, maintenance, and management of
penitentiaries, such classes of subjects as are expressly excepted and
enumerated in the provincial domain. Section 95 of the BNA Act 1867 provides
for concurrent power of federal and provincial government over the two subjects
namely agriculture and immigration. Old-age pensions and supplementary benefits also fall within concurrent jurisdiction.

Compared to 29 subjects of federal government, provincial government has competence over 16 subjects of local importance. This includes direct taxation and borrowing of money on the sole credit of the province, establishment and tenure of provincial offices, appointment and salary of provincial officer, management and sale of public land and timber wood, establishment and maintenance of prison in provinces, establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in the provinces, commercial license for raising revenue, local works and undertaking except lines of ships, railways, canals, telegraphs extending beyond the limits of province, incorporation of companies with provincial objects, solemnization of marriages in provinces, administration of justice in the province, municipalities, property and civil rights within province, imposition of fine or imprisonment for enforcing any law of province, any matter of merely local or private in nature. Further section 92A, inserted by Constitution Amendment Act 1982, allocates non-renewable natural resources to the provinces. What we find that the distribution of powers is in accordance with the conventional or text-book prescription on federalism.

**Conflict Resolution Mechanisms in Canada**

In Canadian federalism, we too find both the formal and informal mechanisms of conflict resolution. The Supreme Court of Canada and Federal Court of
Canada are two formal-constitutional bodies for this purpose. On the other hand First Minister Conference, Ministerial Conference, Annual Premiers’ Conference and Council of Federations are some, informal agencies. Generally formal agencies resolve constitutional and jurisdictional issues. The informal mechanisms are mostly political in nature intended to create uniformity of outlook on matters of national ‘public good’. This has gone long way in institutionalising collaborative federalism fostering the idea of ‘Union’ in all the matters of common public concern. Different ‘Social Union’ programmes are case in consideration.

The Supreme Court of Canada

Supreme Court of Canada is the highest court for all legal issues of federal and provincial jurisdiction since 1949, prior to which Judicial Committee of the Privy Council of the UK was supreme judicial body. It is notable that the Supreme Court of Canada acts as the final court of appeal from all other Canadian courts. Jurisdiction of the Supreme Court covers disputes in all areas of the law that includes constitutional law, administrative law, criminal law and civil law.

The Supreme Court of Canada examines the constitutionality of federal or provincial legislation. Besides, powers of Parliament and the provincial legislatures are also scrutinised by the Supreme Court of Canada. Section 55 of the Supreme Court Act 1985, provides that court not only hears judgments but also advises the federal and provincial governments on important questions of
law or fact concerning the interpretation of the Constitution. Among various opinions the most important opinion was the constitutionality of the patriation of the Constitution. In 1981, the Constitution didn't contain the amendment formula. Following the British model of Parliamentary Sovereignty Prime Minister Pierre Trudeau had attempted to patriate the constitution without the consent of provinces. Provinces took up this issue to the Supreme Court. The question was whether consent of provinces is required for patriation. The Court ruled that though unilateral decision to patriate is legal still it is against the constitutional convention which asks to seek the consent of provinces. Besides it also maintained that constitution doesn't demand absolute unanimity but majority consent of the provinces.

Another important federal issue resolved was the secession of Quebec. In 1995 Quebec conducted a referendum for separation from Canada and its outcomes favored the separation. Federal government approached the Supreme Court for ascertaining its views under what conditions, if any, the unilateral secession of a province would be legal. The Court held that “in a democracy the quest for separation is legitimate if it is the result of the clear majority response to a clear question, and that legitimate secession requires principled negotiation with other participants in Confederation within the existing constitutional framework”. In response to this judgment the federal government of Canada has enacted the Clarity Act, 2000.
The Federal Court of Canada was established by Parliament in 1971. It has replaced the Exchequer Court and has jurisdiction over lawsuits against the federal government and specialised areas including admiralty, aeronautics, patents and copyright, as well as the power to review decisions of federal agencies and officials. However in some areas it also shares concurrent jurisdiction with provincial superior courts.

The Court has been assigned responsibility for reviewing security certificates, warrant requests, public disclosure of evidence, and matters of administrative and federal provincial legal disputes namely (i) Immigration and refugee matters; (ii) Elections; (iii) Official language; (iv) Access to information; (v) Privacy; (vi) Passport; (vii) Prisoners in federal institutions; (viii) war veterans; (ix) application of the Canadian charter of Human Rights; (x) environmental impact assessment; (xi) public works; (xii) national defence; (xiii) public service employment; (xiv) aeronautics and transportation; (xv) oceans and fisheries (xvi) First Nations; and (xvii) intellectual property rights.

First Minister's Conferences

First minister conference is an informal mechanism to resolve federal disputes of Canada. It comprises of Prime Minister and Premiers of all provinces. The origin of FMC can be traced back to mid-1860 when different British colonies or Canadian governments conducted meetings to discuss the form of confederation. FMC provides a platform where premiers can represent issues of
their electorate and in this process it is argued that intergovernmental bargaining process adopts the feature of nation-state diplomatic talks leaving behind the character of a discourse of a single nation.\textsuperscript{79}

Over the years, it has emerged as indispensable institution of conflict resolution and building up of national political consensus on issues like Meech Lake or Chartattetown accords, and recently on social union programme and health care agreements.\textsuperscript{80} In its meetings for Health Care Agreement on 2004 there was no agenda of the meeting however it has discussed issues like

- Health Care, and Public health
- Canada-U.S. relations
- Emergency Management etc.

FMC as a means of intergovernmental interaction creates harmony and cooperation between Ottawa and different provinces.\textsuperscript{81} In FMC heads of the government meet each other to share information, lobbying other for their intergovernmental concerns. Most of the time provinces utilises these meetings to increase more fiscal transfers. On the other hand FMC has not crossed the jurisdictional integrity of provinces and on the other hand it has resolved many disputes such as oil-pricing agreement (1973-74), Alberta and Ottawa’s energy agreement of 1979, the constitutional amendment of 1982, and Meech Lake accord. However it is notable that FMC is loosing its importance and Annual Premiers Conference is becoming more important now a day. Its frequency of meeting has been declined and replaced with short sessions. However the
advocates of collaborative federalism regards FMC should act as a major forum that provides informal solutions at national level and provides guidance to lower level of meetings.\textsuperscript{82}

**Ministerial Meetings**

Inter-jurisdictional ministerial meetings have made considerable impact in the areas of social policy renewal, forestry, transportation, education and the environment.\textsuperscript{83} Lately an innovation was introduced by including municipalities and making it a tri-level conference. These ministerial meetings are efficiently working for resolving many federal disputes and it facilitates to cultivate cooperation and coordination for diverse issues amongst different levels of governments in Canada. It is notable that most of the intergovernmental work is carried in councils of federal provincial and territorial ministers. Ministers of different mandate along with bureaucrats participate in these meetings.\textsuperscript{84}

**Annual Premiers’ Conference**

It is yet another important form of executive federalism in Canada. It mainly discusses provincial issues. Initially it used to meet at irregular intervals, however, in the meet of 1960 it was decided that APC should take place before First Minister Conference. Significant contribution of APC includes regulation of private pension scheme and securities regulation. Apart from Annual Premiers Meet, premiers also meet at regional and bilateral level. There are many such regional groupings in Canadian federalism such as Western Premiers Conference comprising of British Columbia, Alberta, Saskatchewan and
Manitoba which meet less frequently. Another example is Council of Maritime Premiers Conference comprising of Nova Scotia, New Brunswick and Prince Edward Island.85

Council of Federation

Created on December 5, 2003, the Council of Federation marks the beginning of new era in the growth of collaborative intergovernmental relations in Canada. Its members include Premiers of provinces only. It is a provincial/territorial forum striving to evolve cooperation amongst members and discuss various issues of matters of common interest. Its objectives include to

- "Promote interprovincial-territorial cooperation and closer ties between members of the Councils to ultimately strengthen Canada;"
- "Foster meaningful relations between governments based on respect for the Constitution and recognition of the diversity within the federation;"
- "Show leadership on issues important to all Canadians."

Since its inception it has met on annual basis. It has taken key initiatives in the crucial areas as Canada-U.S. relations, Climate Change, Health Care, Internal trade, water stewardship Council and some initiatives are advisory in nature namely Crystal Meth and other Addictives drugs, Energy Strategy, National Transportation Strategy, Post Secondary education and Skill Training.87

Canada and India share similar etiology of distribution of powers. They began with centralisation process and are gradually evolving into a consensual model
where decisions are churned out through political-executive processes. Overburdened centre diversifies its authorities for regional governments. Centralisation and decentralisation are applied according to the nature of the subject of governance. In some areas such as environment and social security centre is being assigned larger fiscal and legislative responsibilities, and in other areas powers are being transferred to the provincial government.
Endnote

4 Johannes Althusius. “Politics as the Art of Associating”, in Dimitrios Karmis and Wayne Norman, eds. Theories of Federalism: A Reader, New York, Palgrave Macmillan, 2005, p.27.
6 Thomas Hueglin. “Johannes Althusius: Medieval Constitutionalist or Modern Federalist”, p. 28.
8 Ibid. p.58.
9 Ibid pp.68-69.
12 Ibid. p.90.
13 Ibid. p.97.
15 Ibid.
19 Ibid.
23 Ibid. p.4.
24 Ibid. p.9.
26 Ibid. p.272.
27 Ibid. p.273.
29 Ibid. p.192.
31 Duchacek, Comparative Federalism: The Territorial Dimension of Politics, p. 192.
36 Ibid. p.183.
38 Ibid. p.12.
39 Ibid. p.29.
41 Ibid. pp.240-241.
43 Ibid.
44 Ibid. p.259
45 Ibid.
46 Ibid.
47 Ibid.
52 Ibid.
55 Ibid.
56 Ibid.
58 Ibid.
59 Ajay Kumar Singh. Union Model of Indian Federalism, pp.13-17.
63 AIR 1989 SC 516.
64 AIR 1990 SC 1316.
67 Ibid.
68 http://dgftcom.nic.in/exim/2000/interstate.htm
69 http://commerce.nic.in/pressrelease/pressrelease_detail.asp?id=1451
70 http://dgftcom.nic.in/exim/2000/interstate.htm

73 Constitution Act 1867, Section 53 and Section 47 (1).


76 http://www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1ARTA0007798


80 Ibid, p.126.


84 http://www.pco-pcb.gc.ca/aia


86 www.counciloffederation.ca

87 www.counciloffederation.ca