CHAPTER-II
NATURE OF THE INDIAN FEDERAL SYSTEM

Introduction:

Federalism is a device by which plural qualities of a society are articulated and protected. It is devised to secure both regional autonomy and national unity. It is a product of historical forces in plural societies. If the forces of national unity are very strong in such society, the central government shall have more powers. The strength of these regional and national forces changes from time to time in view of changing social, economic and political conditions and compulsions. Thus federalism has been reflecting these changing historical conditions and compulsions.¹

Similarly the modern western federal systems of U.S.A., Switzerland, Canada and Australia also reflect the modern conditions and compulsions. These federations are the most successful and prosperous in the world and have influenced new federations.

Federalism is a modern conception. Its theory and practice in modern times is not older than the American Federation which came into existence in 1787. The federal idea- the plan of government of a number of contiguous territories in association and neither separated nor combined in one- is very old and had been practiced in ancient Greece, but it has been employed on a larger scale only during the last two centuries.²

Federalism is a result of historical evolution. It springs from the necessity for the union of a number of Independent States which are not strong enough individually to protect themselves from outside danger, and whose union is requisite for their safety and for the promotion of their economic interests, but which are not prepared to surrender their independence completely. The federal form of government is not deduced from a theory or a prior reasoning. But it is a

historical product or a necessity arising from certain political conditions. Its fundamental principles have been fully worked out in the most highly developed federation in the world, the United States.³

A federal system, in other words, is not an immutable one but needs to undergo re-examination at intervals, the aim being to re-adjust or at any rate, re-confirm the equilibrium in the light of emerging situational compulsions. All federal systems encounter problems and imbalances in the area of centre-state relations, no matter how detailed and elaborate is distribution of the functions and resources between the two levels. The federal process is a dynamic one.⁴

Federalism, which is a historical product, is not a static or a rigid concept. It is a dynamic concept. Birth and development of federalism is a result of various forces which are also dynamic. On account of the inherent dynamic nature of a modern industrial welfare society and of ever-growing economic and social needs of people, each federation goes through its pangs of development. Indian Federalism is also going through such pangs of socio-economic and political developments.⁵

In view of the continental size of its population on 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 the euphoria of independence, the trauma of partition, the problem of integration of princely states and the need for planned economic development for removing backwardness, poverty and food shortage prompted them to establish a strong centre in it.

The framers of the Indian Constitution were not as free as the framers of the United States Constitution who had only declaration of a few principles to guide them. As such, the constitution of India makes the centre stronger than the states and provides a quasi – federal polity to the nation.⁶

³ Ibid.
⁶ Ibid., P. 376.
The establishment of this type of 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 regionalisation of politics due to the cumulative impact of the process of modernization, economic development and politicization.

So, in this chapter, an attempt has been made to review the conceptual framework of federalism, and the American, Canadian and Australian and Indian federations are highlighted since the frame of the Indian Constitution has mainly been influenced by the provisions of these federations. Therefore, it is desirable to state briefly the theory of federalism as revealed in these constitutions for a proper understanding of Indian federalism.

In this chapter an attempt has also been made to reveal the meaning of federalism, nature of federalism, distinction between confederation and federation, evolution of Indian federalism, the meaning of federalism in India, and important features of federal system.

**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 the idea of organization 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 so that neither level of government is legally or politically subordinate to the others.7

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Federalism thus is a method of dividing powers so that the central and regional governments are each within a sphere coordinate and independent. To be clearer, federalism provides a constitutional device for bringing unity in diversity by harmonizing the opposing forces of centripetal and centrifugal trends in a country for the achievement of common national goals.

Meaning of Federalism:

The term federation is derived from the Latin word “Foedus” meaning ‘Treaty or Agreement’. Hence it is the result of an agreement between two sets of governments, that is Central or Federal government and State government. Historically, a federation means a union of some states brought about through the instrumentality of treaty. Federation has come to mean a union of two or more states. In such a union there is a central government and there are state governments. Thus, there is a state authority and powers of the state are divided between the central and regional governments.8

The Concept of the Federation:

The word “Federation” appears in the Swiss and Australian Constitutions and in explaining its meaning.

Lord Haldane observed in Attorney General of Australia Vs. Colonial Sugar:

“In a loose sense, the word “federal” may be used... to describe any arrangement under which self-contained states agree to delegate their powers to a common government with a view to entirely new constitutions, even of the states themselves. But the natural and literal interpretation of the word confines its application to cases in which these states, while agreeing on a measure of delegation, yet in the main continue to preserve their original constitutions.”9

The word “Federation” implies, in the first place, that a federation is the result of an agreement; secondly, this agreement is to delegate powers; thirdly, the

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delegation of powers is to a common government; fourthly, the delegation of powers is with a view to an entirely new constitution; fifthly, the agreement is among self-contained states; and lastly, these states retain, in the main, their constitution.

It follows then that the question, 'what is federation' can reasonably be answered with reference to only its sovereign status, the dual governmental structure and co-ordinate spheres of their competence, and these three alone should be the final determinants of whether a country is a federation.

Wynes, however, conclusively observes: "the chief characteristic of the federal system is the division of powers between the Federal and State governments."\(^{10}\)

Hence, the term 'Federal Government' 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 constituent government giving substantial functions to each. Neither the central nor the state receives its powers from the other; both derive them from a common source, the constitution. Finally, both levels of government operate through their own agents and exercise power directly over individuals."\(^{11}\)

**Definitions:**

1. **K.C.Wheare**, an authority on federalism says that "Federation is a system which consists of two sets of governments which are independent, co-ordinate and distinct."\(^{12}\)

2. **Prof. A.V.Dicey**, says: "Federation is a political contrivance intended to reconcile national unity with the maintenance of State Rights."\(^{13}\)

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\(^{10}\) Ibid., P.97.


3. **Dr.B.R.Ambedkar**, “The partition of legislative and executive power of the centre and units is the main criteria of federation.”

4. In 1961, **M.J.C.Vile**, made an attempt to substitute the idea of interdependence in the place of independence and according to him, “Federalism is a system of government in which neither level of a government is wholly dependent on the other not wholly independent of the other.”

5. In 1964, **W.H.Riker**, pointed out that, “A constitution is federal if (i) two levels of government rule the same land and people and (ii) each level has at least one area of action in which it is autonomous, and (iii) there is some guarantee of the autonomy of each government in its own sphere.”

6. According to **A.H.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 other, and each of which acts directly on the people through its own administrative agencies.”

However, by ‘federation’, we mean, in short 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 and by the people.

**Federation and Confederation:**

The terms Federation and Confederation do not mean the one and the same, 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

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16 Ibid.
17 Ibid., P.19.
Confederation is an association of sovereign states formed temporarily for realizing 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 units deal with subjects of local importance. 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.¹⁸

The American Confederation (1781-89), the German Confederation (1815-60), and the League of Nations (1920-39) are examples of Confederations, and the U.S.A., Canada, Australia and the former USSR are examples of Federations.¹⁹

We may now briefly summarize the chief distinction between a Confederation and a Federation:²⁰

A) A Confederation is a loose union over confederating independent states, whereas a Federation is a union deriving its authority from the citizens of the union.

B) A Confederation is the outcome of an agreement or treaty made generally for a specific period, whereas a Federation is the result of a true constitution supreme over all other instruments, from which both governments, national and states, derive their respective powers, and no government is allowed encroachment on the powers of the others.

C) In a Confederation, the powers of the common body or authority are narrow and extremely limited, whereas in a Federation, the powers of the general government are wider and capable of being exercised through its own agencies.

¹⁹ Ibid., P.10.
²⁰ Ibid, P.17.
D) In a Confederation, the units retain their sovereignty, whereas in a Federation, the authority of government is shared by them with the general government.

E) In a Confederation, the general government is subordinate to the regional governments whereas in a Federation, the general government co-exists with the regional governments, and is independent of them.

F) A Confederation is a temporary union but a Federation is a permanent union.

G) 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. But a Federation is a new state and nation. Fg: U.S.A., Australia and India.

Nature of Federalism:

Federalism has two aspects – static and dynamic. It is a structure as well as a process. It has been defined as “a method of dividing powers so that the general and the regional governments are each within a sphere, co-ordinate and independent.”

Grodzins Morton states that, “Federalism is the device for dividing decisions and functions of government.”

The idea of division of powers and functions is of importance, but the dynamic nature of federal relations should also not be ignored. Carl Friedrich has rightly pointed out:

“Federalism is also the process of federalising a political community, that is to say, the process by which a number of separate political communities enter into arrangements for working out solutions, adopting joint policies, and making joint decisions on joint problems and conversely, is also the process by which a unitary political community becomes differentiated into a federally organized whole.”

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A Federal society is characterised by the continuing existence of both centripetal and centrifugal forces; the former tends towards integration and unity, while the latter tends towards disintegration and disunity. Federalism provides the constitutional device for bringing about unity in diversity by harmonizing these opposing forces for the achievement of common national goals.

"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 some things be reached. It is a pact or treaty in the sense that 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 rests."\textsuperscript{24}

"A Federal government is one which divides powers between the states and the national government. Each level guarantees certain rights, including the right to exist, so that the states cannot conspire to destroy the national government or another state government, and the national government may not dissolve the states. Thus the union is one and inseparable."\textsuperscript{25}

"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 co-operation of the central government and the states, or by co-operation among the state."\textsuperscript{26}

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 jurisdictions of the

two sets of governments. The allocation of powers may be made in the following three ways:

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

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

3) To enumerate the subjects of the units and give the rest to the centre by a general grant.

Each federation has its own way of distributing powers according to historical conditions, the needs of the state and the genius of the people.

Federal relations are dynamic by nature as, in actual practice human beings refuse to be ruled by rigid definitions and static patterns. Each federal society, faced with its own peculiar problems, has to work out its own federal scheme, often after bitter and protracted negotiations.

To quote Livingston, “The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces—social, economic, political, cultural—that have made the outward forms of federalism necessary. 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.”

A federation comes into being when there exist two conditions—a body of countries so closely connected by locality, by history, by race or the like, as to be capable of bearing, in the eyes of their inhabitants, a very peculiar state of sentiment among the inhabitants of the countries, which it is proposed to unite.

“They must desire union, and must not desire unity,” federalism by the establishment of a single political system, helps in achieving a compromise between concurrent demands for union and for territorial diversity within a society. But the mere existence of the desire for union is not sufficient for the

formation of a federal state. These desires must be activated and energised, and this depends upon the appearance of capable and dynamic leadership at the right time. The legal framework of the federal solution is hammered out through prolonged and protracted negotiations and reflects the impact of political, economic, social and historical forces existing in the country concerned.

The Development of Indian Federalism:

The framers of the Indian Constitution wanted to build a strong united India. She has adopted federalism to actualize and uphold the values of national unity, cultural diversity, democracy, regional autonomy and rapid socio-economic transformation through collective efforts.

The development of the concept of federalism in India could be briefly dealt within the following manner:

The seeds of Indian Federalism were there right from the Regulating-Act of 1773 to the Government of India Act of 1935. During this period the form of government was unitary. All powers were concentrated in the hands of viceroy, and through him, in the secretary of state for India and the home government.

The imperial hegemony was imposed over this vast country, and centralized power was the only way for the imperial control. There were no serious suggestions to reconstruct the government of India on federal model till the end of First World War. The Sepoys Mutiny of 1857 was also responsible for the political and administrative centralization of the British government.28

The process of decentralization of powers appeared on the Indian map during the Montagu-Chelmsford Reforms of 1919. These reforms expressed the federal idea in India. This was in response to the Declaration of 20th August 1917, which intended to establish a little responsible government. This report indicated federalism as a form of government in future. This Act also gave the ‘chamber of princes’ to the native states. This report also stated that the provinces will ultimately become self-governing units.

The federal solution was also found in the Indian Statutory Commission’s Report of 1929. This report recommended a Council for Greater India. The British Indian representatives and the Indian states were included in this Council and the Viceroy was the president. The Simon Commission also said something about the idea of Indian federation. Heated discussion were held about the federal idea during the Round Table Conference, which opened in London in the winter of 1930. Federalism was very much in the air during this session. The Indian National Congress was out of this session. Tej Bahadur Sapru proposed a responsible self-government in an All India Federation.\(^{29}\)

The Government of India Act of 1919, was a new milestone in the political system in India. The Act blazed a new trial and laid the foundation of Indian Federalism. It has been described by Wynes as federalism in embryo. The Gandhi-Irwin pact was signed on 5\(^{th}\) March 1931. Here, Gandhiji agreed to a federation.

The Government of India Act 1919 gave the terms like, ‘dyarchy’ and ‘provincial autonomy’. It injected a dose of autonomy in Indian political system. In 1929 too, Simon Commission recommended for complete autonomy at provincial level.

The Nehru Report also envisaged that the constitution of India should be federal in character. The present constitution is a carbon copy of Government of India Act 1935. In other words it is called a “blue print” of the Act. It means, the present constitution has taken most of the elements from Government of India Act, 1935.


Some scholars describe India as a quasi-federal state, and some even regard it as more unitary than federal. It is really a debatable issue.

\(^{29}\) Ibid.
1. **K.C. Wheare**, a well-known British authority on federalism, says, “the Constitution is quasi-federal,” and classifies India as “a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles.”

2. **Sir. Ivor. Jennings** feels, that India is a federation, with a strong centralizing tendency.

3. For **Norman D. Palmer**, “The Republic of India is a federation, although it has many distinctive features, which seem to modify the essentially federal nature of the state.”

4. According to **K.M. Munshi**, the constitution made India “a quasi-federal union invested with several important features of a unitary government.”

5. **P.B. Gajendragadkar**, a former Chief Justice of India, opined that though the Constitution “part takes of some of the characteristics of federal structure, it cannot be said to be federal in the true sense of the term.”

6. **W.H. Morris Jones**, held the view 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 co-operate.”

7. **Benjamin N. Schoenfeld**, opines that, “there was a tendency of centralism in the Indian Federalism, but that was not because of its structural framework but because of its socialistic goals and centrally devised plan development.”

8. **Prof. P.K. Tripathi**, formerly member of the Law Commission of India, finds “federalism in India a myth and not reality.”

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9. According to Alexandrowicz, "India is undoubtedly a federation in which the attributes of sovereignty are shared between the centre and states."  

10. A.H. Birch, says that, "The Indian Constitution of 1949 is a federal one."  

11. Appleby, goes a step further to describe the Indian Constitution as "Extremely Federal."  

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 models of relations with the different states, and hence a varied mode of federalism is perceivable.

Thus, numerous scholars, reflecting on the vast powers left with the Government of India and the subordinate role of states, and also the crucial powers of the union to practically annihilate an existing state, doubt whether India is a federation at all. Some have called it a 'pseudo – federation'. Others feel that it would be more appropriate to call it a 'quasi-federation'. However, many political thinkers have suggested that there is no such thing as a quasi-federation, and that a system is either a federation or it is not a federation and that India should be grouped among the federations by virtue of its constitution.

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 stronger 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 Indian history know that whenever there was a strong central government, there was a united India; on the other hand, whenever 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. India has adopted federalism, and through collective efforts, she upheld the values of democracy, national unity, cultural diversity, regional autonomy and socio-economic developments transformation.

**Federal Features of the Indian Constitution: The Constitution is Federal in Form**

The main features of Indian Federal system are as follows:

1) **Division of Powers:**

The division of powers between two levels of governments is an essential feature of federalism. Federalism means the distribution of powers of the state between the central and the state governments. The basis of such distribution of power is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the centre and matters of local concern remain with the states.44

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. The Seventh schedule contains three legislative lists which enumerate subjects of administration viz., Union, State and Concurrent lists.45

The union list consists of 97 subjects, the more important of which are defense, railway, posts and telegraph, currency etc. The state list consists of 66 subjects, including public order, police, administration of justice, public health, education, agriculture etc. The concurrent list embraced 47 subjects including criminal law, marriage, divorce, trade unions, electricity etc. The residuary powers have been vested in the central government.46

In the U.S.A., the governmental powers are divided between the centre and the state by means of a written constitution. In U.S.A. the enumerated powers are exercised by the central government. But the residuary powers are

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44 Ibid, P. 23.
46 Ibid, P.204.
left to the state governments unlike in India where 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 the state governments 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 Constitution there is a list of enumerated subjects assigned to the exclusive jurisdiction of provinces; over the remaining subjects the dominion government is to exercise control. Thus the residuary powers in Canada are with the centre.

2) **Supremacy of the Constitution:**

A federal state derives its existence from the constitution. The constitution in a federal state constitutes the supreme law of the land. As Prof. K. C. Wheare rightly says, "these two institutions the supremacy of the constitution and the written constitution are, then essential institutions to a federal government. The Supremacy of the Constitution is essential if the government is to be federal; the written constitution is essential if the federal government is to work well."\(^{47}\)

In a federation, the constitution should be the supreme source of strength, both for the centre as well as the federating units. Accordingly, Indian constitution is also supreme and not the hand maid of either the centre 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, which is upheld at all costs.

The constitution of the United States expresses the essential supremacy of a constitution in a federal government as, "The 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."

3) **A Written Constitution:**

A Federal constitution must almost be a written constitution. It will be practically impossible to maintain the supremacy of the constitution and division of powers between the centre and the states, unless the terms of the constitution have been reduced into writing.

Accordingly, the Indian constitution is a written document containing 395 Articles and 10 Schedules, and therefore fulfills this basic requirement of a 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.A., in addition to the federal constitution, each state has its own constitution. 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. The United States of America, Australia, Switzerland, Canada and India are the examples of federal constitution.

4) **Rigid Constitution:**

A natural corollary of a written constitution is its rigidity. In a rigid constitution the procedure of amendment is complicated and difficult. But this does not mean that the constitution should be legally unalterable. A 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

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48 Ibid.
concerning federal 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-third majority of the members present and by voting in the parliament, and is ratified by at least one half of the states.

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 total membership in each house, and a 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 the 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-third majority in the Congress and it should be ratified by three quarters of the states. 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 flexibility and rigidity.

5) Independent Judiciary:

For a federation, it is also essential that the judiciary is 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 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 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 the Parliament.50

Most of the federal governments have given more prominence to 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.A., if the federal and the State legislatures pass an act beyond their jurisdiction, then the Supreme Court will declare the act as unconstitutional or ultra virus. 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.51

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 Court. But in Canada, Court system is not like that in American system. Unlike in India, in the U.S.A., there is one unified judicial system, and federal courts cannot interfere in the affairs of the state courts, and federal Courts and the state courts work on parallel lines. In India, the Supreme Court (which is the federal court) and the High Courts belong to the same integrated judicial system.

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

50 Ibid., P. 85.
51 Ibid.
Constitution of India also provides for a bicameral legislature at the Centre consisting of the Lok Sabha and the Rajya Sabha. While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by State Legislative Assemblies.

In fact, most of the modern federations have adopted the principle of bicameralism. America, Canada, Australia, Switzerland, and 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.”52 Among these countries, America, India, Switzerland, Australia and Canada adopted a principle of bicameralism to fulfill 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 chamber.

Unitary Features of the Indian Constitution: A Strong Central Government:

The framers of the Indian constitution have made the central government very strong. To realise the powerful position of the central government, it is necessary to discuss the unitary features of the Indian federal system. The following discussion has been devoted to describe the unitary features of the Indian federal system.

1. Single Citizenship:

The makers of the Indian constitution have provided only a single citizenship. But usually the federal constitutions provide dual citizenship, that is, national, and state citizenships. Among the world federations, the United States and the Swiss Republic provide the dual citizenship. In case of America, the citizen of New York is also a citizen of the United States of America. The Swiss

constitution also provides for dual citizenship. The Swiss citizen is naturally a cantonal citizen too.  

Though the Indian constitution provides the concept of dual polity, in this case it has departed from the federal principle. In the United States, the constitution made a logical provision for the double citizenship, a double set of officials and a double system of Courts. The Indians, in whatever the states they might have been born, are called the Indian citizens.

2. A Strong Centre:

In India, the centre is very strong. Though our constitution has adopted the federal principles, it has been gradually heading towards a strong centralized constitution. Our constitution clearly democrats the division of powers between the centre and the states. The distribution of powers is presented in the eleventh part of the constitution. The three lists are embodied in the seventh schedule of the constitution.

The union list consists of 99 subjects. The state list covers 61 subjects and the concurrent list consists of 52 subjects. The residuary powers are with the centre. In America, Australia and Switzerland the constitution has specifically enumerated the powers of the federal government. In all these federations, the residuary power rests with the states. Our constitution follows the Canadian model. The centre and the state has powers to make the laws on the concurrent list, but if there is a conflict between the two, then the central law will prevail over the state law. This shows that the centre is strong in India.

3. Single Constitution for Union and States:

The framers of the Indian constitution hammered out a single constitution for the union and the states. Usually, under a federal system, the states have their own constitution separate from that of the union. But unlike other federations of the world, the Indian states have not been permitted to frame their own constitutions. Unlike the American States, the States in India have had no voice in

initiating the amendment to the constitution. This power exclusively vests in the Indian Parliament. Some eminent political scientists have criticized their non-federal principle under the Indian federal structure.\textsuperscript{55}

4. Centre can Change Name and Boundaries of States:

In a federation, the centre has no right whatever to change the boundaries of the states. But in India the centre has a right to change the boundaries of the state and to carve out one state out of the other. In the fifties, Andhra Pradesh was carved out of the then Madras state. There is perhaps no state whose boundaries have not been changed at one stage or another. The right of the centre to change the boundaries of the states is against the federal set up.\textsuperscript{56}

5. A Single Judiciary:

In India, there is a single unified judiciary. This system has been working since 1950. The Supreme Court is the highest Court in India and it is at the apex of the judiciary hierarchy. But the Indian constitution has adopted a single integrated judicial system. In the United States of America there is a dual system of Court. All the states in America have adopted their own Independent Judicial System.

In India, the Supreme Court exercises supervision and control over the functioning of other courts including High Courts. The Supreme Court is known as a Court of record. The writs of the Supreme Court are binding in all the spheres namely, civil, constitutional and criminal. This shows the unitary character of our constitution. It is quite opposite of the American judicial system.

6. Unitary in Emergencies:

The Indian constitution has given emergency powers to the president. During the time of emergency, the central government will become powerful. Even it makes the laws on the state list also; the states will lose their voice.

\textsuperscript{55} Ibid., P.87.
\textsuperscript{56} Fadia, Babulal., Op.Cit., P.87.
Articles 352, 356 and 360 will play dominant role. The President proclaims emergency in the country under Article 352, if there is an internal or external threat to the country’s security, unity and integrity. If the constitutional machinery fails in the concerned state, then the President will impose the President's rule in that state under Article 356. During this period, the state legislative Assembly will be suspended or dissolved. The entire state administration will come under the control of the central government. If there is a threat to the country’s finance, then the President will declare financial emergency under Article 360.

During emergency, the centre gives financial directions to the states to observe the specified canons of economy. Even the state governments have to reserve the money bills for the consent of the President. Our constitution has given the vast emergency powers to the centre.

7. Common All India Services:

The constitution has certain special provisions to ensure the uniformity of the administrative system, and to maintain minimum common administrative standards without impairing the federal principle. These include the creation of All India Services such as Indian Administrative and Police Services and placing the members of these services in key administrative positions in the states.

8. Inequality of Representation in the Council of States:

The traditional and the classical federations have adopted the equal representation to their states in the upper chamber of the National legislature. But the Indian constitution deviates from this traditional principle of providing the equal representation to the states in the upper chamber of federal legislature.

In America, the true federal principle has been followed. The American legislature is known as ‘the Congress’. The upper chamber is called ‘the Senate’. There is equal representation to all the states in the Senate.57

But in India, the states have no equal voice in the Rajya Sabha. The representation depends upon the population of the concerned states. It is unlike

America, Australia and Switzerland. This shows the clear departure from the federal principle in India.

9. Appointment of Governor by President:

The President appoints the Governors of the concerned states. They hold office during the pleasure of the President. In America, the Governor of the States are elected directly by the people.

In India, too, this aspect was discussed during the debates of ‘Constituent Assembly’. The American fathers of the constitution adopted the presidential executive but in India they adopted the parliamentary executive. This system has been adopted both at the centre and the states in India.

Under the parliamentary system of government, the ministers in the states are also elected directly by the people, whereas, the Governor is appointed by the President of India.

The Governor is the constitutional head of the state, like the President at the centre. At the state level, the executive authority is vested in the Governor. Article 154 vests all the executive powers with the Governor. Article 200 and 201 of the constitution empower the Governor to withhold his assent to a bill passed by the concerned state legislature. Sometimes the Governor reserves the bill for the President’s consent. This again shows the Central’s dominating power over the state administration.

10. The Office of the Comptroller and Auditor General:

The Comptroller and Auditor General is appointed by the President. He keeps a careful vigilance over the finances not only of the centre but also of the states. He controls the issue of public money. As an auditor, he audits the accounts of both central and state government and reports to Government of India annually. Here also, the states have no voice.58

58 Ibid.
11. Centralized Electoral Machinery:

In India, we have adopted the unified and single electoral machinery. The periodical elections are the bed-rock of democracy. Democracy needs the proper electoral machine. India is the biggest democratic country and she has the largest electorate in the world.

The Election Commission has been functioning since the dawn of Independence. The authorities of the Election Commission are appointed by the President. The states have had no say in this field. The states too, have no independent Election Commission of their own.

12. Appointment of the High Court Judges:

In India, there is a single integrated judicial system. Under this judiciary hierarchy, the President appoints the judges of the State High Courts. He can transfer the judges from one High Court to another. The President will not consult the state authorities in this matter. Only, Parliament has the power to remove the Supreme Court and High Court Judges through the process of impeachment. The state legislatures have no voice in this field.\(^{59}\)

13. The Flexibility of the Constitution:

Our constitution is a mixture of both flexibility and rigidity. On some issues the parliament amends the constitution with the simple majority. On some occasions it needs two-third majority.

For important issues, the Indian parliaments amends the constitution with two-third majority in both the houses and ask ratification of half of the states. The states in America have the right to initiate amendment to the constitution. Also in an ideal federation there should be a rigid constitution.\(^{60}\)

In the U.S.A., the constitution is very rigid. In India, many parts of the constitution can be easily amended. This flexibility of constitution is against the

\(^{59}\) Ibid.  
\(^{60}\) Ibid.
spirit of federal system. All this has contributed to the strength of the centre at the
cost of the states.

14. Special Powers of Council of States:

The Indian Parliament has also been empowered to legislate on any matter
in the state list. If the Rajya Sabha passes a resolution with two-third majority,
then it gives power to the Parliament for the transfer of state subject to the union
list.

Article 249 empowers the Rajya Sabha to make laws on any corner of the
nation if the issue is of national interest and importance. Even, this chamber can
create the new All India Services.61

15. Financial Dependence of the States:

The States in India have been depending on the centre for their finances.
Especially, during the time of floods and drought, the states have to depend only
upon the center's financial help.

In a Federation, the states should be financially self-sufficient. They should
enjoy the maximum autonomy. The Finance extremely complicated aspects of
federal relations. For this purpose, the Indian Constitution has established a
Finance Commission. This Commission allocates and adjusts the receipts from
certain sources. No other Federal Constitution has made such provisions.

The Government of India Act 1935 has tried to allocate every possible
source of revenue between the centre and the provinces. But the real drawback of
the Act was the extremely limited revenue resources were given to the provinces.

According to the present existing scheme of distribution, the taxing powers
of the states and the centre have been completely separated. The Indian
Constitution has not been provided the concurrent jurisdiction in the financial
field. But it exists in other federations of the world. Especially it is there among
the Non-Congress ruling states. Till today, the states have been depending only on

61 Ibid., P.49.
the centre for the financial help. But it is not healthy for the working of a true federation.

Federation in India:

Indian Federal character is based on the assimilation of different features like language, regionalism, unity and culturalism. It is based on supremacy of the centre over the state. According to Dr. Ambedkar, "Indian Federation has not resulted by virtue of instrumentality of agreement with the units, and that the union is indestructible; no unit can secede from it."\(^{62}\)

In practice, the Indian federation works as an admixture of both federal and unitary traits. We believe that the Indian union, though it is a federation of a special type, is a federation in which the paramount powers which the British Government had over the Indian states has been taken over by the union government and applied to all its units. The National leader had agitated against this doctrine of paramount powers, but the Constituent Assembly has effectively installed those powers in the constitution. As such, our federation may be called paramount federation.

With this background, both constitutionally and politically, India’s federal system, as originally conceived, is of the union type, in which the structural, functional balance is in favour of the centre.

The Future of the Federal System: Strong Trend of Centralization

The actual difficulties experienced by federation like the U.S.A, Switzerland and Australia make statesman 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 federation. According to some, it is merely a transition stage bound to give way to the unitary principles in the long run.”\(^{63}\) 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 U.S.A, the constitutional amendments were introduced.

In the light of the new difficulties experienced by the rulers in the U.S.A, 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 for strengthening the hands of the centre from time to time. According to this Principle, the Congress in the U.S.A, as the authorized Article 8 of the constitution is interpreted, is authorized to enact legislation 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 in the U.S.A, decided to make the centre strong.

In India, the constitution has a unitary bias. This again shows the trend of centralization. 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 U.S.A. In Australia and Switzerland also there is an unmistaken trend towards centralization.

Main factors that explain the Trend of Centralization are:

1. **Complex Problems:** - The problems of the 20\textsuperscript{th} Century are more serious than those of the 19\textsuperscript{th} Century just as those of the 19\textsuperscript{th} Century were more complex than those of the 18\textsuperscript{th} Century. 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 this meant that the general government had to come to the assistance of the regions. But, the growth of the social services went on quite independent of war & 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 government. And finally the revolution in transport and industry made so much of life inter state instead of intra-state, that large area of activity came within the ambit of the general government control, until finally, in the United States, crime itself become a matter for the Congress. And thus the power of the general government increased.

3. War & Economic Depression: - The war 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 strains 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 & fundamental factor insinuation, and to that extent the increase of power in the general government is fairly certain to continue, and so war and economic depression unavoidably produce an increase in the power of general government. If federations are to face these crises successfully they must exercise large measure of unitary control.

However, the process of centralization makes Scholar; think that the future of federalism is dark. But this is not the case. Increase in the power 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 in a federation are deliberately degraded by the whim and fancies of interested politician at the centre. But, whenever there was centralization in countries like the U.S.A it was not without justification in the U.S.A, Switzerland and Australia. Centralization manifested itself to meet the urgent need of the changing times.

Federation 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 U.S.A, Switzerland, Australia, Canada hold 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 curing 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 stabilize. In the era of coalition polity which lays ahead, political parties are bound to be preoccupied with tactical issues, and are hardly likely to advocate any radical restructuring. Large number of scholars have made studies and published on the dynamic nature of Indian 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.

Proposed Indian Federation:

Under the Act of 1935, Indian was to be a federation. Accordingly, there was distribution of subject between the centre and the provinces. There was much controversy as to whether residuary powers should be left with the centre or with provinces. The authors of the Act did not wish to see a weak centre, and at the same time also did not wish to give many powers to the provinces. 64

Then another characteristic of Indian federation was that it was made a bicameral legislature consisting of the Council of States and Legislative Assembly. Indian States were to send 104 members to the Council of States and 125 to the federal Assembly. This federation was to consist of eleven Governor’s provinces and six Chief Commissioner’s provinces. Their joining the proposed federation was absolutely compulsory.

A Peculiar Federation:

In spite of the fact that the Act of 1935 created the structure of a federation in India, the whole system was unlike many other federations, which made it a peculiar federation. It may however be remembered that Indian States and their princes who had been given the option of joining the federation did not come forward in equisetic number.

Deviations from Federal Pattern:

Usually, in a federation, residuary powers are left either with the Central Government or with the federating units. In the case of proposed Indian Federation the subjects to be dealt with by federal government and provincial governments were specified and clearly defined. A concurrent list was also prepared on which both the centre and the provincial governments could enact laws. Residuary powers were, however, left with the Governor-General. This never happens in the case of federation, where such powers are left either with “the centre or the provinces.”

In the words of Dutt, R.P., “A federation is a voluntary union of independent sovereign units impelled by common political aims, ideals or external needs, to establish a sovereign central organ based on the units, and responsible to them or to their populations and establishing a restricted measure of common organisation, falling short of full centralization but such as to institute within the voluntarily agreed limitations a single federal laws for all the citizens of the union.”

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65 Ibid., P.61.
66 Ibid., P.62.
But in India the proposed units of the proposed federation never desired to come closer to one another. They never drafted a constitution for themselves, and in fact, never agreed to the constitution which was given to them. The Act which was bringing them closer was prepared by the British parliament and passed by that body.

When a federation is usually created, federating units have almost similar type of political awakening and mission to make the system a success. But this was not so with the Indian Federation. In Indian Federation, the states had less political awakening and much less a desire to make the federation success, as compared 'with the Indian provinces'.

In a federation, federating units as well as the central government enjoy full powers to amend the constitution in the way they like. But in the case of Indian Federation power of amendment of the Act was not vested in Indian Federation, but with the British Parliament.67

In the proposed federation, the states, which were a part of the federation, were given under representation than what these deserved. In a good federation, no unit is given any weight age over the other and both are equally well treated and kept at par.

Then, in a federation, centre has much more autonomy than the federating units. In the case of Indian federation the reverse was the case. Under the Act, the provinces were given more powers and the system of provincial autonomy was introduced. On the other hand, dyarchy, which had failed in the provinces, and which put many restrictions, was introduced at the centre and as such even technically centre was not made autonomous. Thus where provinces were autonomous, centre was not. This peculiar situation does not prevail anywhere else.

**Federalism: Theory and Practice in India:**

Whether India is a federation or not is a controversial issue. Broadly speaking there are two different schools. The first school led by Professor. K.C. 67

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Wheare is not prepared to accept that the Indian constitution is a federal one. He points out, "The constitution establishes indeed a system of government which is almost quasi-federal, devolutionary in character, a unitary state with subsidiary federal features, rather than a federal state with subsidiary unitary features."68

On the other hand, Dr. D.N. Banarjee, who represents the other school, is of the opinion that India has a federal system with a pronounced bias for the centre. The centralization of Indian federation has been justified by Dr. D.N. Banarjee. He observed, "To my mind the strong central government is indispensable to the maintenance of unity, solidarity and integrity of India."69

Centralism is not peculiar to India. It is a feature of all the federations of the world. Even in the American federation there are evident signs of centralization. The states are gradually surrendering more and more powers to the centre in the larger interest of the people and the nation. The modern state is more positive and it is a welfare state. This has been responsible for the development of centralism. Further, needs of uniform planning and policy have added to the powers of the central government? Economical Strategic considerations have also been responsible for the increased power of the centre.70

**Criticism of Indian Federal System:**

It has been stated earlier that the Indian federal system has been subjected to severe criticism. Due to the prominence of the centripetal forces some critics were not prepared to accept it as a federal constitution.71

1. The Territorial sanctity of the federating units which is a vital principle of a federal government is not allowed by the Indian Constitution. The states can be re-organized and their territorial limits changed, cut short or enlarged by the Parliament unilaterally without the consent of the concerned state or states.

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69 Ibid., P.349.
70 Ibid., P.350.
71 Ibid., Pp.355-356.
2. The practice of appointment of the Governors by the President smacks of centralism. The Governor enjoys their office during the pleasure of the President and they are expected to work as the agents of the Union Government in the states. The action of some of the Governors in dissolving the state government has been severely criticized.

3. The President is empowered to transform the federal constitution into a unitary one during the time of national emergency. Under such circumstances, the Union Parliament shall have the power to make laws for the whole of India.

4. While in the U.S.A. an individual enjoys dual citizenship, that is the citizenship of his state and federal citizenship; in India there is single citizenship throughout the country. Wherever in the country an individual might have been from, he is regarded as an Indian citizen.

**Reasons for Adopting Federal Structure:**

The founding fathers of the constitution preferred federal constitutional structure because of the certain factors. These were:72

1. It would have been very different to rule over such a vast country from one centre. As Justice P.N. Sapru said, "our founding fathers wisely did not establish for this country a completely unitary sovereignty among various units composing it. Any such attempt would have completely broken down, as India is too vast a country to be governed as a completely unitary state."73

2. The reason for India to go for federation was that the foundation of federation had since been laid down by the Government of India Act, 1935. The New Constitution was thus obliged to go in for federal structure. The Indian constitution in its federal aspect is very much influenced by that Act.

**Impact of Party System on Federalism exaggerated:**

It is, however, an exaggeration to say that the states became like administrative units of a unitary form of government under the impact of the non

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dominant party system. The fact, as to how the states exerted more and more pressure on the central government, is clear from the following facts:

1. Central Government Failed to Enforce its Directives even in Congress-Ruled States:

   Marcus F. Franda in his book “West Bengal and the Federalising Process in India”, writes that it became impossible for the Congress government at the centre to enforce its views even on the states ruled by Congress governments. Our view that one dominant party system has gone against the spirit of federalism, is totally unfounded. 74

2. Unwilling Acceptance Meant no Acceptance:

   Even in cases where the orders of the Central government were accepted unwillingly, that meant no acceptance. According to S.C. Kashyap, “unwilling acceptance amounted to very little in practice, as the state governments were slow or even unwilling to implement the legislation in accordance with central policies.”

3. Linguistic Reorganization of States in spite of Central Government Opposition:

   The Central Government was totally against the reorganization of states on the basis of language. But we find that power-hungry Congressmen in different states pressurized the central government into agreeing to form new states. Fg: - Bombay was divided into Maharashtra and Gujarat in 1960. Punjab was divided into Himachal Pradesh and Haryana in 1966. Similarly, demands for the creation of new states giving statehood to certain main territories led to the creation of Nagaland, Meghalaya, Tripura & Manipur.

4. Decisions of Centre Changed Under State Pressure:

   Not only that, the Centre had to change its decisions as a result of state pressure. According to Marcus,F.Franda, in the case of Bihar and West Bengal boundary disputes, “The rumour that the centre had arrived at a decision without

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74 Ibid., P.378.
consulting the state led to massive opposition within the state and central government and Party leaders quickly backed down." 75

5. **Failure of Centre Over the Question of Hindi:**

The amount of autonomy, which is enjoyed by the states, is also clear from the fact that the Central Government failed to impose Hindi as compulsory subject of study in Non-Hindi states. It is more interesting to point out here that some of these states were governed by the Congress Party. They described the effort of the Central Government as imposition of Hindi imperialism.

**Gradual Weakening Position of the Central Leadership:**

One of the factors responsible for the states to assert themselves was the weakening position of the central leadership and the Congress High Command. According to R.K. Bombwall, "The High Command has in fact, become a shaky colossus whose write runs in state Capitals in inverse ratio to the coherence and stability of the state party units." 76

1. At present, the planning commission is dominated by politicians. The prime minister is the ex-officio chairman and other ministers of the union government are also associated with it. Decisions are taken at political level and economists are asked to justify them. The Commission has to be remodelled so that it can act as an expert body. They should be coercion on members and there should be allowed to express them opinions freely and function independently.

2. An objective basis for the allocation of plan assistance acceptable to all states has not so far been evolved.

3. The Present overlap of functions of the Finance Commission and Planning Commission should be avoided and an integrated view of plan and non-plan activities should be taken.

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75 Ibid., P.379.
76 Ibid., Pp.363 - 364.
4. Just as the State’s resources and expenditures are scrutinized so also the
resources and expenditures of the central government should be scrutinized.

5. There is a close relation between balanced regional development and dispersal
of economic activity. The Central Government must provide the required
infrastructure to underdeveloped states to promote growth and diversification
of economic activity in these states.

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

Federalism is the result of historical evolution. It springs from the necessity
of the union of a number of independent states which are not strong enough
individually to protect themselves from outside danger, and whose union is
equisetetic for their safety and for the promotion of their economic interests, but
which are not prepared to surrender their independence completely.77

Federalism as a Concept:

The founding fathers of the Indian Constitution have mainly been
influenced by the provisions of the American, Canadian and Australian
federations. It is desirable to state briefly the theory of federalism as revealed in
these constitutions.78

According to A.V.Dicey, there are two requisite conditions for the
formation of a federation:-

First, by history there must be a body of states so closely connected by
locality, by race or the like, as to be capable of having, in the eyes of their
inhabitants, can impress of common nationality. Secondly, there must be the

77 Babulal, Fadia., State Politics in India, Vol. 1&2, Radiant Publisher, New Delhi, 1984, P.64.
78 Ibid., P.65.
existence of a very peculiar state of sentiment among the states which propose to unite. They must desire union but not desire unity.

The aim of federalism is to give effect, as far as possible, to both these sentiments. "A federal state is thus a political connivance intended to reconcile national unity and power with the maintenance of "States" rights."79 It is a union of a number of independent states whose territories are contiguous and whose citizens have certain affinities, either racial or traditional, which have a common historical background or heritage, a community of economic interests, and feel a craving for spiritual and national unity.

The Federal state is the embodiment of the nation as a whole, and it has a direct and organic contact with the citizens of all the states, who are citizens of the federation and who owe a double allegiance to their own states and to the federal state.80

The federal form of government came into existence where a unitary form of government was not possible owing to a strong sentiment of local patriotism. The states are, first of all, sovereign states. They then enter into an agreement to part with a portion of their sovereignty, and thus to create a national state which discharges certain functions in relation to all the state - functions which are common to all. Such a federation is essentially created for national purposes.

A study of modern federal system reveals three leading characteristics of a federal constitution. They are: 1) Supremacy of the Constitution. 2) Distribution of power among bodies with limited and coordinate authority. 3) Authority of the Federal Court to act as interpreter of the Constitution.

**Conception of Federalism:**

The Bible is regarded as the first book to discuss the problem of a federal polity. Ancient Israel provides the first example of a union of constituent politics based on a sense of common religious nationality. It was visualized as a linkage of people and institutions by mutual consent without the sacrifice of their

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individual identities. It aimed at evolving a society based on coordinative rather than subordinate principle politically; it stood in favour of a political order operating on the principles of a 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 a 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 more communities and less politics. Big empires like Persian, Hellenic, Roman, Magadha, Mauryan, Gupta and so on, flourished from time to time, which allowed cultural identity to their sub units, but could not evolve them into a form of strong and permanent federation. Affinities among them were either personal or mythological. They lagged far behind and required political development for reaching the milestone of sovereignty and nationalism.81

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 right including the right to come out of those collectivities. Some federal principles or elements do appear in multiple. Monarchies, legislative union's empires and decentralized unitary systems. They can, at the most, be regarded as political order which make use of specific federal principle, but are not genuine or authentic federation. Moreover, the hierarchical character of relationship existing in those polities did not allow them to evolve a mechanism to maintain the terms of 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 some
how survived till its reconstitution on modern line 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.

Johan’s thesis (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 16th & 17th
centuries provided federal solutions to the problems of national unification, but
gave emphasis on three problems:

1) The cancellation of feudally rooted hierarchies with a system demanding
fundamental social equality in order to facilitate 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 difference, and

3) The problems of executive leadership and succession which was not solved
until the United States invented the elective presidency. 82

Modern imperialism also contributed to federalism in its own way. Its
discussion is found in the writings of pre-revolutionary theorists of the 18th
Century like Montesquieu and Adam Smith, Britain, in line with her imperialistic
design and under pressure created popular assemblies in her colonies of North

82 Ibid., P.66.
America. The colonists found out theoretical justification for these institutions on the basis the Bible which led early Americans to accept those semi federal institutions. Imposed 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 ram shackles of European federal societies and could keep away from external pressures for several decades, they continued to strengthen their federal system. Facing one after another major event, and in the end, successfully provided a model of federalism to many politics throughout the world. The Americans had all other social, political, cultural and economic diversities along with emerging tide of unity & cohesions, which all contributed towards the success of an effective federal system.

However, the founders of the U.S.A. did transform and organize the principle 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 disadvantage that was set in earlier federal system. As, they were following an isolationists policy, external pressure for centralization was 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 co-operation & 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 attitude in political operations and to place primary reliance upon voluntary collaboration."  

Since its adoption in 1787, by the U.S. Constitution-makers, the federal system has become a popular pattern of governance, and today is a subject of academic study and has practical significance to a far greater extent than ever before. A noted scholar on federalism, Daniel Elazar, has observed, federal principles and arrangements have become so wide-spread because they suit the modern temper, and federalism is designed to achieve some degree of political integration based on a combination of self-rule and shared-rule. At present, more than two countries have federal system while another 21 have certain federal arrangements.

The roots of Indian federalism can be traced to the British colonial regime. The unsuccessful working of their unitary system led the British to introduce a federal system during the last eight decades of their rule, and ultimately, "the Act of 1935 served to perpetuate a belief in the inevitability of federalism." The importance of the act was that the provinces were endowed with a legal personality under a federal scheme.

The Indian federalism is unique in nature and is tailored according to the specific needs of the country. Federalism is a basic feature of the constitution of India in which the Union of India is permanent and indestructible. Both the centre and the states are co-operating and coordinating institutions having independence, and they ought to exercise their respective powers with mutual adjustment, respect, understanding and accommodation.

Thus, the Indian federalism was devised with a strong centre; Federalism with a strong centre was inevitable as the framers of the Indian constitution were aware that there were economic disparities among several areas of India in comparison to others. The nation was committed to a socio-economic revolution not only to secure the basic needs of the common man and economic unity of the country but also to bring about a fundamental change in the structure of Indian

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society in accordance with the egalitarian principles. With these considerations in mind the constitution makers devised the Indian federation with a strong union.

Federalism Defined:

Federalism constitutes a complex governmental mechanism for the governance of a country. It seeks to draw a balance between the force working in favour of concentration of power in the centre and those urging a dispersal of it in a number of units. A federal constitution envisages a demarcation of governmental functions and powers between the centre and regions by the sanction of the constitution, which is a written document. From this follows two necessary consequences:

1) That the invasion by one level of the government on the area assigned to the other level of the government is a breach of the constitution.

2) That any breach of the constitution is a justifiable issue to be determined by the courts as each level of government functions within the area assigned to it by the constitution.

K.C. Wheare defines federal government as an association of states, which has been formed for certain common purposes, but in which the member states retain a large measure of their original independence. A federal government exists when the power of the government for a community is divided substantially according to a principle that there is single independent authority for the whole area in respect of some matters and there are independent regional authorities for other matters, each set of authorities being co-ordinate to and subordinate to the other within its own sphere. The framers of the Indian constitution attempted to avoid the difficulties faced by the federal constitutions of U.S.A., Canada and Australia and to incorporate certain unique features in the working of the Indian Constitution. Thus, our constitution contains certain novel provisions suited to the Indian conditions. The doubt which emerges about the federal nature of the Indian Constitution is the power of intervention in the affairs of the states given to the central government by the constitution.
According to K.C. Wheare, in practice the Constitution of India is quasi-federal in nature and not strictly federal. Sir.Ivor. Jennings is of the view that India has a federation with a strong centralizing policy. In the words of D.D.Basu, the constitution of India is neither purely federal nor unitary, but a combination of both. It is a union or a composite of a novel type.

The Indian constitution is not only regarded as Federal or unitary in the strict sense of the terms, it is also often defined to be quasi-federal in nature also. Throughout the constitution, emphasis is laid on the fact that India is a single united nation. India is described as a union of states and is constituted into a sovereign, secular, socialist, democratic republic.

It should be remembered that the aforementioned provisions in the constitution are aimed at establishing a working balance between the requirements of national unity and autonomy of the states. Dr.Ambedkar, one of the architects of the Indian constitution, rightly prophesied: our constitution would be both unitary as well as federal according to the requirements of time and circumstances.

The issue of federalism was carried forward in S.R.Bommai V Union of India. Four opinions were rendered, expressing varying views: Justice Ahmadi opined that in order to understand the true nature of the Indian constitution, it is essential to comprehend the concept of federalism. The essence of the federation is the existence of the union and the states, and the distribution of powers to them.

The significant absence of expressions like ‘federal’ or “federation” in the Constitution, the powers of the parliament under Articles 2 and 3, the extraordinary powers of the powers conferred to meet emergency situations, power to issue directions to the states, concept of single citizenship and the system of integrated judiciary create doubts about the federal nature of the Indian constitution. As opposed to this, justice Sawant and Justice Kuldip Singh regarded democracy and federalism as essential features of the Indian constitution. The learned judges elaborated upon the scope, and justified use of power conferred on the president by Article 356 which will not restrict the scope...
of the independent powers of the respective states for every state is constitutional political unit and has to have an exclusive Executive and Legislative elected and constituted by the same process as the Union Government."86

Justice Ramaswamy declared the Indian Structure as organic federalism, designed to suit the parliamentary form of government and the diverse conditions prevailing in India. Justice Jeevan Reddy and Justice Agarwal opined that the expression federal or federal form of government has no fixed meaning. The constitution is also distinct in character, a federation with a bias in favour of the centre. But, this factor does not reduce the states to mere appendages of the centre. Within the sphere allotted to them the states are supreme.

Constitutional Significance of Federalism:

Federation is a significant aspect of constitutionalism, because basically both aim at consciously constituting public authorities with agreed, defined powers: a consensus with an authority with agreed, defined power: a consensus with a legal core on basic issues relating to the governance of a country brings into being the constitution of the country, and when the consensus includes an arrangement whereby two sets of authorities – one national and the other regional with coordinate spheres of competence are set up to operate in a competitive or cooperative spirit, the constitution becomes federal in nature.

The Federal Polity and Constitutional Construction: -

It is of primary interest to note that the nature of a constitution is relevant in interpreting the provisions of the constitution. The federal nature of a constitution is taken into account in construing the constitution, particularly the provisions relating to the division of powers between the national and regional governments; and the courts so interpret the constitution as to secure a smooth working of two sets of coordinate authorities.

86 Ibid.
Federal Nature of the Constitution:

Federalism was not unknown to the ancient and medieval east and west, but the credit for having caused its current currency ought to go to the United States. Conceived under the conditions of an age completely different from that of the present generation; founded on the ideas and experiences of that age, especially the predilections and prejudices of its founding fathers; born of peculiar local factors, and followed by the constitutions of Canada (1867), Switzerland (1874) and Australia (1900), are initially shaped, still claims to provide the federal model to the world, although it itself contains the word “Union” instead of the word “Federation”. And this is in a world where all the older federations, including that of the U.S.A. have undergone almost a complete transformation in structural details and operational devices and technique in response to new social claims, economic condition, technological advancements and international needs.87

A Definition of Federation:

Federation is thus, a contrivance for constituting within the bounds of one sovereign state national and regional government which are on par in status and have exclusive spheres of powers and functions. The people are placed, as it were, under dual jurisdiction – one national and the other regional. But the state is one single entity, only its government is dual and from that state receives its federal character.88

Sovereignty and Federalism:

A very significant constitutional aspect of federalism is related to the location of sovereignty in a federal polity. It is now being increasingly recognized that sovereignty even under a federal system is a national attribute, an attribute of the federal state and this is the rather sole point of conceptual distinction between a federation and a confederation. The best solution, which is now being generally

88 Ibid., P.97.
adopted, is that sovereignty vests in the people as a whole, and in a more determinate form in the authority that has the competence of formally amending the constitution.

**Parliamentary Sovereignty and Federalism:**

A question may also arise: whether in our, or any other, federal set-up the principle of parliamentary sovereignty is compatible with the federal principle of coordinate regional and national authorities. In this regard, if it is accepted that the people of the constitution epitomizes the mere fact that the constitution contemplates coordinate regional and national legislative, executive and judicial authorities need not prove a logical but to the operation of the principle of parliamentary sovereignty. Because in this case, the constitution may invest Parliament with constituent powers, as under our constitution, to be exercised by itself or in conjunction with some other authority or authorities in the prescribed manner.89

**Supremacy of the Constitution and the Courts:**

From the principle of the supremacy of the constitution in a federation is said to emerge the doctrine of ultra virus or the power of judicial review of the courts in a federation. In the first place, the so-called supremacy of the constitution is not limited to only federal constitutions but also extends to any extant unitary written constitution also. Secondly, whatever the situation, once an authority is said to have defined powers, the question of virus is inherent in the exercise of the powers and there is nothing peculiar about it in a federation.90

Thirdly, the doctrine of ultra vice does not necessarily lead to the doctrine of judicial review of statutes, unless it is also assumed that the legislative prudence is less reliable because of its popular character than judicial wisdom because of its permanent nature.

And it is logically possible to consistently build and work with a federal polity without providing for judicial review, at least, of the statutes passed by the national legislative authority.

Theories of Federalism:

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

II) Modern or Empirical Theories

I) Classical Theory of Federalism:

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 U.S.A, Switzerland, and Canada & Common Wealth of Australia.


Robert Garran, an eminent- Australian Scholar, has defined federation thus: "A form of government in which sovereignty or political power is divided between The central & local government, so that each of them within its sphere is independent of the other." 91

Following the definitions of Bryce, K.C.Wheare gave a traditional concept of federalism. In order to assess whether a constitution is federal or not was 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 & regional authorities, each of which in its own sphere is coordinate with the others & independent of them. If so that government is federal." 92
K.C. Wheare puts emphasis on federal principle. It relates to the procedure of division of powers, by which the union & regional government remain coordinate & equal in their areas. More direct relation with the people in federal state is not enough. Each unit should remain confined to it's our area. In other words, division of power must result in their ultimate independence & coordinate status which differentiates between federal system, federal constitution, and federal government. When a constitution is federal but does not operate on federal principle, K.C. Wheare, regards it as ‘quasi – federal’.

Thus, units under such system do not operate in an independent & coordinate manner, constitutions & governments which do not operate on the federal principle are called quasi – federal constitutions & 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, & on the other hand, a unitary constitution might be practiced in such a manner that the union government becomes so much regionalized in its working that many regional pockets emerge which enjoy a fair degree of autonomy. In the long run, they might acquire the status of permanent arrangement. A federal constitution is the outcome of the forces prevailing at a particular juncture of time. This framework at times refuses to cope with the changing nature of the society, and is often unchangeable & rigid. Practice of a Constitution makes it, dynamic. It easily adopts and absorbs the new changes, & 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, find it, a federal state is “One in which part of the authorities and power is vested in the local area while another part is vested in a central institution deliberately constituted by an association of the local area.”

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 & 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 state & the centre are co-equal in this matter. It is difficult to see how much a constitution can be called centralistic. It may be that the constitution assigns to the centre a larger field for the operation of its legislative & executive authority than is to be found in any other federal constitution. It may be that residuary powers are given to the Centre & not to the states. But these features do not form the essence of federalism." 94

Thus all classical theorists emphasize:

1) Watertight compartmentalization of the general & regional governments
2) Disallowance of any kind of over lapping or coordination between them:
3) Clear cut constitutional autonomy for the states.
4) An independent judiciary to uphold their separate states & powers.

It is clear that these authors democrat the feature of a federation, but do not bestow responsibility on any particular authority to maintain it. More of them relate the "federal principle" to a particular part of government & the constitution.

**Modern Theories of Federalism:**

Modern Theories of federalism can be categorized as:


1) Origin Theory again contains three sub-categories:

a) Sociological Theory  b) Multiple-Factor Theory  c) Political Theory

1) **Origin Theory:**

Origin Theory explains circumstances related to establishment of a federal system, thereby seeks to define federalism in terms of circumstances, conditions

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94 Ibid., P.41.
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.

A) Sociological Theory:

According to this theory, it is the federal nature of society that gives birth to the federal political system. A federal society is one which contains within its fold elements of diversity. Usually, diversity is caused by differences of economic interests, religion, race, nationality, language, separation by great distances, differences in historical back-ground and dissimilarity in social & 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 defines federalism as “a form of political and constitutional organization that unites into a single polity a number of diversified groups or component politics so that the personality and individuality of the component parts are largely preserved while creating in the new totality a separate and distinct political 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 independent. 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

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96 Ibid., P. 43.
between the two levels of government. Though the formal federal structure cannot alone determine the federal process, its significance must not be ignored.

Like Livingston, Wildausky 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 U.S.A., is an example of ‘Social Federalism’ because of the social make-up of territorial, religious and other diversities located in distinct 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 pointed out the various kinds of diversities but has not explained the factor which generates 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, France, South Africa, Srilanka, and Ghana and so on. Sawer has pointed out that social attitudes and diversities as enumerated by Livingston, are not specific to federalism, they may result in any kind of constitutional & political system ranging from a non-federal alliance to a centralized system which a good deal of defect devolution.97

Livingston’s theory lacks definite indices and criteria by which federal society can be distinguished from a non-federal society. Venkatrangaiya, therefore, considers that “idea of federal society on which the sociological theory rests is vague, & full of ambiguities, each scholar interpreting it and its bearing on federalism in his own way.”98

B) 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 condition of the birth of federal systems.

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97 Ibid., P.44.
98 Ibid., P.45.
Wheare lays stress on the desire for union and the desire for establishing independent regional governments, & the capacity to give reality to that desire. The desire for union requires a sense of military insecurity & the need for common defense, a desire to be independent of a foreign regime, a hope for economic advantage, geographical neighbourhood, and similarity of political institutions, and this desire for union must be coupled with a similar desire for independence of regional government. Given both the desire, 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 government to raise the financial resources needed to maintain their autonomy.

C) Political Theory:

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 on power a stand for the division of political power as distinct from its concentration on 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 & preserve federal government that they already have?

Ricker puts forward the thesis that federalism is one way of solving the problems of government in expending societies. The Traditional Method of Imperialism that is by enlarging the area of political control & Government by founding an empire has become unpopular, out of tune with the advancing human civilization. But, the purpose is well served by federalism which provides for an enlarged community without the use of coercive & 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 territorial control over the whole area of the empire that collapse in order to meet military or diplomatic threat, and are unable to extend their control by conquest and those who stand for the independence of the constituent provinces to whom concessions are offered. This, according to Ricker, 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. 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 defense and protection, they were not prepared to abandon provincial autonomy. The centralists 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 government 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 all federations.

2) Functional Process Theory:

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 persists in the face of new
challenges that have raised their heads in the present country. To explain this gap, scholars have evolved the functional theory of federalism which has found favor 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 & continuing applicability to older forms 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.E.J.Vile and D.J.Elazar both of them suggest that the traditional conception of federalism as involving a sharp demarcation responsibilities between two independent sets of sovereignties has never worked in practice in the United States. According to them, in the 19th century, as in the 20th century, administrative co-operation and political Interdependence between federal and state governments was a dominant characteristic of the American Federal System, in spite of the formal division of the constitution.

This view, argues R.L.Watts, holds good for other developed federations such as Canada & Australia “Interdependence and cooperation between the two levels of government are instead their characteristic features.” 99 This trend is also inherent in the structure and operation of the new federations formed after the Second World War. An empirical study made by Watts of the six new federal constitutions of India, Pakistan, Malaysia, Rhodesia and Nyasaland, Nigeria & West Indies shows that “Cooperative Federalism” becomes 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 practical financial dependence of the regional government upon the general government & 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

99 Ibid., P.44.
termed as 'organic federalism'. The term 'organic' belongs to political geography & may be called 'integrated federalism.'

**Process Theory of Federalism:**

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, & making joining decisions on common problems.\(^{100}\)

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 territorially by joint values and beliefs and ultimately with constitutionalism & the rule of law. He disagreed with the critics who saw federalism in the United States as a mechanism for entrenching special interests while he 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' & '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, & in doing so become progressively integrated.\(^{101}\)

However, his approach has been criticized 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, maintence and growth as an organism." When seen as a process,

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\(^{100}\) Ibid.

\(^{101}\) Ibid., P.49.
loose confederations give place to "dual federalism, and later to 'cooperative federalism' & may gradually turn into Wheare's quasi-federations or even "Unions". 102

However, Carl Friedrich 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, & there is no provision as such in the constitution. Extra-constitutional factors & forces have, to a large extent, transformed the traditional federal scene. 103 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 government nor automatic. Someone has to trigger it off. The federal governmental process receives its inputs from the nation as a whole, the states, local needs & pressures people, and circumstance generating crisis & emergencies. Inputs may not result in positive results or outputs & has to be fed back into the federal system.

Political parties which have been described as engines of American Government, also contribute to the decentralized structure of government. Pressure groups operate the others way and strengthen the federal government. The Supreme Court has proved to be the greatest framework of centralization process, offering from time to time, a liberal & 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." 104

These theories try to peep into actual working of federations & find it as interdependence, co-operation 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 apriority goals attached to federalism. It is

102 Ibid.
103 Ibid., P.50.
104 Ibid.
therefore, quite clear that these theories are not concerned with the effective & 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 place & proverbs of federalism.

3) Systems Theory:

Systems Theory caters to the complementarily 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 and its use by Deutsch 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 systematic 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 or values are arrived at. Systems thinking analyses relationships and shows the functions that part of system have a 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 patters found in the political systems a whole, showing amongst other things the prerequisites for harmony and for conflicts. It can be used as a reference model for interdisciplinary interaction.

The state aims at the facilitation of there objects of society as a sub system of society. But systems theory does not normally concern itself with the state but rather constricts on the political system. The abstract end of a political system it self-preservation for which all its structure and procedures have their role to play or have systemic functions to perform. These can be voluntary as well as willed

105 Ibid.
functions. Voluntary functions relate to systems learning capacity and its stability. Willed functions move around autonomy system interaction: society assigns them through the political process to certain structures and procedures. Such functions, for example of guarantee individual liberties, participation in decision-making, and so on, are systematic only in an indirect way. According to Parsons, a society is self sufficient to the extent that its institutions are legitimized by valued that its member hold with relative consensus which are in turn legitimized by their congruence with other components of the cultural system, especially its constitution symbolism.

Conclusion:

We can say that, so far as the meaning of federalism is concerned, federalism is a modern conception. The Federal idea is very old, because it had been practiced in ancient Greece but it has been employed on a larger scale, only during the last two centuries. The Term Federalism comes from the Latin word “Foedus” which means an ‘agreement’, ‘treaty’ or ‘contract’.

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, MaxBeloff 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.”

In modern period, the constitution of United States of America 1787 treated the first experiment in establishing a federal system of government. 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 20th century.

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 co-ordinate and independent within their sphere. Therefore, federal government means the division of powers between the two sets of governments namely, the central and the state governments. Each government should work in its own sphere and it should not interfere in other’s sphere; otherwise, it will be a violation of the constitution.

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 means the particular type of government practiced with slight variations by the American, 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.\footnote{Ibid.}

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.

As far 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. The terms of the compact and the division of

\footnote{Ibid.}
powers or functions therein are made by federating units as co-ordinate 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 at some another time.

As in case of India, Dr. B.R. Ambedkar and many others regard the Indian political system, in every sense of the term, as ‘federal’, whereas scholars like K.C. Wheare analyse it as “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 constitution.”

So far as the nature of federalism in Indian context is concerned, W.H. Morris Jones, Marcus Franda, K.C. Wheare and Sir. Ivor Jennings, N.D. Palmer and Ashok Chanda have studied the Indian federal system in its political and dynamic perspectives. Ashok Chanda points out that planning has suspended the federation and our country is functioning almost like a unitary system in many respects. Prof. Morris Jones talks of federalism in India as an example of the concept of bargaining federalism. He says that federalism in India is 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 far as the features of Indian federalism are concerned, it has been critically analysed that India has a centralized federation and this federation is

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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 then a quasi-federation at best or that if it is a federation at all, it has many unitary features. Thus, the centralized federalism in India has been the result of five outstanding factors that is,

A. Monolithic parties which control the state organizations through their nation's organs.

B. Congress Rule in the union and in all the states from 1950 till 1967 with minor exceptions.

C. The dominating personality of Jawaharlal Nehru as the Prime Minister from 1950 till 1964.

D. Introduction of national planning as the medium for rapid economic growth in the country.

E. 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 descriptive forces had been very strong in India.

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. Like other constitutions, it is an instrument for the government of the country. It is sufficiently elastic for adaptation to India's changing and growing needs.

However, the process of centralization makes scholars think that the future of federalism is dark. K.C. Wheare points out that if the functions of the centre have increased in the federation, functions of the units also have increased.

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. Federalism is also the best remedy for curing 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 stabilize. Large numbers of scholars have made studies and have published
on the dynamic nature of Indian federal system.