CHAPTER X

DIVISION OF CIVIL SERVICE IN A FEDERATION

The term 'federation' means treaty or agreement. A federal Govt. comes into existence either as a result of centripetal or centrifugal forces. When hitherto sovereign and independent states either because they are too weak to resist individually foreign aggression, or because they remain economically backward by standing alone, voluntarily agree to unite, as in unity there lies strength, they form a federal union. Such a union comes into operation as a result of centripetal forces. The instrument by which a federation is brought about is of the nature of a treaty or agreement between the independent states and the new unit of government, national or central, which they agree to create. A new State is, thus, created to which the hitherto sovereign States surrender their sovereignty and agree to become its component parts, known by different names - States in United States, provinces in Canada, Cantons in Switzerland in different federal States.

The Central or national government which comes into existence, as a result of such a union is entrusted with powers of general character which concern the nation as a whole. Other subjects, which are of local
interest, or in which variety of practice can be permitted, are left within the jurisdiction of the regional governments, States, Provinces or Cantons whatever be their name. The powers so distributed between the two sets of government, Central and regional are protected by the Constitution and neither of the two can encroach upon the jurisdiction of the other or destroy its existence. Alterations can be made by amending the constitution alone. Sovereignty lies neither in the Central Govt. nor in the regional Govts. Neither can it be divided between the two, it resides in the State alone and it is exercised by the authority which has the power to amend the Constitution. In a federation, therefore, "the separate States disappear, their sovereignty being destroyed, and their citizens having divested themselves of the old allegiance, create, on the basis of a national unity, a federal State.

A federation may also come into existence when a unitary State with a large area, which needs unity out of its diversity, divides its powers into two sets of government and grants constitutional independence to its units. The new apparatus of Govt. comes to be like this: the Central Govt. retains only those subjects which are of national importance and transfers the rest to the
jurisdiction of the units. For example, the Govt. of India Act 1935 envisaged a federation consisting of all the eleven provinces and those princely states which were to express their desire to accede to federation after signing the instrument of accession.

Whatever be the methods of its coming into existence and whatever be the system of division of powers, a federal Govt. is a dual government in which powers are divided and distributed by the Constitution between a Central Govt. and Regional Govts. Unlike the unitary Govt., powers of the units in a federation are regional and not derived. Both the Central and Regional governments are co-ordinate, independent authorities within their allotted sphere of jurisdiction. None can encroach upon the powers of the other. If any change is desired to be made in the distribution of powers, it cannot be done by any one of the two sets of government. It must be done by amending the constitution as prescribed by law. This means the equally of status and this is the essence of federation, although equality of status does not necessarily imply absolute equality of powers. This is an impossible task and not within the reach of practical policies. The distribution of powers between the Central Govt. and Regional Govts. depends upon various factors and every
country has its own peculiar problems. The balance of powers is, accordingly, differently titled in different federations; in some it is in favour of the Central Govt. and in others it is in favour of the regional Governments. But it does not deprive the Govt. of its federal character so long as the one is not rendered thereby helplessly dependent on the other for its existence or proper functioning. By the federal principle, observes professor Sheare, "I mean the method of dividing powers so that the general and regional govt., are each, within a sphere, co-ordinate and independent." The existence of sphere of activities for each Govt., Central and regional where they are co-ordinate and independent is the essential quality of federation. Prof. Dicey defines federation as a "political contrivance intended to reconcile national unity with the maintenance of state rights." i.e. the desire for national unity and determination of each individual unit to maintain its identity and independence.

American Federalism, the Start of an Invention.

Federalism is of extreme modernity. Its theory and practice in the modern state are not older than the American federation, which came into existence in 1787. The delegates to the Philadelphia Convention of 1784,

1. Professor Sheare - Federal Govt. p.11
who were sent by the States for the purpose of preparing a revision of the Articles of Confederation, went beyond their instructions and drafted a new Constitution without knowing that they were devising an entirely novel and ingenious scheme of government, and it would become a distinctive and influential contribution of America to the Art of Govt. Once the example of the United States had demonstrated that a federal Union could work successfully, a precedent was established that others whose situations were similar could follow. The first to do it was Switzerland. In 1847, the Swiss Confederation was convulsed by an attempt of seven catholic cantons to secede. The protestant majority crushed the secessionists protestant majority who had formed a separate league called the Sonderbund. The defeat of the seven Catholic Cantons, was in fact, the triumph for the movement of national unity. Next year the Swiss Diet approved a new constitution which created a federal union.

The next to adopt was Canada in 1867, although the Canadian federation was produced by a different combination of factors. The scheme of distribution of power between the centre and provinces was just the reverse of the American model and it was essentially due to the lessons of America.
Civil War of 1860. The provinces were given exclusive legislative control over a list of enumerated subjects reserving the rest for the Dominion. The Dominion Government was also given the power to disallow any act passed by a provincial legislature, to appoint the Lieutenant-Governor of a province and to instruct him to withhold his assent from provincial bills and to reserve them for consideration of the Governor general and he might refuse assent to such reserved bills.

In the formation of Australian federation the need for common defence was probably the strongest, though economic issues were also involved. The commonwealth came into existence on January 1, 1901. The Constitution enumerated substantial powers for the federal Govt. the residues remaining in the hands of the States. The main taxation powers were given to the federal Govt. with three quarters of revenues to be returned to the States during the first ten years. The Soviet Union adopted the federal form of Govt. as a concession to the various nationalities and tribes inhabiting Russia with a view to build a strong and powerful State. Lenin characterised federalism as a step towards:— "The most solid unification of the different nationalities into a
single, democratic centralised Soviet State." The Constitution of 1936 gives certain specified powers to the Union Govt. and leaves the residuary powers with the constituent republics and each republic exercises its authority independently of the Central Govt. The Constitution also gives to the constituent republics the right to secede.

In India the Scheme of federation under the Constitution of 1950 is fundamentally the same as under the Act of 1935. There are three lists of subjects. The Union list the State List, and the concurrent list, and the residuary powers rest in Parliament.

The variations on the federal theme show that two methods have been adopted in the distribution of powers between the Central and Regional Govts. the system of the United States, Switzerland and Australia is that their Central Govt. have been given enumerated powers whereas the residuary powers are left with their State Govts. In Canada the method adopted was just the reverse of the United States and Switzerland. The Canadian Constitution - the British North America Act, 1867 - accordingly devides the powers between the provincial and dominion Govts. in such a way that the provinces have exclusive control over a list of enumerated subjects, and the dominion has exclusive
control over a list of enumerated subjects, and the
Dominion has exclusive control over the rest. In
Canada, enumerated powers are given to the provinces,
and residuary powers are left to the Dominion Govt.

In India the total number of subjects exclusively
given to the Central Govt., are ninety seven as
compared with sixty six which are under the actual
exclusive control of the States. Concurrent list
contains forty seven subjects upon which both Union
and State legislature make laws. Here is an enumeration
more than anything attempted in any other federation.

Dr. Ambedkar, admitted in the constituent assembly that
the constitution has been not set in a tight mould of
federalism. It is true that the federal principle has
been introduced into the terms of the constitution to
some extent and professor Wheare deems it justifiable to
describe it as a quasi-federal. Here I present
the Division of Civil Services in an American
federation. So far as the distribution of powers are
different in the different countries, the division
of services are also different. Federal personnel
in U.S.A. is classified into five services known as
(1) The professional and scientific (2) Sub-professional
(3) Clerical administrative and fiscal (4) Custodial
and (5) Clerical Mechanical. Services are sub-divided
into classes and grades.
In so far as variety is concerned, outside the legislative and judicial branches, the official organization manual of the American federal government classifies administrative agencies into three kinds:

(1) The Executive Office of the President, (ii) Executive departments, (iii) and independent agencies (that is independent of an executive department). This is a classification whose principal virtue is its noncontroversial character.

Here administrative agencies have been devised into two broad types: (1) Central coordinating and service agencies, which exist primarily to assist the President in his various administrative responsibilities or to facilitate the work of other agencies, and (2) the operating agencies which carry on the various programmes authorized by the Congress from time to time. These operating agencies in turn have been divided into four groups: (a) Executive departments, (b) Separate Administrative agencies, (c) Regulatory Commissioners, and (d) Miscellaneous boards and agencies altogether forty nine operating agencies are listed here. This enumeration omits certain temporary agencies in existence in 1958, the Govt. of Dist. of Columbia and certain corollary bodies, such as the national capital Housing authority and the national capital planning...
Commission, and two or three inter-agency committees.

Administrative agencies differ a great deal in size, as the figures on numbers of employees at the beginning of the calendar year 1958 will indicate.

<table>
<thead>
<tr>
<th>Central Coordinating and Service Agencies</th>
<th>Civilian Employment, 1958</th>
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<tbody>
<tr>
<td>1. The White House Office</td>
<td>407</td>
</tr>
<tr>
<td>2. Bureau of the Budget</td>
<td>437</td>
</tr>
<tr>
<td>3. Council of Economic Advisers</td>
<td>32</td>
</tr>
<tr>
<td>4. National Security Council</td>
<td>64</td>
</tr>
<tr>
<td>5. General Intelligence Agency</td>
<td>-</td>
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<tr>
<td>7. U.S. Civil Service Commission</td>
<td>4,107</td>
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<tr>
<td>8. General Services Administration</td>
<td>27,524</td>
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Operating Agencies

(1) Executive Departments

1. Department of State                    34,397
2. Department of the treasury              78,496
3. Department of Defence                   1,600
   (a) Deptt. of Army                      4,05,628
   (b) Deptt. of the Navy                  3,64,157
   (c) Deptt. of the Air Force             3,11,526
4. Department of Justice                   30,523
5. Post Office Department                  5,35,421
6. Dept. of the interior. 48,462
7. Department of Agriculture. 85,249
8. Department of Commerce. 52,187
9. Department of Labour. 5,606

(II) Separate Administrative Agencies

1. Atomic Energy Commission. 6,787
2. Board of Governors of the Federal reserve system. 579
3. Export Import Bank of Washington. 206
4. Farm Credit Administration. 875
5. Federal Civil Defence Ad. 1,295
6. Federal Deposit Insurance Corp. 1,191
7. Federal Home Loan Bank Board. 796
8. Federal Mediation and Conciliation Service. 319
9. Housing and Home Finance Agency. 9,688
10. National Advisory Committee for Aeronautics. 7,696
11. National Science Foundation. 298
12. Panama Canal Company and Canal Zone Govt. 14,820
13. Railroad Retirement Board. 2,572
14. Saint Lawrence Seaway Development Corporation. 37
15. Selective Service System. 6,290
16. Small Business Administration. 1,310
17. Tennessee Valley Authority. 14,674
18. United States Information Agency. 10,989
19. Veteran's Administration. 1,746,657

Operating Agencies -

(III) Regulatory Commissions
1. Civil Aeronautics Board. 672
2. Federal Communication Commission. 1,204
3. Federal Power Commission. 708
4. Federal Trade Commission. 727
5. Interstate Commerce Commission. 2,253
6. National Labour Relations Board. 1,124
7. Securities and Exchange Commission. 838
8. Subversive Activities Control Board. 33
9. United States Tariff Commission. 216
10. Federal Coal Mine Safety Board of Review. 8

(IV) Miscellaneous Boards and Agencies
1. American Battle Monument Commission. 540
2. Indian Claims Commission. 17
3. National Mediation Board. 402
4. National Gallery of Art. 327
5. Smithsonian Institution. 853
6. Tax Court of the United States. 150
7. Foreign Claims Settlement Commission of U.S. 93
8. Renegotiation Board.

9. Board of Commissioners, United States Soldiers Home.

10. Virgin Islands Corporation.

Some agencies are headed by Individual Administrators, others by Boards or Commissioners. Some Agencies trace their history to the early days of the Republic, others are of recent origin. Each year one or two agencies may disappear while new ones are created. There is nothing static about Govt. administrative organization.

The President has available, first, an immediate personal staff in the White House. Secondly, there are five agencies which, with the White House Staff, make up the executive office of the President. Finally two independent Agencies – The Civil Service Commission and General Service Administration. The White House Office confronted by the overwhelming variety of problems weaving up throughout the nation, and handicapped by the inability of even 'big men' serving as department and agency heads to speak their mind to their Chief Executive, most Presidents have needed able men to help them win now fast from masses of conflicting prejudice, selfishness, and partisanship.
In addition, each President has needed a variety of assistants to aid him with the flow of work that results from his relations with the Congress, the Press, the Departments, the agencies, the party and the public. Such work includes preparation for meetings, handling telephone tasks, writing speeches and papers, formal and informal. Under President Kennedy, the staff number was 29 in 1962.

The Bureau of the Budget—This serves as "the President's programming staff". Members of the Bureau's Staff devote their time largely to studying what goes on in each major field of Govt. (e.g. health, education, and welfare). They review the annual spending programmes proposed by each department and agency and the bills which the departments propose for presentation to Congress or which have been introduced by members of Congress.

The Council of Economic Advisers—It's work focuses on the review of monetary developments and problems on projections of Economic Activity, on the coordination of economic budgetary, and revenue estimates and consideration of the economic effects of the each federal programme.
The Office of Emergency Planning - It is engaged in stockpiling strategic materials, in controlling exports and imports of such essential materials as petroleum, and in planning what might be required if war comes again.

The National Security Council - "The real worth of the Council to a President" as the Senate Sub-Committee on national policy machinery pointed out: "Lies in being an accustomed forum .... where the President can receive from his department and agency heads a full exposition of policy alternatives available to him and, in turn, give them clear cut guidance for action. "It collects, co-ordinates and evaluates the intelligence essential to framing military, international and economic policies.

Office of Science and Technology - Competent advice on problems arising out of the impact of Science on Govt.

The Civil Service Commission - This means that its staff of approximately 7600 men and women is continually working to find the workers that the departments and agencies need, to aid them in fixing the compensation for and in training such employees, and to meet the myriad of personnel problems which arise.

Corson and Harris - Ad. in Modern Society. p.56
General Services Administration - It sees the physical requirements of the departments. It consists of five services - (i) Public Buildings Service (ii) The federal Supply Service (iii) The national Archives preserves all essential Govt. records, (iv) the Defence material service (v) Transportation and utilities service.

The Departments - Most of the business of the Govt.
The collection of taxes, the enforcement Laws, the defense of the country, the delivery of the mails, the conduct of international relations, the maintenance of natural resources, is done by the executive departments. The 13 executive departments employed approximately 213 million civil employees during 1962. The ten regular departments are - (i) State (ii) Treasury (iii) Defence (iv) Justice (v) Interior (vi) Agriculture (vii) Commerce (viii) Labour (ix) Health, Education and Welfare (x) Post Office. Each of the Deptt. is headed by a Secretary, who may have under human Under Secretary, and lower down, several assistant Secretaries, special assistants etc. All these are political appointees, though the selection of some of them (and this tendency is on the increase) may have been based considerations of competence rather than patronage. Each Asstt. Secretary is in-charge
of a group of bureaus (services, offices, administrations). The bureaus have at their head officers styled variously as directors, administrators etc. Most throughout all of these bureau chiefs are men from career service.

The majority of positions in the federal Govt. of today were unknown prior to World War II. The changes in the state and local Govts. have been almost as sweeping. Apart from the postal service, only one worker out of seven in the federal Govt. is engaged in clerical work. Three million public employees in 1960, or one out of every three, were engaged in education, a million civilian employees were engaged in national defence, and the third largest group 8,500,000 were employed in public health and hospitals.

Governments today employ persons of practically every known profession, occupation, and field of specialization. The federal government employs more scientists, engineers, economists, lawyers, statisticians, accountants, foresters, agricultural specialists, geologists, meteorologists, physicians, nurses and still other categories of specialists than any other employer. The number of scientists and engineers employed by the federal Govt. increased from
1931 in 1931 to 1,0990 in 1958. The number of physical scientists and mathematicians increased from 9758 in 1931 to 25475 in 1954. The federal service includes more than 10,000 separate classes of position, while that of the States and cities includes most occupations and professions, ranging from apiary inspector to Zoologist. Formerly governments recruited few employees from the colleges and professional schools; today many graduates of universities and professional schools enter the public service.

These sweeping changes in the civil service at all levels of Govt. are due to the great changes that have taken place in Government functions. Many of the most important Government activities today did not exist a generation ago. As new functions have been assumed, older functions have been expanded and become more complex and technical, requiring highly qualified and trained personnel. The State and local Govt.s. today are carrying on programmes of a size and complexity that were undreamed of a quarter of a century ago. No longer can it be said, as Andrew Jackson stated more than a century ago that the duties of the public office are so plain and simple that men of intelligence can quickly learn to perform them.

Andrew Jackson - Ad. in Modern Society
By - Corson and Harris. p.38
Modern Govt. requires the services of many persons of outstanding ability for its many specialized and managerial positions, as well as competent employees for more routine work in the lower grades. It needs also personnel policies and administrative practices that will make it a model employer.

Govts. require unquestioned loyalty of their employees. Because the State is sovereign its employees are subject to various restrictions on their activities. One restriction circumscribes the right of public employees to form unions and the activities which may be carried on by such unions, public employees in the United States are usually prohibited by law from engaging in strike, and Unions of Public employees almost invariably disclaim the right to strike.

Public employees are also restricted in engaging in political activities. Under the former spoils system, which still prevails in some areas, public employees are expected to contribute to the party in the office and to take an active part in political campaigns. In the departmental organization of the U.S.A. therefore, civil servants are found only up to the Bureau level, and all the positions higher up are occupied by political appointees.
Most of the Bureau in U.S.A. (though not all, for a bureau may have staff work) are operational units corresponding to the offices of the executive heads of departments in India. It means, therefore, in terms of our system is that in the U.S.A. all posts corresponding to those of the Secretaries, joint or additional secretaries, deputy and under Secretaries and even Assistant Secretaries in India, are filled by political men. Hence it happens that the policy making and controlling levels or the 'High Command', consist as they do of laymen, find themselves, comparatively weaker in relation to bureaus staffed with career men, and thus there arises the problem of 'bureau intransigence' defying or evading departmental control. There are also staff units whose function is not to carry on the Administration, but to advise and assist those engaged in the task of Administration.

Another characteristic of the civil service in a democratic society is that it is representative of the entire population, drawn from all geographic areas, all racial and religious groups, and all economic classes and walks of life. This is one of the strengths of the American Civil Service, though pockets of discrimination against minority groups and, for certain positions, against women still prevail.
A closely related principle is that equality of treatment shall be accorded to all applicants for the public Service and to all employees after they have entered. The service. Open, competitive examinations and the appointment of the candidates who stand highest on the registers are based on this principle. Until recently veterans' preference was accorded only in entrance examinations, after entrance into the federal service, veterans and non-veterans were treated alike.

Public employees, after the probationary period, cannot be discharged except for gross inefficiency or misconduct. Public employment normally provides greater security to employees than private employment, but today private employers' freedom to discharge employees is limited by management labour agreement. The widely held belief that incompetent public employees cannot be fired is in part a myth, but civil service regulations and procedures often make discharge difficult.

Personnel administration in Govt. is being increasingly decentralized to the operating departments and conducted as an aspect of management. Personnel officers today are devoting increasing attention to motivation and employee morale, to the training of supervisors, and to advising executives on personnel policies. Many personnel agencies still cling to the
older, negative, police concept, and in many communities
the term "Civil Service" evokes an image of a wooden,
unimaginative public service filled with incompent
employees who cannot be discharged.

Personnel Administration in this country has
had to overcome defects, patronage appointments,
still are the rule for many higher appointments, as
in the postal service, and limit the opportunities
of career employes for advancement. The widely held
out erroneous belief that government is always less
efficient than private business and offers fewer opport-
unities for advancement and satisfying careers discourages
many able young men and women from entering
the civil service. Low salaries, especially in the
upper grades, handicap Govt. in recruiting and
retaining competent personnel. Residence requirements
often handicap local Govts. in recruiting persons
with professional training and experience.

Thus federalism has its principle the combination
of unity and diversity. The Central Government is
assigned functions which are of national importance and
general concern. It harmonises local autonomy with
national unity and thereby provides an equilibrium
between the centripetal and centrifugal forces.
Other matters of local interest that differ in different sections of the country are left to the people of those areas for their solution. In this way federal Govt. presents a blending of centralisation and decentralisation.

It prevents rise of a single despotism, checks the growth of bureaucratic authority and conserves the political liberty of the people. Abuse of power by the central authority is more easily checked by vigorous federalism than by any other form of Govt. It adds to the efficiency in administration as well because the division of powers is related to the actual needs of life. But the Govt. has to bear the burden also of determining the manner in which the total of Govt. power shall be distributed among them. This a task of such difficulty that a satisfactory performance of it at one time is impossible as it is tantamount to compartmentalizing the life of nation. The proper adjustment of central to local governments thus becomes, writes Gettel: "a constant source of difficulty and the danger of rebellion or the formation of sectional factions is always present."

The powers of Govt. in a federation are divided among as many sets of officials as there are major

A.C. Kapoor - Principles of co, Sc. p. 274
political divisions plus, of course, the central Govt. The organs of government, instead of being parts of one highly integrated piece of administrative machinery, are parts of as many different administrative systems. Being co-ordinate, as regards their States, uniform policy for a common good can only be secured by a voluntary agreement among all to co-operate this is something which it is often difficult if not impossible to secure. The particular interests of all the component units of a federation are not always identical and each unit is likely to pursue a policy which seems to be conducive to its own interests over those of the state as a whole. More serious still this difference of interests may bring the several units into sharp conflict with each other or collectively into conflict with the central Govt. even then there is no conflict of interest, great loss often results when a given work is not under a single direction.

It is financially expensive, since there is such duplication of administrative machinery and procedure. It is wasteful of time and energy in that it ends in negotiation, political and administrative, to secure uniformity of law and proper administrative fulfillment thereof.
The theory and practice of federalism has undergone a radical change and the fact of the matter is that in all those states which have adopted federal system of government. There has been a steady movement to counteract the disadvantages, resulting from a constitutional distribution of powers by progressively increasing the powers of the Central Government. In the United States it has been accomplished partially by constitutional amendment, but chiefly by giving to the causes of the constitution defining the powers of the control Govt. a broadness of interpretation that certainly was not in the contemplation of the framers of the constitution. The doctrines of implied powers, of inherent powers, of the sanctity of contracts and many other decisions of the Supreme Court stand obnoxious in extending the influence or control of the national Govt. over functions which formerly were considered under state jurisdiction. In Australia likewise a centralising process has been sanctioned by the High Court. In Switzerland four important factors have contributed to the process of centralization: war, economic depression, the demand for ever increasing social services, and the mechanical and technical revolution in transport and industry.
The result is obvious. There is one general tendency in all federal governments that the central governments have increased in importance and strength at the expense of the regional ones.