CHAPTER - III
FEDERALISM: THEORETICAL DIMENSIONS
In view of the continental size of its area and huge number of its population on the one hand and the diverse nature of its society on the other, the constitution makers of India resolved to opt for a federal system instead of a unitary one. But, at the same time the euphoria of independence, trauma of partition, the problem of integration of princely states and need for planned economic development for removing backwardness, poverty and food shortage prompted them to establish a strong centre in it. The lessons of history, the presence of internal threats from casteism, communalism, regionalism, separatism, the external threats from Pakistan and China on the one hand, and challenges of cold war between the blocs led by the U.S.A and erstwhile U.S.S.R too influenced them to have such a federal system.

The establishment of this type of a federal structure however, created the problem of developing a conceptual framework that could be useful for the study. This problem has been further compounded by the changes in the nature of federal system in India owing to the conversion of one party dominant system into a multi party system as a result of regionalization of politics due to the cumulative impact of the process of modernization economic development and politicization. This problem, Therefore, remains unresolved despite the production of an enormous quantity of literature on federalism in India by a galaxy of foreign and Indian scholars.
So in this chapter an attempt has been made to review the conceptual framework of federalism and the American, Canadian and Australian federations with India federation are highlighted, because the frame of the Indian Constitution have mainly been influenced by the provisions of these federations. Therefore, it is desirable to state briefly the theory of federations. Therefore, it is desirable to state briefly the theory of federalism as revealed in these Constitutions for proper understanding of Indian federalism.

FEDERALISM

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

The bible is regarded as the first book to discuss the problems of a federal polity. Ancient Israel provides the first example of a union of Constituent politics based on a sense of common religio nationality. It was visualized as a linkage of people and institutions my mutual consent without the sacrifice of their, individual identities. It aimed at evolving a society based on coordinative rather than subordinative principle. Politically, it stood in favour of a political order operating on the principle of bargaining and negotiated coordination among several power centers as a prelude to the exercise of power within a single political system. Both ancient India (2) and Greece had tried to aim at similar goals, but could form only some permanent leagues of independent states, but not federation (3) in the modern sense of the term. They were united by a sense of common need or crisis, but failed to inculcate a sense of nationhood on some permanent temporal basis. In fact, they were communities more, and politics less. Big empires Persian, Hellenic, Roman, Magadhan, Mauryan, Gupta and so on, flourished from time to time which allowed cultural identities to their sub units, but could not evolve them into a form of strong and permanent federation affinities among them were either personal or mythological. They lagged for behind and required political development reaching the milestone of sovereignty and nationalism.

Some elements of federalism appear in the medieval political organizations. They put emphasis on essentially immutable contractual relationship which linked various contracting parties while guaranteeing their rights. Medieval federations were actually leagues and confederations. They
were united through a perpetual covenant, binding under prevalent international law. The constituent states delegated some specific powers to a common government retaining full rights including the right to come out of those collectivities. Some federal principles or elements do appear in multiple monarchies, legislative unions empires and decentralized unitary systems. They can, at the most, be regarded as political orders which make use of specific federal principle, but are not genuine or authentic federations. Moreover, the hierarchical character of relationship existing in those politics did not allow them to evolve a mechanism to maintain the terms of their political contracts, and led those loose organizations ultimately to decay and disruption. The Swiss confederation which came into being in 1291, leaving the Napoleonic interlude, was the only exception. It somehow survived till its reconstitution on modern lines in 1848.

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

1) The conciliation of feudally rooted hierarchies with a system demanding fundamental social equality in order to facilitate the sharing of power.

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

3) The problems of executive leadership and succession which was not solved until the United States invented the elective presidency.4

Modern imperialism also contributed to federalism in its own way. Its discussion is found in the writings of pre-revolutionary theorists of the eighteenth century like Montesquieu and Adam Smith. Britain, in line with her imperialistic design and under pressure created popular assemblies in her colonies of North America. The colonists found out theoretical justification for these institutions on the basis of the Bible which led early Americans to accept those semi federal institutions. Imbued with the biblical spirit, they assumed their relationship with the British Government as 'Federal' or as based on 'coordinative' principles, though the latter did not entertain any such ideas. But the underlying spirit and relationship caught imagination. The Americans
during the course of their struggle for independence translated those ideas and principles into a working system of government. As they were free from ramshackles of European feudal societies and could keep away from external pressures for several decades, they continued to strengthen their federal system. Facing one after another major events, and, in the end, successfully provided a model of federalism to many polities throughout the world. The Americans had all other social, political, cultural, and economic diversities along with emerging tide of unity and cohesion, which all contributed towards the success of an effective federal system.

However, the founders of the United States of America did transform and organize the principles of federalism into a practical system of government. They were able to do so because, being a post-feudal society, they could develop themselves as a nation without the disadvantages that beset earlier federal systems. As they were following an isolationist policy, external pressures for centralization were not there for about 150 years.

"The successful operation of federal systems requires a particular kind of political environment, one which is conducive to popular government and has the strong traditions of political cooperation and self-restraint that are needed to maintain a system which minimizes the use of coercion. Beyond the level of tradition, federal systems operate best in societies with sufficient homogeneity of fundamental interests or consensus to allow a great deal of latitude in political operations and to place primary reliance upon voluntary collaborations."
In fact, allocation of powers between the union and its units is directly related with the evolution and growth of nationalism in a polity. A federation can allow greater autonomy to its units if there is greater amount of nationalism. Greater amount of nationalism permits greater amount of autonomy to its units. However, it is also true that apart from subjective socio-psychological factors, as stated earlier, objective factors too help or discourage the making and running of a federation.

MEANING AND DEFINITION OF FEDERALISM

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

Association of States, Common Aims and Large Measure of Original Independence: A federation is an association of states formed by a written constitutions. Several states having common aims and objectives may form an association on constitutional, legal and permanent basis. In this association having two sets of authorities, the states surrender their sovereignty for the common good, but at the same time, maintain a large measure of their original independence as far as the regional matters are concerned.

Hence in a federation we find:

1) Two sets of government constitutionally coordinate;
2) Division of powers between centre and units according to a fairly rigid written constitution;
3) A federal court as a guardian of the constitution; and
4) Supremacy of the constitution which is rigid.
Hence the term 'federal government' is used very loosely in political discussions and it is used very loosely in political discussions and it is seldom given a meaning which is at once clear and distinct, that is "a federal system of government is one in which a constitution divides governmental powers between the central, or national government, and the constituent government (called "States" in the United States), giving substantial functions to each. Neither the central nor the constituent receives its powers from the other; both derive them from a common, source, the constitutions. This constitutional distribution of powers cannot be altered by an the ordinary process of legislation for example, by an act of the national legislature or by act of the several constituent governments. Finally, both levels of government operate through their own agents and exercise power directly over individuals". 7

DEFINITIONS ASSOCIATED WITH THE TERM FEDERALISM

1). K.C.Wheare, an authority on federalism says that "In a federal constitution the powers of government are divided between a government for the whole country and governments for parts of the country in such a way that each government is legally independent within its own sphere." 8

2) J.W.Garner says in political science and Government (1955): "Federal government as distinguished from unitary government is a system in which the totality of governmental powers is divided and distributed by the national constitution or the organic act of parliament creating it, between a central government and the governments of the individual states or other territorial subdivisions of which the federation is composed." 9
The two sets of government in a federation are: (i) Federal, National or Central Government to deal with subjects of general or national importance. (ii) Regional Governments which may be called states (as in the USA and India), Cantons (in Switzerland) or provinces (in Canada) to deal with subjects of regional importance.

The division of powers is made in such a way in such a way that national interests and the distinctness of the communities or units coming together into the union of states are reconciled. The individuality of the federating partners is clearly retained, while their absolute sovereignty is surrendered.

3) According to Nathan, "Federation is an aggregate of smaller states which while retaining each its separate identity are united together for common purpose in a nation which theoretically atleast is indissoluble." 10

4) According to Dicey. "Federalism means the distribution of the forces of the states among a number of co-ordinate bodies each originating in and controlled by the constitution." 11

5) According to Birch, "A federal system of government is one in which there is a division of powers between one general and several regional authorities each of which, in its own sphere is coordinate with the others, and each of which acts directly on the people through its own administrative agencies." 12

Generally above definitions tells about division of powers. This division of powers based on allocation of subjects in the sense that in any state, there are firstly subjects in the sense that in any state, there are firstly subjects of...
national importance like defence, foreign policy and currency and coinage and secondly, subjects of regional or local importance like public order, police and local government, in a unitary state, both the types of subjects are dealt with by one integrated system of government, and all powers are exercised and functions discharged by the central government and its agents. But in a federation subjects of general or national importance are given to the federal or central government, and those of regional importance are given to the units.

However, in short, by federation we mean a type of polity operating a constitution which works on two levels of government as a nation and as a collection of related but self standing units. And the main objective of a federation is to form a government for the people by the people.

NATURE OF FEDERALISM

"Federalism is by its very essence a compromise and a pact. It is a compromise in the sense that when national consensus on all things is not desirable or cannot readily obtain, the area of consensus is reduced in order that consensus on somethings be reached. It is a pact or quasi treaty in the sense that the terms of that compromise cannot be changed unilaterally. That is not to say that the terms are fixed forever, but only that in changing them, every effort must be made not to destroy the consensus on which the federated nation rest". 

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

In each the powers of government are divided on constitutional basics, between a general or national government and regional units or states; and both the national government and the states have authority to act in ways which directly affect the people."  

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

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

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

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

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

Each federation has its own way of distributing powers according to historical conditions, the needs of the state and the genius of the people.
"A federal government is one which divides powers between the states and the national government. Each level is guaranteed certain rights, including the right to exist, so that the states cannot conspire to destroy the national government or another state cannot conspire to destroy the national government or another state government; and the national government may not dissolve the states. Thus the union is one and inscrutable." 16

ESSENTIAL FEATURES OF A FEDERATION

1) The existence of a dual government: In a federation we have two sets of government. Firstly the Federal or central or the Union Government and secondly the regional Governments. They are the units of the government. In Switzerland, the regions are called cantons, in Canada provinces, and in USA states.

2) There is a division of power between the Centre and the States in a federation: However a study of different federal Constitutions reveals that there is no uniform approach in the division of power. In USA, the power of the National Government has been enumerated in the Constitution and rest of the powers belongs to the state. Conversely in Canada, the powers of the provinces have been defined and the centre is authorised to make laws for the "peace, order and good government" of Canada and with respect to subjects not assigned to provinces. This means residuary powers are with the centre. In Australia the powers of the centre are defined, there is a concurrent List in which both the centre and states can legislate. However the states powers have been vested in the states. Whatever may be the form of distribution of power
but this distribution is necessary so that both the governments understand their respective jurisdictions and there is no conflict over it.

3) This division of power is through a constitution which is written, supreme and rigid: the constitution has to be written because the division of power has to be written because the division of power has to be done in a very precise manner. The constitution is also supreme law of the land and both the Central Government and the state Government derive their respective powers from the constitution and they function under its supremacy. The constitution has to be rigid which means that there is a distinction between the constitutional law and ordinary laws. There is a special provision in amending the constitutional law. This is done so that the distribution of powers between the central and state Governments is not tampered with and ordinarily it is not changed. The American Constitution is the most rigid constitution.

4) Finally the federal system envisages an independent and impartial judiciary:

The Judiciary acts as the guardian and protector of the constitution. The final interpretation of the constitution vests with the judiciary. It has to maintain the balance between the centre and states so that they function within the limits prescribed by the constitution.

FEDERATION AND CONFEDERATION

In order to have a clear idea of Federal government it is also very important to understand the difference between the two terms that is a Federation and Confederation.
The terms Federation and confederation do not mean the same thing, though both have the same root.

A federation is a permanent union or association of states or units in which both the sets of government come under a common sovereignty; but a confederation is an association of sovereign states formed temporarily for realising a specific purpose.

In a federation, the centre and the federated units are bound by the provisions of a written constitution, the centre deals with the subjects of national importance, and the unit's deal with subjects of local importance. The division of subjects is made according to the constitution. But in the case of a confederation, there is no constitution binding on the various member states each of which is completely sovereign, and can have the type of government it chooses.

The American confederation (1781-89), the German confederation (1815-66), and the League of Nations (1920-39) are examples of confederations; and the USA, Switzerland, Canada, Australia and the former USSR are examples of federations.

The units of a federation (except the federation of the formers USSR) do not have the legal right of secession, but the states of a confederation have the right.

The following table summarizes the difference between a federation and a confederation; which is important to note.
CONFEDERATION FEDERATION

An association of sovereign states formed by a treaty or agreement.
An association of states or units formed according to a written constitution

A Confederation is a temporary union.

A Federation is a permanent union.

Formed for realizing a specific aim or objective

Formed for the sake of a compromise between unity and diversity

Each member of the confederation is completely sovereign. There is absolutely no surrender of sovereignty to the confederation.

The centre and the federated units have a common sovereignty. Units surrender their sovereignty, and the constitution in supreme.

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

A federation, that is, its centre and its units has full control over all citizens. Citizens in a federation have to obey the laws of two governments, viz. federal and regional

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

A federation is the result of the union of people in the various states, which make a permanent constitutional agreement-surrendering their sovereignty.
A confederation is not a new state, it is a loose association of states and each state continues to retain its separate identity and sovereignty.

A federation is a new state and nation.

Member states may withdraw if they so choose, at any time from the confederation.

A federated unit cannot secede or legally withdraw from the federation.

If member states resort to war, it becomes an international war.

If war breaks out between units, it is a civil war.

Examples. American confederation (1781-89) and German confederation (1815-66)

Examples: USA, Switzerland, Australia and India.

FORMATION OF FEDERATION

W.F. Willoughby thinks that federations were formed by historical reasons and not by judging the relative merits of the unitary and federal systems.

A federation may be formed in two ways:

1) By Integrating by Centripetal forces: A number of states, at first separate and sovereign, may come together and form a federation by accepting common sovereignty. Favorable Centripetal forces may aid the formation of federation. The federations of the USA, Switzerland and Australia were formed in this manner. Here the process is of integration.
2) By disintegrating by centrifugal forces: A state which was formerly unitary, may be transformed into a federation as a result of centrifugal forces. Canada, which was originally unitary was converted into a federation. Similarly India, a unitary state under British rule was broken up and recognized into autonomous units to form a union of states, a federal structure with a strong centre. The federal constitution for India, was drafted by the constituent assembly (1946-49). Here the process is of disintegration.

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

THEORIES OF FEDERATION

An attempt is made to deal with the theories of federalism in order to have more clarity about the federal concept. Theories are classified as below.

I. Classical, pure or conventional theories and II. modern or empirical theories. Modern theories can further be classified as

1) Origin Theories and Functional, process, and system theories.

I. Classical Theory of Federation:

The chief concern of the classical theory is to explain what federation is? This view is based on a study of the constitution and the system of government obtaining in the four classical federations, namely the United States of America, Switzerland, Canada and the commonwealth of Australia.

Some of the chief exponents of the classical theory of federalism are A.V. Dicey, John W. Burgess, James Bryce, Jethro Brown, Harrison Moore, K.C Wheare, M.J.C Vile, Robert Garren and others.
Robert Garran, an eminent Australian scholar, defined federalism thus:

"A form of government in which sovereignty or political power is divided between the central and local governments, so that each of them within its own sphere is independent of the other" 17

At the end of the 19th century, Lord Bryce, in his book, American commonwealth, described the federal and state governments as "distinct and separate in their action." The system, he said, was "like a great factory where in two sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another yet - each set doing it's own work, without touching or hampering the other" 18

Following the definitions or Bryce, K.C. Wheare gave a traditional concept of federalism. In order to assess whether a constitution is federal or not. Wheare applied the test as follows.

"The test which I apply for federal government is then simply this. Does a system of government embody predominantly a division of power between general and regional authorities, each of which in its own sphere, is coordinate with the other's and independent of them? If so that government is federal." 19

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

A large number of scholars are influenced by this classical model. Herman Finer, finds it, a federal state is "one in which part of the authority and power is vested in the local areas while another part is vested in a central institution deliberately constituted by an association of the local areas". Birch is also traditional when he writes that, "There must be a division of powers between
one general regional governments, each of which, in its sphere, is coordinate with the others; each government much act directly on the people, each must be limited to its own sphere of action; and each must within that sphere be independent of the others." B.R. Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly of India also followed the same line: "the basic principle of federalism is that the legislative and executive authority is partitioned between the centre and the state but not by any law to be made by the Centre, but by the constitution itself. This is what the constitution does. The states are in no way dependent upon the centre for their legislative or executive authority. The states and the Centre are co-equal 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 a larger field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that residuary powers are given to the centre and not to the states. But these features do not form the essence of federalism."  

Thus all classical theorists emphasize,

i) Watertight compartmentalization of the general and regional governments,

ii) Disallowance of any kind of overlapping or coordination between them;

iii) Clear cut constitutional autonomy for the states, and

iv) an independent judiciary to uphold their separate status and powers.
It is clear that these authors demarcate the features of a federation, but do not bestow responsibility on any particular authority to maintain them. None of them relates the 'federal principle' to particular parts of the government and the constitution. They create a federation and throw it to sea-waters.

II. Modern Theories of Federalism:

Modern theories of federalism can be categorized as:

1) Origin Theory
2) Functional process theory, and
3) Systems Theories

Origin theory again contains three sub-categories:

i) Sociological,
ii) Multiple-factor theory and
iii) Political theories.

1. Origin Theories:

Origin Theory explains circumstances related to establishment of a federal system, thereby seeks to define federalism in terms of circumstances, conditions or requisites, Functional and process theories are more interested in the operational aspects of federal systems. All these theories try to explain federalism in their own way.
i) Sociological Theory of Federalism:

According to this theory, it is the federal nature of society that gives birth to the federal political system. A federal society in one which contains within its fold elements of diversity. Usually, diversity is caused by differences of economic interests, religion, race, nationality, language, separation by great distances, differences in historical background and dissimilarity in social and political institutions. One important condition laid down by Livingston, is that diversities must be territorially grouped, in order to result in the formation of a federal union. He redefines federalism as "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." According to him, "the essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal Government is a device by which the federal qualities of the society are articulated and protected." Societal forces are more important than anything else.

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

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

Like Livingston, Wildavsky, also distinguished 'social federalism' from 'structural federalism.' He cited the common wealth of Australia as an example of structural federalism which is a framework devised and adopted to retain the unity of the Australian people as a nation. According to him, the USA is an example of 'social federalism' because of the social make-up of territorial, religious and other diversities located in dislinet geographical corresponding roughly to the boundaries of the states which united under the constitution of 1787. Livingston's theory does not serve the purpose mentioned earlier. He merely points out the various kinds of diversities but has not explained the factors which generate the desire among the diversities for establishing a general government within a federal framework. It is not true that every society containing elements of diversity necessarily results in the establishment of a federal political system, for example; Great Britain, and also in France, South
Africa, Ceylon, Indonesia, Ghana and so on. Sawer\textsuperscript{26} has pointed out that social attitudes and diversities, as enumerated by Livingston, are not specific to federalism; they may result in any kind of constitutional and political system ranging from a nonfederal alliance to a centralized system with a good deal of defect devolution. Livingston's theory lacks definite indices and criteria by which federal society can be distinguished from a non-federal society. Venkatrangaiya, therefore, considers that "the idea of federal society on which the sociological theory rests is vague, and full of ambiguities, each scholar interpreting it and its bearing on federalism in his own way."\textsuperscript{27}

ii) Multiple-Factor Theory:

This theory is propounded by K.C.Wheare and Karl Deutsch. This theory tells about the necessary as well as the sufficient conditions of the birth of federal systems.

Wheare lays stress on, the desire for union and the desire for establishing independent regional governments, and, the capacity to give reality to that desire. The desire for union requires a sense of military insecurity and the need for common defence, a desire to be independent of a foreign regime, a hope for economic advantage, geographical neighborhood, similarity of political institutions and this desire for union must be coupled with a similar desire for independence of regional governments. Given both the desires, the desire for union as well as the desire for regional independence and identity, a right kind of relationship with the foresight and vision of statement would be necessary to device a federal system for accommodating both the tendencies.
He lays down no criteria to determine 'capacity'. It may mean the capacity of the regional governments to raise the financial resources needed to maintain their autonomy. In fact, this theory fails to explain adequately the creation of federal systems by the process of devolution or disaggregation. It does not take into account the aspects of regulating the federal relations in a right direction.

iii) Political Theory of Federalism:

This theory's principal thesis is that federalism is a solution to what is essentially and primarily a political problem. The solution is political because it centers around power and stands for the division of political power as distinct from its concentration and monopolization. Hence, it is to be recognized that political motives play a dominant role in the origin of federal systems.

The theory finds a forceful exposition in William. H. Riker, who raises two questions and tries to answer them. These questions are:

1) What occasions the adoption of a federal government?

2) What induces societies to maintain and preserve federal governments they already have?

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

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

2) Functional theory, process Theory and System Theory

   i) Functional theory of Federalism:

   The Origin theory of federalism tries to explain the causes responsible for the creation and substance of a federal system of government, but it fails to point-out-how federalism, despite its gradual erosion tries to persist in the face of new challenges that have raised their heads in the present century. To explain this gap, scholars have evolved the functional theory of federalism which has found favour with a large number of people in modern times. Similarly, the theory of 'dual federalism' has also come in for severe criticisms on several counts. Dual federalism or classical theory fails to stand the empirical test relevance and continuing applicability to older of federations and to new experiments in federalism as well. In its applicability to the American federal system the theory of 'dual federalism' has been rejected by M.C.J.Vile and D.J.Eazr 28 both of them suggest that the traditional conception of federalism
as involving a sharp demarcation of responsibilities between two independent sets of sovereignties has never worked in practice in the United States. According to them, in the nineteenth century, as in the twentieth century, administrative cooperation and political interdependence, between federal and state governments was dominant characteristic of the American federal system, in spite of the formal division of the constitution.

This view, argues R.L. Watts, holds good of other developed federations such as Canada and Australia "Interdependence and cooperation between the two levels of government are instead their characteristic features." The trend is also inherent in the structure and operation of the new federations formed after the Second World War. An empirical study made by Watts of the six new federal constitutions of India, Pakistan, Malaysia, Rhodesia and Nyasaland, Nigeria and West Indies shows that "Cooperative Federalism" became the inevitable trend in their systems. This trend has taken place because of the extension of nationwide commercial enterprise, the development of an inter functions of government in modern society, the growth of national sentiment and so on. All these have resulted in partial financial dependence of the regional governments upon the general government and the administrative dependence of the latter upon the former.

The role of the federal government as the centralized regulator brings us to a new phase in the development of federalism. This new phase has also been termed as 'organic federalism'. The term 'organic' belongs to political geography and may be called as integrated federalism. This is, however, still a
recent and ill-defined concept. Organic federalism is that category of federalism in which the central governments wield power in extensive and the most important areas of their individual as well as their cooperative activities.  

ii) Process Theory of Federalism:

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

According to Carl. J. Friedrich, the process of federalism is 'the organizational counterpart of communal development' or the organized cooperation of groups', Moreover, he holds that this process is linked with a 'territorially diversified pattern of values, interests and beliefs, overarched by joint values and beliefs' and ultimately with constitutionalism and the rule of law. He disagreed with the critics who saw federalism in the United States as a mechanism for entrenching special interests whilst himself found that the benefits of federal organization had to be paid for in other ways. The most important contribution to the discussion of the nature of federalism was in his rejection of a 'static' and 'rigid' view of federalism in favour of seeing it as a process, a dynamic set of relationships through which a number of separate
political communities work out joint solutions to problems and in doing so become progressively integrated.

However, his approach has been criticised as too general as it comprehends all, leaving nothing out of the picture. But it has been described in more definite terms as "a kind of metabolism of the federal body politic, that is, involved in all the process, chemical relations as well as physical phenomena, pertaining to its organization, maintenance and growth as an organism." When seen as a process, loose confederations give place to 'dual federalism, and later to 'cooperative federalism' and may gradually turn into wheare's quasi federations or even 'unions'.

However, Leach studies federalism with a different perspective. He examines American federalism as power process. He points out that it was not designed as a device for facilitating the use of power. He observes that power is systematically exercised in the United States, and there is no provision as such in the constitution. Extra-constitutional factors and forces have, to a large extent, transformed the traditional federal scene. According to him, federalism is mainly procedural, it is devoid of specific goals. It fulfils its purposes in its functioning, rather in meeting a set of pre-determined objectives. Action in American federalism is neither confined to governments nor is automatic. Someone has to trigger it off. The federal governmental process receives its inputs from the nation as a whole, the states, local needs and pressures, people, and circumstances generating crisis and emergencies. Inputs may not result in positive results or outputs and has to be fed back into the
federal system. Power in the federal process is circular, involving constant change and movement.

Political parties which have been described as engines of American government, also contribute to the decentralized structure of government. Pressure groups operate the other way and strengthen the federal government. The Supreme Court has proved to be the greatest bulwark of centralization process, offering from time to time, a liberal and national interpretation of the constitution. The constitution has been interpreted "not as a document of the past, but as a document of the future, not as a printed finality but as a dynamic process." Wars, science and technology have further increased power in the hands of the union.

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

iii) Systems Theory of federalism:

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

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

RENOVATION OF THE FEDERAL CONCEPT

As a result of these newer theories federalism has been redefined as "the mode of political organisation which unites separate politics within an overarching political system so as to allow each to maintain its fundamental political integrity." Federal systems do this by distributing power among general and constituent governments in a manner designed to protect the existence and authority of all the governments. By requiring that basic policies be made and implemented through negotiation in some form, it enables all to share in the system's decision making and decision-executing process. Morton Grodzins visualized the American form of government as a the rainbow or marble-cake characterized by an inseparable mingling of differently coloured
ingredients, the colours appearing in vertical and diagonal, strands and unexpected 'whirls'.

Thus, theories based on the concept of process, have advanced from the conceptual arena of 'dual federalism' to that of cooperative federalism. The layer-cake theory of federalism has undergone a process of metabolic change giving rise to the theory of 'marble-cake', as developed by Mortan Grodzins. Then latter has further been developed by Daniel J. Elazar. and others, explaining federalism in terms of 'interdependence' 'Cooperation' and 'sharing of power' between the two levels of government instead of their 'interdependence.

FUNCTIONS OF FEDERALISM

Functions of federalism are related to its goals. According to Friedrich following are the main functions of federalism.

1) increases the opportunities for dissenting minorities to make their views known to other citizens and policy makers;
2) multiplies the opportunities for citizens to participate in political life;
3) enhances consensus in political discussion in the sense that solutions are sought that will reduce the size, resentments and coercion of defeated minorities;
4) greatly improves the chances of the peaceful resolution on conflicts;
5) aids the solving of urgent policy questions by providing an opportunity for experimenting with solutions on a limited scale, and
6) enhances confidence in and loyalty to a constitutional polity.
Willed Functions of Federalism:

Willed functions relate to a particular socio-political ideology and are translated into various provisions of a country's constitution. They can be broadly categorized as:

1) citizens participations and

2) Civic liberty. Civil participation consists in having the opportunity to control conditions of one's own life, and the exercise of rational self control as individuals and as citizens. No citizen could be called either happy or free without participating and having a share in public power. One has to have his share in public happiness or experience in public freedom. Government in any case and in every form is a mode of strengthening one's own active facilities. It follows the ideals of ancient Greek city states.

According to Ricker, the aim of federalism is to give to each nationality, every province or commune, the highest possible amount of life, activity and independence. For every individual

THEORETICAL PERSPECTIVE OF FEDERALISM IN INDIA

In this subchapter an attempt has been made to reveal the meaning of federalism in India, definitions of federalism and important features of federalism in India along with American, Canadian and Australian federalism because the founding father of Indian constitution have mainly been influenced by the provisions of these federations.
THE INDIAN FEDERALISM IN PARTICULAR

Federalism was very much in the air when the Round Table Conference opened in London in the winter of 1930. This idea was expressed during the meeting of Round Table Conference by one of the delegates. The Indian leaders were advocating for a federal India along with the struggle for freedom.

The act of 1935 may be regarded as a constitution for a federal state in India, in which both British India and Indian states would be joined. The federation provided for in the Act of 1935 as a most peculiar one. Since it was never really established, it is impossible to say whether it would have been a workable arrangement. However, it served as a model for the federal state which India established in the constitutions of 1950. The Act of 1935 was designed to establish a highly centralized federation with a fair measure of provincial autonomy, always subject to the ultimate control of the paramount power. Its federal features were never implemented, but their influence on the character of the government of independent India is manifest.

However, Indian federalism did not spring into life, in 1950, actually the foundations had been laid during the last eight-decades of British rule in India. It was over these foundations that the constituent Assembly raised the federal superstructure. The deliberations of the constituent Assembly were conditioned by the fact that the principle of federal constitution for India had been mooted over the post several years and had been accepted at the First Round Table Conference by the representatives of practically all major parties and sections of opinion in the country. The Indian National Congress which was not
represent in the First Round Table Conference participated in the second session of the conference, thereby given its approval to the idea of an all India Federation comprising the provinces of British India and the princely states. The constitution makers of free India were inevitably influenced by the fact that the trend of constitutional development in India, since the initiation of a policy of decentralization after the 1857. Mutiny and, more unmistakably, since the introduction of partial provincial autonomy under the Montford Reforms, had been in the direction of federalism. In fact they were also aware, that a federal form of government alone would suit the requirements of a country of India's gigantic size and manifold diversities. The basic element which has made a federal organization inevitable for India is the country size accompanied by the factor of unity in diversity. Federalism, in other words has been inescapable for India "to maintain and foster a national coherence while at the same time articulating and protecting the several diversities within the society to which value is assigned."40

Different political scientist have had commented and been commenting on Indian federalism. Some say that it is a federal constitution and some others argue that it is quasi-federal in nature. Some other scientists say, Indian union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features. It is federal in theory and unitary in practice. It is important to note that, India formally improvised the classical model of federalism but-looking at its practice, a large number of scholars, jurists and statemen have been expressing doubt regarding the real nature of the Indian
federalism. Some scholars described the Indian federation as bargaining cooperative vertical federation, horizontal, paramount, pseudo and so on.

DEFINITIONS ON INDIAN FEDERALISM

1) K.C. Wheare, a renowned British political scientist and authority on federalism, says, the constitution is 'quasi-federal', and classified India as "a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles." 41

2) According to N.D. Palmer- "This Republic of India is a federation, although it has many distinctive features, which seems to modify the essentially federal nature of the state." 42

3) According to Sir Ivor Jennings "India has a federation with a strong centralizing tendency" 43

4) Morris Jones commented on Indian federalism that "Indian federalism was a kind of cooperative federalism where bargaining took place between the centre and the states, but ultimately a solution came out-and both-agreed to cooperate." 44

5) B.N. Schoenfeld has defined that there was a tendency of centralism in the Indian federalism that was not because of its structural framework but because of its socialistic goals and centrally devised plan development." 45

Marcus Franda remarks that in India, there is not one model of federalism but in practice various models of federalism are in operation. The centre has encouraged different, modes of relations with the different states and hence a varied mode of federalism is perceivable.
A large number of scholarly studies have been published on the dynamic aspect of India's federal system and these studies reveal a dynamic character of Indian federal system and this dynamic character changes according to compelling reasons, pressures and circumstances.

Here a question may arise as to why the framers of the Indian constitution thought of giving more, powers to the union or made union government more strong than the state governments in the fashion of a true federation. The answer to this particular question could be found in the long historical background of India. The students of India history know that wherever there was a strong central government, there was a united India, on the other hand, where there was a weak central government India was disunited. So, the Indian National Congress during the freedom movement advocated "Akhand Bharat". And this could be achieved and maintained only by making central government strong.

Hence, the framers of Indian constitution desired to build a strong, Akhand and united India. India has adopted federalism and through collective efforts she uphold the values of democracy national unity, cultural diversity regional autonomy and socio-economic developments transformation.

**FEDERAL FEATURES OF INDIAN CONSTITUTION**

**A CONSTITUTION IS FEDERAL IN FORM**

The Indian federal system of today has many such characteristics which are essential for a federal polity. The main federal features of the Indian
1) Written Constitution:

For a federation it is essential that its constitution should be a written one so that both the units as well as the centre can refer to that as and when need be. Accordingly the Indian constitution is a written document containing 395 Articles and 12 schedules, and therefore fulfils this basic requirement of federal government. In fact the Indian constitution is the most-elaborate-constitution of the world.

All the modern federations like the U.S.A, Australia, Switzerland and Canada have hammered their constitutions, and they are written in nature. However, it should be noted that in the U.S. in addition to the federal constitution each state has its own constitutions. The Indian constitution is the result of constituent assembly. The members of the constituent Assembly thoroughly discussed in their debates and deliberations on Indian federal structure. The Indian constitution clearly demarcates the powers between the centre and the state. Dual polity and a clear written constitution are absolutely essential for the functioning of federalism. In a written constitution the central government will not encroach upon the state powers, and both have to work within their jurisdiction. Hence it is essential to put in black and white the powers for both sets of government. If the powers are not enumerated properly in the constitution, it may lead to disputes between the centre and the states. The United States of America, Australia, Switzerland, Canada and India are the examples of federal constitution.
2) Supremacy of the constitution:

In a federation the constitution should be supreme source of strength, both for the centre as well as the federating units. The constitution is the supreme law of the land the laws passed by the the union or the state governments must conform to the constitution. Accordingly, India's constitution is also supreme and not the handmaid of either the center or of the states. If for any reason any organ of the state dares to violate any provision of the constitution, the court of law is there to ensure the dignity of the constitution and is it upheld at all costs.

Even Queen of England cannot act arbitrarily Similarly, the president of India is bound by the constitution. At the same time, the people have to respect the constitution and should obey all the provisions and laws of the constitution. The centre and the states should work according to the constitution.

It is essential for a good federal government that the constitution should be written. And supreme and in practice all modern federal and quasi federal constitutions have been supreme and in written form.

The constitution of United States expresses the essential supremacy of a constitution in a federal government as:

"This constitution and the Laws of the United States which shall be made in pursuance, thereof .... shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding." 46
In this way, the supremacy of the constitution has been playing a dominant role under the India of federal structure.

3. Rigid constitution:

Another essential characteristic of a federation is that the constitution should be rigid. This rigidity is specially desired by the federating units so that the centre subsequently does not change the list of subject to suit it's convenience and rigid constitution, as we know is one which cannot be changed easily. The Indian constitution is largely a rigid constitution. All the provisions of the constitution concerning union state relations can be amended only by the joint actions of the state. Legislatures and the union parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States. Because under the rigid constitution, the constitutional law is superior to that of an ordinary law and this is made by a special body and not by the legislature. There is a special procedure of amending the constitution. If can be amended either by the joint action of the federal and state legislature or by the federal government with a certain procedure. 47

However, in India the constitution prescribes three different methods for amending the different provisions of the constitution. In the first category it can be amended by a majority of the total membership in each house and by a majority of not less than two-thirds of the members present and voting in each house of parliament. In the second category it requires, a majority of the total
membership in each house and majority not less than two thirds of the members present and voting in each house of parliament and ratification by at least one half the state legislatures. The third category requires a simple majority in each house of parliament.

In other federations, the amending procedure is different. In case of America, the congress will propose the amendment bill and it should be passed by two thirds majority in the Congress and it should be ratified by three quarters of the state. Sometime the states will initiate the amendment, to the constitution. For this two-thirds of the states should apply for amendment. Then the Congress will summon a convention to make proposals for amendment and lastly it should be approved by the three quarters of the states.

The constitution of Canada was the result of British North America act of 1867, which was passed by the British parliament. The United States, Australia and Switzerland adopted rigid constitutions. Though the Canadian constitution is a federal one, the constitution is not rigid like those of other classical federations. But the Indian constitution is a mixture of rigidity and flexibility. It strikes a balance between the flexibility and rigidity.

In Switzerland, if both the houses of the Federal Legislature agree by passing resolution to revise the constitution either wholly or partially they may draft the proposed new constitution or a particular amendment and submit it to a referendum of the people and the Cantos. If it is approved by the majority of the citizens voting at referendum and majority of the cantos then the revision is adopted.
It only one house of the Federal Legislature agrees to the proposed revision and the other house does not agree, then.

It is necessary to decide whether the proposed revision is needed or not. This is to be decided by the the people at the referendum.

If the people approve the proposed revision by majority vote, the new elections to the federal Assembly will be held. Approval of the Cantons is not required here.

Then the newly elected council of states and the national Assembly proceed to consider the proposed revision and submit it to the referendum of the people and the cantons.

If approved by majority of the voters and a majority of the cantons, the revision comes into force.

4) Division of Powers:

In a federation there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite in evident in our constitution. The seventh Schedule contains three Legislative Lists which enumerate subjects of administration that is, union, state and Concurrent Legislative Lists.

The Union List consisted of 97% subjects, the more important of which are defence, foreign affairs, railways, posts and telegraphs, currency and so
on. The state List consisted of 66 subject, including, inter-alia, public order police, administration of justice, public health, education, agriculture and so on. The concurrent List embraced 47 subjects including criminal law, marriage, divorce bankruptcy, trade unions, electricity, economic and social planning and so on. The union Government enjoys exclusive power to legislative on the subjects mentioned in the Union List, the State Governments have authority to legislate on the subjects of state List under normal circumstances. And both the Centre and the State can legislate on the subjects mentioned in the Concurrent List. The residency powers have been vested in the Central Government.

In U.S.A. the governmental powers are divided between the centre and the state by means of a written constitutions. In U.S.A. the enumerated powers are exercised by the central government. But the residuary powers are left to the state governments unlike in India. Whenever there is a conflict between centre and the states, it will be decided by the Supreme Court whose decision is final Federal government means a dual government because the central and state government are working on parallel lines. Usually the national government will not interfere in the state affairs.

Canada was the second country to adopt the federal system. In 1867, the British parliament passed the North America Act, and the Dominion of Canada was born, Canada did not follow the American example regarding the distribution of powers. In the Canadian Constitutions, there is a list of enumerated subjects assigned to the exclusive jurisdiction of providence
(Federal units); over the remaining subjects the Dominion Government is to exercise control. Thus the residuary powers in Canada are with the centre.

Unlike in Canada, in Australia residuary powers are with the units. According to the constitution, the centre is given very wide powers, and the residuary powers are with the units and this units have no right to secede. It has been said that, though America is known as the classical home of federation, but its growing tendency is towards centralization.

5) Independent Judiciary:

For a federation it is also essential that the judiciary should be impartial and independent. A Federal court is indispensable to a federation. It acts as the guardian of the constitution. Especially this principle has been playing an important and key role in the working of federal government. The judiciary has occupied a very important status in federal countries like the United States, Switzerland, Australia, Canada and in India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra vires, if it contravenes any provisions of the constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by parliament.

The constitution divides the powers between the central and state governments, no doubt the conflict between the central and state governments is bound to arise frequently, if the centre encroaches on the state subjects, then
it is a violation of the constitution. And in some time the centre may curb the powers given to the states and impose some restrictions on the states. In that case the Supreme Court decides the validity of such acts of the federal government.

Most of the federal governments in the modern world have given more prominence judiciary and in these federations the doctrine of judicial review has been playing a dominant role. Especially, in the United States the judicial review occupies an important place. In the U.S, if the federal and the state legislatures pass on act beyond their jurisdiction, then the Supreme Court will declare the act as unconstitutional or ultra vires. In India too, the federal judiciary is the highest court of the land. It also acts as a tribunal in solving the disputes between the centre and the states. Like other federations the centre and the states derive their authority from the constitution. Their jurisdiction is limited by the provisions of the constitution. In India, the Supreme Court has the original jurisdiction to decide the disputes between the central and the state governments and between two or more states India has a single integrated judicial system.

The British North America Act of 1867, provides for a Federal court to Canada. This act establishes two types of courts, namely the Federal court and the provincial courts. But in Canada court system is not like that of American system, unlike in India in USA there is not only one unified judicial system and federal courts cannot interfere in the affairs of the state courts, and federal courts and the state courts work in parallel lines. In India, the Supreme Court (which is the federal court) and the High Courts belong to the same integrated judicial system.
While in the USA the Supreme Court can declare a federal law unconstitutional, the Federal Tribunal in Switzerland is not competent to do so; it can only declare cantonal law unconstitutional. Thus the court is not the guardian of the constitution, as its power of judicial review is only concerning cantonal legislatures. In the USA in the category of the Supreme Court there are ten federal circuit court of Appeal and eighty five subordinate Federal circuit court of Appeal and eight five subordinate Federal District courts but in Switzerland there are no courts belonging to the category of the Federal Tribunal, and so it has no subordinate courts.

6) Bicameral Legislature:

A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The constitution of India also provides for a bicameral legislature at the centre consisting of Lok Sabha and Rajya Sabha. While the Lok Sabha consist of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the State Legislative assemblies. However, all the States have not been given equal representation in the Rajya Sabha.

In fact, most of the modern federations have adopted this principle of Bicameralism. America, Canada, Australia, Switzerland, Russia including India have adopted the bicameral system.

Dr. Herman Finer observes "legislatures are bicameral for two broad and different reasons; as a part of federalism and as the result of a desire to check the popular principle in the constitution." Among these countries, America,
India, Switzerland, Australia and Canada adopted a principle of bicameralism to fulfil the conditions of federalism. Under this principle, the constituent states are represented in the upper chamber of the legislatures. The different federations have been following a different method of representation in the upper chambers.

In America, senate is the second chamber. The American Senate is the most powerful second chamber in the world. In America there are fifty state and each state sends two members to the senate. Therefore, there is an equal representation to all the states in the American Senate. This is a democratic body and the members are directly elected. In America, this principle has been working most successfully, under her federal structure. In India too like other federations the union legislature consists of two chambers. The upper chamber in known as the Rajya Sabha. It represents the states on the basis of population. The state legislative Assemblies elects the 238 members on the principle of proportional representation with single transferable vote. The President of India nominates the 12 members. Thus unlike the American Senates, election to Rajya Sabha is indirect.

There is no equal representation in the Rajya Sabha for the States. It is not as powerful as the American Senate. Infact some political scientists have said that it is against the federal principle. However it plays a significant role. Its position is not so weak as that of the Canadian Senate. But it is note worthy that in making of the Union Government strong in India, the founding fathers of the Constitution of India (1950) followed the Canadian example.
To sum up we can say that, so far as the meaning of federalism is concerned, federalism is a modern conception. The theory and practice of this government is not older than American federation which came into existence in the year 1787. But the federal idea is very old, because it had been practised in ancient Greece but it has been employed on a larger scale, only during the last two centuries. This type of government is the result of historical evolution. The term federalism comes from the Latin word "Foedus" which means an 'agreement', 'treaty' or 'contract'.

For a student of modern politics and government, federalism offers a wide field of study. In modern period, the constitution of United States of America 1787 is treated the first experiment in establishing a federal system of government. Subsequently, federalism as a mode of political organization was embodied in the constitution of Swiss confederation (1848), the Dominion of Canada (1867), and the Commonwealth of Australia (1900). This increasing appeal of the federal idea is discernible also in the twentieth century. ⁴⁹

Even K.C. Wheare, a leading exponent of federalism conceded in 1945 that under pressure of war and economic crises the trend in existing federations was towards a concentration of central powers sufficient in some cases to threaten the federal principle. But in 1953, Max Beloff noticed that federalism was enjoying "a widespread popularity such as it had never known before". A look at the remarkable array of constitutions enacted and adopted since the end of World War II, would show how federalism has been taken to as a means to political unity among the new nation in Europe, South America, Asia and Africa." ⁵⁰
As far as definitions of federalism are concerned it is not easy to define the concept of federalism. There is a classical version and there are other versions. In the classical sense, federalism was fairly closely defined. It meant the particular type of government practised with slight variations by the Americans, Australians, Canadians and the Swiss. The federal structure is the outcome of the merger of a number of separate states into a single sovereign state, with legislative and executive powers coordinately divided between federal and unit governments, each of which acts directly on the people.  

All the definitions related to federalism given by the different political scientists shows that federal government is a form of government in which the sovereignty or political power is divided between the central and the regional governments and they are coordinate and independent within their sphere. These political scientists have used the different terms in their definitions but meaning is the same in all. Therefore, federal government means the division of powers between the two sets of government, namely, the central and the state governments.

Each government should work in their own sphere and they should not interfere in other's sphere, otherwise it will be a violation of the constitution, which is known as the fundamental law of the land. Under this form of government, the powers are divided between the two sets of governments not by any political parties or by the leaders but by the constitutions itself.

A federal state divides the authority between the self governing parts and the central whole; each part operates in its sphere as defined in fundamental
law. It is a system of government which involves a certain pattern of relationship between the centre and the states. In modern terms, a federation is a type of polity operating a constitution which works on two levels of government, namely, one at central level and another at state level. In real sense of the term, the federal government works under the democratic set up.

In distribution of powers between the centre and the states each federation has its own way of distributing powers according to historical conditions, the needs of the state and the genius of the people. In some federations, the balance of power is distinctly in favour of the federal government, whereas in others it is in favour of the units. In the first case the centre becomes strong, and the units enjoy relatively less autonomy. But in the second case the centre remains weak, and the units enjoy good deal of autonomy. The USA is good example of a relatively strong centre.

As for as nature of federalism is concerned, federalism begins with the rising sense of common nationality, some emergent crisis, or underlying consensus among some autonomous states, and culminates in an irrevocable compact for making a federation. Like any other compact, it has to have a written constitution that cannot be unilaterally altered. The terms of the compact and the division of powers or functions therein are made by federating units as coordinate and co-equal bodies. The federation is an outcome of the will to live together by preserving internal autonomy. A federation is made by a federating plural society. Federalism comprises a set of institutions erected to meet a particular type of social, political, military and economic situation.
The phenomenon that is so created is not static but dynamic. It goes through a process of evolution and economic factors which necessitate federalism may require one type of instrumentalities at one time and another type of some another time. "As the nature of society changes, demands for new instrumentalities are created, and these demands are met by changing or abolishing old instrumentalities and establishing new ones in their place." 52

Regarding theories of federalism, classical theory of federalism emphasises on meaning of federalism and stress on the study of constitution and government pattern of classical federations. Modern theories tells about the circumstance for origin of a federal system, nature of society, wish to establish a union and independent regional governments and show a way of solving the problems of government in extensive societies. But it has been critically analysed that, most of these theories actually either remain on surface or look at a segment of the total reality. They deal with side issues and secondary problems only, thus adding confusion to the realistic understanding of federalism. The classical theory seeks to explain what federalism is when viewed from a legal angle. Origin theories, Functional and process theories they all see partially the legal set-up, origin purpose, and actual process of relationship operating among various units of a federal system, but-rarely go back to essentials that involve the making up of a federation. As such, they remain unable to trace out the way to keep federations intact, and regulate changes entering into them. So many ambiguous terms are used to conceptualize particular federalism. Sometimes the same federation is
addressed by different names. As in case of India, B.R. Ambedkar and many other regard the Indian political system, in every sense of the term, as 'federal', whereas scholars like K.C. Wheare analyse it 'a unitary state with subsidiary unitary principles'. S.P. Aiyar refused to accept even 'quasi-federal' term for the Indian constitution, preferring to call it a 'Union Constitutions'. Similarly, use of various metaphors and analogical models rarely picks up the crux of a federal system.

In fact, most of these theorists have not been able to conceptualize 'federalism' properly. They have not been able to comprehend the real force operating behind a federal system. Scholars get confused when they look at the apparent working of federation.

As for as theoretical perspective of federalism in Indian context is concerned W.H. Morris Jones, Marcus Franda and Asoka Chanda have studied the Indian federal system in its political and dynamic perspectives. Asoka Chanda points out that planning has suspended the federation and our country is functioning almost like a unitary system in many respects. Professor Morris Jones talks of federalism in India as an example of the concept of bargaining federalism. He says that federalism in India is a form of 'co-operative federalism' but according to him this phrase should be understood to include hard competitive bargaining. The centre has encouraged different modes of relations with the different States and hence a varied mode of federalism is perceivable.

As for as features of Indian federalism is concerned, it has been critically analysed that India has a centralized federation and this federation is inspired
by many other federal features of different federal countries like U.S.A Canada, Australia and so on. Many provisions of the constitution can be cited to support the view that the Central Government has in fact such extraordinary authority that India is no more than a quasi federation at best or that if it is a federation at all, it has many unitary features. However it is recognized that the centralised federalism in India has been the result of five outstanding factors that is,

1) Monolithic parties which control the state organizations through their nations organs;

2) Congress rule in the Union and in all the States from 1950 till 1967 with minor exceptions;

3) The dominating personality of Jawaharlal Nehru as the Prime Minister from 1950 till 1964;

4) Introduction of national planning as the medium for rapid economic growth in the country;

5) The emergency declared in the wake of Chinese aggression in 1962 and Pakistani aggression in 1965 and 1971. It is also analysed that in the past disruptive forces had been very strong in India. The necessity for guarding against centrifugal tendencies is recognized in the new polity, and the distribution of power between the Union and the States is designed to avoid these dangers and evils. The president is empowered to take measures to avoid the difficulties from this direction as well as those difficulties which have been felt by the United States, Canada and Australia. The federal Constitution of
India is the latest addition to the federal constitution of the world. Its framers have borrowed largely from other federal constitutions and have drawn upon the experience and close study of their working, and they have attempted to embody in the constitutional provisions which are necessary and essential in a federal polity, but have modified them to meet the peculiar needs and conditions of India. Like other constitutions it is an instrument for the government of the country. It is sufficiently elastic for adaptation to India changing and growing needs.

THE FUTURE OF THE FEDERAL SYSTEM

STRONG TREND OF CENTRALIZATION:

The actual difficulties experienced by federations like the USA, Switzerland and Australia make statesmen and thinkers apply their minds seriously to the question of the position of the centre. J.P.Suda opines in his "Elements of political Science" (1952): "Writers hold conflicting views on the future of federalism. According to some, it is merely a transition stage bound to give way to the unitary principle in the long run." The principle of leaving the residuary powers to the units as experience bears witness has weakened the position of the centre. This explains why in the USA the constitutional amendments were introduced.

In the light of the new difficulties experienced by the rulers in the USA, which perhaps the makers of the constitution did not anticipate, a broad interpretation of constitutional provisions in favour of the federal government was given. The Supreme Court which upheld the Doctrine of Implied Powers
went far in strengthening the hands of the centre from time to time. According to this Principe, the Congress in the USA, as authorised Article VIII of the constitution is interpreted, is authorised to enact legislation on subjects, which are implied or latent, though not specifically mentioned in the constitution.

In Canada, the constitution makers seeing the difficulties of the federal government is the USA decided to make the centre strong.

In India, the constitution has a unitary bias. This again shows the trend of centralisation. The strong centre in India, in contrast to the relatively weak centers in other federations, can be explained by the peculiar conditions prevailing in India. The people in India are not so advanced and well informed as the people in the USA.

In Australia and Switzerland also there is an unmistaken trend towards centralisation;

Main factors that explain the trend of centralization are:

1) Complex Problems:

The problems of the twentieth century are more serious than those of the nineteenth century just as those of the nineteenth were more complex than those of the eighteenth. They are war, economic depression, the growth of the social services and the mechanical revolution in transport and industry, the last named so familiar that its existence and significance are often overlooked. To express the same things in different words, they were power politics, depression politics welfare politics and the internal combustion engine.
2) Expansion of Social Service:

The concept of the welfare state calls upon all democratic governments including those having the federal pattern to render various kinds of social services. These are steadily expanding in recent years, and it becomes necessary to increase the powers of the centre. To some extent the cost of social services has been greatly increased in times of economic depression and by war, and this meant that the general governments had to come to the assistance of the regions. But the growth of the social services went on quite independently of war and economic depression. Educational and health services were developed in times of peace. In most federations these matters were under the control of the regions, but in all it was found that the regions required financial assistance from the general governments. And finally the revolution in transport and industry made so much of life inter state instead of intra-state, that large areas of activity came within the ambit of the general governments control, until finally, in the United States, crime itself becomes matter for congress. And thus the powers of the general governments increased.

3) War and Economic Depression:

The wars of the present century also favoured centralization. War and economic depression demand unitary control if their problems are to be effectively treated, and they impose financial trains which only the general governments have been able to bear. And all general governments grew stronger in times of war and economic depression. First of all it seems clear that the revolution in transport is a permanent and fundamental factor in the
situation and to that extent the increase of power in the general governments is fairly certain to continue and necessarily so. War and economic depression unavoidably produce an increase in the powers of general governments. If federations are to serve these crises successfully they must submit to a large measure of unitary control while the crises last. Any how war has been the great influence in centralising federal government.

However the process of centralisation makes scholars think that the future of federalism is dark. But this is not the case increase in the powers of the centre does not mean that units have become subservient to the centre. Constitutionally speaking, their position has not changed to one of subordination to the centre. K.C. Wheare points out that if the functions of the centre have increased in the federation, functions of the units also have increased. The process of centralization has added to the strength of federalization. There is danger to federalism only if the units in a federation are deliberately degraded the whims and fancies of interested politicians at the centre. But, whenever there was centralization in countries like the USA, it was not without justification in the USA, Switzerland and Australia centralization manifested itself to meet the urgent needs of the changing times.

Federalism is spreading in the world. In recent years, countries which got independence have adopted a federal system. India can be quoted as an example. The functioning of federal government in the USA, Switzerland, Australia, Canada holds out great hope for federalism in future. In these countries, perhaps a unitary system would have failed miserably. Federalism
is also the best remedy for caring the ills of the world. In the days to come when states decide to surrender sovereignty and wish to have a world government, they will have to choose a federal system and not a unitary one.

However in India federalism is bound to take another decade to evolve and to stabilise. In the era of coalition politics which lies ahead, political parties are bound to be preoccupied with tactical issues and are hardly likely to advocate any radical restructuring. Large number of scholar have made studies and published on the dynamic nature of Indias federal system and besides, socio-economic conditions they are also determining the emerging framework of the Centre-State relations to prove this an attempt has been made in the following chapter.
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