

CHAPTER VI-A

FEDERALISM & INDIAN FEDRATION

FEDERALISM

- 6A.1. DEFINITION AND MEANING
- 6A.2. BASIC CHARACTERISTICS
- 6A.3 BASIS OF AND NEED FOR FEDERALISM
- 6A.4. ORIGIN AND DEVELOPMENT
- 6A.5 DIFFERENT TYPES OF FEDERAL SYSTEM

6.1. DEFINITION AND MEANING

A federation is usually defined as a compact between two or more states to establish a new state, retaining a place and status for every state inside the new organization. It is not easy to define federalism. Federalism is the idea of multi-level Government .Modern federalism is based on the notion of limited government. It is one element of power dispersion among others in the creation of political order which is built in accordance with the principles of constitutional government. Federal principles are concerned with the combination of self-rule and shared rule. In the broadest sense, federalism involves the linking of individuals, groups and politics in lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrity of all parties. As a political principle, federalism has to do with the constitutional diffusion of power so that the constituting units in a federal arrangement share in the process of common policy making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrity. There is no fixed definition of the word FEDERAL. Professor K.C. Where in his renowned work 'Federal Government', stated that 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. Although

the idea of federalism is not new, in fact, is as old as the Greek city-states, no satisfying and complete definition can suit for all countries and all times. Most of writers agree that they have in mind 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. But although they agree in this, they differ about particular form or type of association of States which they think it proper to describe as a federal government.

According to Garner: Where several states unite themselves together under a common sovereignty and establish a common central government for the administration of certain affairs of general concern of where number of dependencies are by a unilateral act of their common superior transformed in to largely autonomous self governing communities, we have a federal union, or as is often said, a federal state.¹

A English historian, Freeman says: "The name federal Government may be applied to any union of component members where the degree of union between them surpasses that of mere alliance, however intimate and where the degree of independence possessed by each member surpasses anything which can fairly come under the head of mere municipal freedom."²

Professor Wheare observed that the modern idea of what a federal government is has been determined by the United States of America. Not that the Constitution of 1787, which established and regulates this association of States describes it as federal government. Indeed, the word FEDERAL OR FEDERATION occurs nowhere in the American Constitution. The word CONFEDERATION occurs once but not as a description of the Union. Nonetheless it has always been called the FEDERAL CONSTITUTION and now-a-days everybody regards the United States as an example of true federal government. Many consider it the most important and the most successful example.

¹ Political science and Government by Garner.,p.280.

² History of federal Government,pp.2-3.

Numerous countries in the world have, since 1787, adopted Constitutions having federal features and, if the strict historical standard of the United States be applied to all these later Constitutions, few will stand the test of federalism save perhaps Switzerland and Australia. Nothing is, however, gained by excluding so many recent Constitutions from the federal class, for, according to the traditional classification followed by political scientists, Constitutions are either unitary or federal. If, therefore, a Constitution partakes of some features of both types, the only alternative is to analyse those features and to ascertain whether it is *basically* unitary or federal, although it may have subsidiary variations. A liberal attitude towards the question of federalism is, therefore, inevitable particularly in view of the fact that recent experiments in the world of Constitution-making are departing more and more from the 'pure' type of either a unitary or a federal system. Question whether a State is federal or unitary is one of degrees and the answer will depend upon "how many federal features it possesses." Another American scholar has, in the same strain," observed that federation is more a 'functional' than an 'institutional' concept and that any theory which asserts that there are certain inflexible characteristics without which a political system cannot be federal ignores the fact "that institutions are not the same things in different social and cultural environments."³

Professor Wheare has pointed out that what matters is not the look but the practice of government. It was observed that in federal government like that of United States, the general government grew in importance in comparison to regional government for various reasons. But, sense of self-importance, self-assertion and increase in self-consciousness have led to the growth of regional governments. So development of co-operative tendencies is necessary to make

³ Ibid.

federation live long. Prevention of clashes is necessary and co-operative federalism is one way to bring about this result.

It would be useful to mention about certain basic characteristics of federal systems, principles and processes in order to understand both the manner and direction of the development of such governments. There are essential minimal features common to all truly federal systems.

6.2 Basis of and Need for federalism

Federalism is now widely acknowledged to be the best founding principle of politics around the world. The advantages of the federal form are many-fold. It enables the constituent units to reap the benefit of strength in unity while retaining their identity and autonomy in organizing their public sector in accordance with the wishes of their people-“The different advantages of magnitude and littleness of nations” in Tocqueville celebrated words. The advantage include, most importantly, from the economic angle, the gains from a large common market and from a political perspective, protection of individual rights and freedom and promotion of democratic values ⁴

Federalism is a device to protect multiplicity and peculiarity in the framework of grater organization, an especially important feature in society where minorities settle in contiguous territories.

Federalism originated in the experience gathered from political experiments that not merely defense but a number of other subjects, such as control of foreign affairs, inter-state and foreign commerce, export and import and the like, are matter of national concern which require to be dealt with by a national organization, while other matters , such as public order, public health, fire water and electricity supply services, which are the concerns of the inhabitants of a particular local area and have problems of their own connected with the

⁴ [Inman and Rubinfield of I-R 1997].

exigencies of that particular locality, would be best administered if entrusted to the representatives of that area.

Federalism is conceived as a means to protect liberty by the vertical separation of powers and understood as a restraint on governmental jurisdictions according to the guiding principle of subsidiary.

Federal systems provide additional levels for democratic input and civic participation. In the case of the representation of the member-states as territorial units in the national decision-making process, the power of the Central institution is limited; moreover, the impact of democratic representation is moderated by territorial representation.

Federal systems foster a climate of tolerance in so far as they are based on compromise and negotiation. The principle of 'federal comity' as well as the acceptance of 'diversity in unity' is both prerequisites and results of federal will and community feeling. On the other hand, it is obvious that the development and maintenance of a federal system is directly related to a federal spirit. The will to live together constitutes an essential element of federalism. In this sense federalism is always "a question of degree".

Last but not the least, federal structures are more efficient in problem solving because "multilevel structure" creates the potential for innovation.

From a practical standpoint, the basis of a federation is what Dicey called, 'the desire for union and not unity'. Wheare begins his synthesis on the basis of this dictum. This dictum presupposes two essential conditions for the origin of federalism:

first the units involved must have many interest in common because of which they are convinced that their destiny lies in union;

secondly, while very strongly committed to union by the force of their historical, political, cultural, or economic circumstances, the units concerned must also possess certain strong elements of separation which seem to them so vital for their individual group identities, and

which they value so greatly that they are not prepared to forgo their rights to manage their own regional affairs and, want to retain their autonomy in respect of matters in which they differ from one another. In essence, the units should be prepared to erect a common Central government for purposes that are best served in common, but at the same time they must also have a keen desire to maintain regional centers of decision making with guaranteed autonomy in respect of matters that are served best by local involvement.

This desire may be generated by geographical, historical, economic, social and like conditions. For an enduring federal polity a firm federal social base is needed. And this federal social base is to be found more in the nature of racial, linguistic, cultural, or religious diversities in a country. Federal polity is a device best suited to a federal society where cultural, linguistic, racial or religious groupings almost coincide with the territorial divisions of the federation.

The two conditions must be present together. And a balance between the two opposing sentiments is necessary. As Where says, if the communities involved are not prepared to submit themselves to an independent government, they have not achieved the first prerequisite of federal government. This is important, for federalism is essentially what Riker terms 'a bargain between prospective national leaders, who want unity and the officials of constituent governments who stand for a larger regional control.

Where has given the various factors for union and separation in the origins of federalism. These factors are:

1. Need for common defense;
2. Desire to be independent of some foreign power, and a realization that only through union could independence be achieved;
3. Expectations of economic advantages from union;
4. Some political association of the units involved prior to their federal union;
5. Geographical neighborhood; and

6. Similarity of political institutions.

Where writes that this desire for union will not be produced unless all or most of these factors are present. They may be classed as prerequisites for federal government .

Coming to the factors of regional separation, he is much less emphatic. He enumerates three important factors:

1. Previous existence as a distinct governmental unit;
2. Economic divergence; and
3. A sense of isolation through 'geographical' factors;

He thinks that the factor of 'divergence of nationality' itself alone quite certainly could produce the desire for separation in communities otherwise prepared to unite.

Riker's Theory of the Military Origin of Federalism;

He describes federalism as 'a constitutional bargain' 'between prospective national leaders and officials of constituent governments for the purpose of aggregating territory, the better to lay taxes and raise armies'. Riker infers the existence of at least two conditions encouraging a willingness to strike the bargain of federalism. Riker refers to these two conditions as

1. the expansion condition and
2. the military condition.

According to him each one is a necessary condition for the creation of a federalism. Many before him, including Maddox, Greaves, and Where have included military condition as one of the conditions but one great difference is there- Riker asserts the importance of military condition or external threat and desire for expansion as necessary and possibly even sufficient factors in the origin of polity. This theory has received some criticism from scholars like Sawyer and Livingston who regard Riker's emphasis on the military diplomatic factor as rather 'overstressed' and 'excessive.'

Deutsch and his collaborators have proposed nine so-called essential conditions.

1. mutual compatibility of main values;
2. a distinctive way of life;
3. expectations of stronger economic ties or gains;
4. market increase in political and administrative capabilities of atleast of some participating units;
5. superior economic growth on the part of atleast some participating units;
6. unbroken links of social communication;
7. a broadening of the political elite;
8. mobility of persons
9. multiplicity of ranges of communication and transactions.

Prof. Laski said, “dumb consent to dull inertia”, to say that agreement is the basis of federations is to subscribe either to the archaic contract theory of the origin of the state or to the international view of treaty-making powers of a state. But no living Constitution acknowledges either of these two positions. In all cases a Constitution can be said to have been derived from the sovereign people of the country. Technically, the legal basis of a federal constitution, as much as of any other constitution, is the sovereign will of the people.⁵

6.3 Origin-development

The idea of federalism is not new, in fact ,is as old as the Greek city-states, and federal systems have been in operations in various forms in different part of the world for quite sometime, no unique model has emerged that can suit all countries for all times.

Federalism is frequently spoken of as an American invention. This is a correct statement if the particular kind of union created in 1787 is taken as the archetype of federalism. For nowhere before had so close a union been combined with so much autonomy and freedom of the

⁵ EPW, 19 Aug 2000 Rethinking Federalism by Amrish Baghichi.

component parts. Past attempts at federal union had usually remained at the level of a league or long term alliance. The nearest parallels in European history were the Swiss Confederation and the United Provinces of Netherlands, but the first had not achieved an effective Central government, while, in the second, the component units languished for lack of autonomy.

Neither Plato nor Aristotle, nor the many political writers following in their footsteps in classical antiquity, developed a concept of federalism. The repeated attempts at federalism which were made to unite Greece against Macedonia and Rome failed. It was only in the Middle Ages, the first vague hints appeared with its great city leagues. But not until the confederations of the Swiss and Dutch had come into being did a full bodied concept of federalism its appearance. This concept was formulated by Johannes Althusius (1530-1596) who, fully conversant with both these federal regimes, made the bond of union one of the corner stone of his political thought. He expounded a federal theory of popular sovereignty. But his concept was in sharp contrast to the later American concept.

No significant development of the concept of federalism occurred in the century and a half following Althusius's bold theory.

Montesquieu's (1689-1755) discusses the notion of a "federative republic" in,⁶ but largely in terms of giving defensive strength to several Republics. Yet his analysis stresses one point which found expression in Article IV, section 4 of the American Constitution: Federal republics ought to be composed only of republics. It is a principle of homogeneity. He insisted upon the difficulty of maintaining a republican form of government over a large territory which stimulated the belief in federalism but he did not elaborate the institutional structure of such a federal Republic. So loosely constructed could not hope to deal effectively with the task confronting young America. Economic crisis, political confusion, and

⁶ Book IX of his Spirit of the Laws (1748),

the danger of losing their newly won independence soon confronted the Americans. He did not present the American concept of federalism, anymore than Althusius had done.

Federalism was the most Central issue of the constitutional convention at Philadelphia. In the Fourteenth chapter of The Federalist, James Madison stated this very emphatically. In fact the concept was hammered out in a protracted struggle between two dominant factions of the convention, the nationalists and the federalists (not the Federal party which grew out of the nationalist). The arguments at Philadelphia were consequently focused upon the specific issues of governmental pattern and debates were dominated by federal problems. From these debates, emerged a novel, unprecedented concept of federalism. Contrary to the earlier notions, as found in Althusius and others, the federal system here is not composed merely of states , as in a league, but creates a new community, all inclusive , of the citizens of all the states. It is a part of practice which has developed under this concept of federalism that there exists two separate levels of administration and each is operating independently of the other. The Federalist written by Hamilton, with the help of Madison and Jay, has ever since been recognized as the bible of American federalism, and has consequently exercise an enormous influence in the shaping of federal institutions all over the world.

According to D.D.Basu :

1. Though there were loose forms of union in the world between States prior to 1787, modern federalism started with the constitution of the US (1787), which is regarded as the model of federal constitutions.
2. Though the federal principle has been adopted by other countries from the American precedent, each country has introduced variations of its own, as a result of which the world of federalism to-day consists of different types of federal constitutions, -none being an exact replica to the other.

There is a consensus of opinion that in any present day discussion of federal Constitutional law, we must include the entire family of these variegated types besides the classical model of the American Constitution. Nevertheless, whenever any question arises as to what is the “true” federal principle relating to any point, one must inevitably refer to American constitutional law for light.

3. Even in the United States, owing to activist judicial interpretation as well as constitutional practice, federalism has assumed a shape which the founding fathers could little envisage. Nevertheless, the essentials of American federalism are the same after two centuries, namely, a legally enforceable division of powers between two governments, -federal and regional-by the written constitution and the authority of the courts to interpret, apply and enforce that constitutional distribution of powers.

6.4. Basic Characteristics of a Federal System.

The essential feature of federation is a sharing of power in the political and social system between the Centre and the Units, both retaining their identities. At the same time there is a commitment to partnership by the units among themselves with Centre.

According to D.D.Basu, though there may be difference amongst scholars in matters of detail, Essential features of a Federal polity the consensus of opinion is that a federal system involves the following **essential features**⁷:

6.4.1. Dual Government.

While in a unitary State, there is only one Government, namely the national Government, in a federal State, there are two Government,-- the national or federal Government and the Government of each component State.

⁷ Comparative Government, D.D. Basu.

Though a unitary State may create local sub-divisions, such local authorities enjoy autonomy of their own but exercise only such powers as are from time to time delegated to them by the national government and it is competent for the national Government to revoke the delegated powers or any of them at its will.

A federal State, on the other hand, is the fusion of several States, into a single State in regard to matters affecting common interests, while each component State enjoys autonomy in regard to other matters. The component States are not mere delegates or agents of the federal Government but both the Federal and State Governments draw their authority from the same source, viz., the Constitution of the land. On the other hand, a component State has no right to secede from the federation at its will. This distinguishes a federation from a confederation.

6.4.2. Distribution of Powers.

It follows that the very object for which a federal State is formed involves a division of authority between the Federal Government and the States, though the method of distribution may not be alike in the federal Constitutions.

6.4.3. Supremacy of the Constitution.

A federal State derives its existence from the Constitution, just as a corporation derives its existence from the grant of a statute by which it is created. Every power—executive, legislative, or judicial—whether it belongs to the federation or to the component States, is subordinate to and controlled by the Constitution.

6.4.4. Authority of Courts.

In a federal State the legal supremacy of the Constitution is essential to the existence of the federal system. It is essential to maintain the division of powers not only between the coordinate branches of the

government, but also between the Federal Government and the States themselves. This secured by vesting in the Courts a final power to interpret the Constitution and nullify any action on the part of the Federal and State Governments or their different organs which violates the provisions of the Constitution.

Our Constitution possesses all the aforesaid essentials of a federal polity. Thus, the Constitution is the supreme organic law of *our* land, and both the Union and the State Governments as well as their respective organs derive their authority from the Constitution, and it is not competent for the States to secede from the Union. There is a division of legislative and administrative powers between the Union and the State Governments and the Supreme Court stands at the head of *our* Judiciary to jealously guard this distribution of powers and to invalidate any action which violates the limitations imposed by the Constitution.

In International **Encyclopedia of the Social Sciences**⁸, it has been stated in volume V that the basic characteristics and operational principles common to all truly federal systems can be identified; and these may be divided into three essential elements and a number of supplementary ones. The first being:

- (a) Written Constitution.
- (b) Non-Centralization.
- (c) A real division of power.

Recent studies have shown that the existence of a non-centralized party system is perhaps the most important single element in the maintenance of federal non-centralization. The importance of a non-centralized party system is well illustrated by contrast with those formally federal nations dominated by one highly centralized party, such as the Soviet Union, Yugoslavia and Mexico. In all these cases, dominant parties have operated to limit the power of the constituent

⁸ Edited by David L. Sills., vol. V.

polities in direct proportion to the extent of its dominance. It has been observed that in any federal system, it is likely that there will be continued tension between federal government and the constituent polities over the years and that different balances between them will develop at different times. The existence of this tension is an integral part of federal relationship and its character does much to determine the future of federalism in each system. The question of federal-state relations which it produces is perennially a matter of concern because virtually all other political issues arising in a federal system are phrased in terms of their implications for federalism. This is particularly true of those issues which affect the very fabric of society.

It has been pointed out that the successful operation of federal system requires a particular kind of political environment, one which is conducive to popular government and has the strong tradition of political cooperation and self-restraint that are needed to maintain a system which minimizes the use of coercion. The existence of severe strains on the body politic which lead to the use of force to maintain domestic order is even more inimical to the successful maintenance of federal pattern of government than all other forms of popular government.

Reference may also be made in this connection to what has been stated in volume II of the **Encyclopedia** of Democracy⁹ in which fundamental principles of federalism have been mentioned, as below :

- (i) Non-centralization.
- (ii) Democracy.
- (iii) Checks and balances.
- (iv) Open bargaining.
- (v) Constitutionalism.
- (vi) Fixed units.

⁹ Ed. By Seymour Martin, Vol.II.

On the question of successful federal systems, it has been stated that over the years there is likely to be continued tension in any federal system between the federal government and the constituent polities with different balances between them at different times. This tension is an integral part of federal relationship. As to successful operation of federal systems, it has been observed here that the same requires a particular kind of political environment, one that is conducive to popular government and that has the requisite traditions of political cooperation and self-restraint. Beyond this, federal systems operate best in societies in which the fundamental interests are homogeneous enough to allow a great deal of latitude to the constituent governments and to permit reliance on voluntary collaboration. The use of force to maintain domestic order has been regarded, even in this work, as more inimical to the successful maintenance of federal patterns of government than of other forms of popular government.

6.5. Different types of federal system

There is no absolute form of federalism. The form varies according to the historic, geographic, socio economic and cultural heritage of particular country. Today, there are roughly 35 country rich have some kind of a federal constitution recognized as such by political scientist.¹⁰ Political systems of the world are either federal or unitary or a mixture of both. While countries like the United States, Switzerland, Australia, South Africa, Canada and India should be placed in the category of 'federal states', others like Britain, France, Sri Lanka and china are the examples of 'Unitary States'. Different from both, some countries having a system based on the principle of division of powers in the hands of the Central government are treated as 'quasi-federal'. Earlier the case of Soviet Union was in this category and Prof. K.C. Wheare places India too in this category. Certain elements of centralization of powers are unmistakably present in every federal system of the world and for this reason, no political

¹⁰ Vite Tarunchandra Bose, Federalism page 15.

system now be described as the model of an ideal federalism and there is no uniform type of federalism instead we find a plentitude of federal arrangements. In the aforesaid encyclopedia, it has been stated that in 1993 at least 19 countries were organized as federal system and at least 21 others utilized federal principles to incorporate a measure of Constitutional zed decentralization into their systems of government. In addition, there are three super-national confederations and 23 associated states, federacy and condominiums. An associated State is nominally sovereign but it is Constitutionally tied to or dependent on another State for certain purposes. Federacy are arrangements in which a smaller State is Constitutionally linked to a larger one (the federal power) in an asymmetrical manner. Condominiums are States that are jointly controlled by two or more other States.

It would be interesting to note which country falls in which type of political set up. The table given in annexure (E-1-4) indicate the same :

TABLE 1 Federations

Country	Constituent units
Argentine republic	23 provinces, 5 regions, 1 national territory, 1 federal district
Commonwealth of Australia	6 states, 4 administered territories, 2 territories, 1 capital territory
Federal Republic of Austria	9 Lander
Kingdom of Belgium	3 regions, 3 cultural communities
Federative republic of Brazil	26 states, 1 federal capital district
Canada	10 provinces, 2 territories
Federal Islamic Republic of the Comoro	3 islands
Federal Republic of Germany	16 Lander
Republic of India	25 states, 7 union territories, 1 federacy, 1 associated state
Malaysia	13 states
United Mexican States	31 states, 1 federal district
Federal Republic of Nigeria	30 states, 1 federal capital territory
Islamic Republic of Pakistan	4 provinces, 6 trial areas 1 federal capital
Russian Federal	89 republics and regions
Spanish State	17 autonomous regions
Swiss Confederation	26 cantons
United Arab Emirates	7 emirates
United States of America	50 states, 2 federacy, 3 associated states, 3 local home-rule territories, 3 unincorporated territories, 1 federal district, 2 federal dependencies, 72 islands
Federal Republic of Yugoslavia	2 republics

TABLE 2 Political Systems with Federal Arrangements

Country	Constituent units
Antigua and Barbuda	2 islands
People's Republic of China	22 provinces, 5 autonomous regions, 3 municipalities
Republic of Colombia	23 departments, 4 intendencies, 3 commissaries
Republic of Fiji	Consociation of 2 ethnic communities
Republic of Georgia	2 autonomous regions
Republic of Ghana	10 regions
Italian Republic	15 ordinary regions, 5 special status regions
Japan	47 prefectures
Republic of Lebanon	5 provinces
Union of Myanmar [Burma]	7 states, 7 divisions
Republic of Namibia	14 regions
Kingdom of the Netherlands	11 provinces, 1 associate state
Independent State of Papua New Guinea	19 provinces, 1 capital district
Portuguese Republic	18 districts, 2 autonomous overseas regions
Solomon islands	4 districts
Republic of South Africa	9 provinces
Republic of the Sudan	6 regions, 1 federally administered province
United Republic of Tanzania	2 constituent units
Ukraine	1 autonomous region
United Kingdom of Great Britain and Northern Ireland	4 countries, 5 self-governing islands
Republic of Vanuatu	Constitutionally regionalized islands

TABLE 3 Confederations

European Union (EU)	Caribbean Community and Common Market [Caricom]	Commonwealth of Independent State [CIS]
Austria	Antigua and barbuda	Armenia
Belgium	Bahamas	Azerbaijan
Denmark	Barbados	Belarus
Finland	Belize	Georgia
France	Dominica	Kazakhstan
Germany	Grenada	Kyrgyzstan
Greece	Guyana	Moldova
Ireland	Jamaica	Russia
Italy	Montserrat	Tajikistan
Luxembourg	St. Kitts and Nevis	Turkmenistan
Netherlands	St. Lucia	Ukraine
Portugal	St. Vincent and the Grenadines	Uzbekistan
Spain	Trinidad and Tobago	
Sweden		
United Kingdom		

TABLE 4 Associated States, Federacy and Condominiums

Federate power	Related country	Relationship or territory
Denmark	Feroe Islands	Federacy
	Greenlands	
Finland	Aaland Islands	Federacy
France	Monaco	Associated State
France and Spain	Andorra	Condominium
India	Bhutan	Associated State
	Jammu & Kashmir	Federacy
Italy	San Marino	Associated State
Neitherlands	Neitherlands Antitles	Associated State
New Zealand	Cook Islands	Associated State
	Niue Islands	Associated State
Portugal	Azores Islands	Federacy
	Macao	Associated State
	Madeira Islands	Associated State
Switzerland	Liechtenstein	Associated State
United Kingdom	Guernsey	Federacy
	Isle of Man	Federacy
	Jersey	Federacy
United States	Marshall Islands	Associated State
	Federated States of	Associated State
	Micronesia Northern	Federacy
	Marianas	Associated State
	Republic of Palau	Federacy
	Puerto Rico	

CHAPTER VI-B

FEDERALISM AND INDIAN FERERATION

INDIAN FERERATION

- 6B.1 HISTORY OF FEDERALISM IN INDIA
 - 6B.1.1. EAST INDIA ERA
 - 6B.1.2 PRE-CONSTITUTION PERIOD
 - 6B.1.3 POST-CONSTITUTION PERIOD
 - 6B.1.3.1 PRIOR TO JUNE 1947
 - 6B.1.3.2 AFTER JUNE 1947
 - 6B.1.3.3. ACCESSION OF THE INDIAN STATES TO THE UNION OF INDIA
- 6B.2. FACTORS WHICH INFLUENCED THE MARKERS OF THE CONSTITUTION.
- 6B.3. NATURE OF INDIAN FEDERATION.
 - 6B.3.1 MODE OF FORMATION
 - 6B.3.2. POSITION OF THE STATES
 - 6B.3.3. NATURE OF INDIAN POLITY

6.1. HISTORY OF FEDERALISM IN INDIA

The seeds of federal idea can be traced as far back at the decentralization policy of Lord Mayo in 1870. The authors of Mont ford reforms declared themselves formally first of all in favour of federalism.¹The introduction of diarchy further encouraged the growth of federal idea in India. At first the Indian National Congress suspected the motives of the British Government. They thought that the Indian States were being enjoined with the British Provinces only to retard the growth of nationalism in India.

6.1.1. EAST INDIA ERA

The aftermath of the first war of Indian Independence, 1857, saw the passing of the Act of 1858 transferring the administration of

¹ Agarwal, R. C., "Constitutional Development of India and National Movement, History of the freedom movement including the comparative study of the modern Indian Constitution", PartII,P.46.

concentration of all powers in one common centre and consequent enfeeblement of the regions were not conducive to peace and security of the country and as such gradual decentralization began from then onwards. The British efforts to meet the challenges of Indian Nationalism through decentralization and progressive democratization of Provincial Governments in their turn, generated new factors which reinforced not only the natural dynamics of federal orientation of the Indian polity, but also the peculiar form Indian federalism assumed under the Constitution of Independent India.

Thus federalism crept into the Indian Constitutional system by the back door. The Joint Committee echoed the reluctance of the Montford Report to accept the word "Federal" as applicable to the Centre-Province relations in regard to the administrative sphere covered by diarchy. In fact, the Committee declared that "India is not yet ripe for a true federal system"²

6.1.2. PRE-CONSTITUTION PERIOD

The Simon Commission Report published in 1930 took the question of federalism in India a little further. It declared that the ultimate frame work of the Indian Constitution "cannot be unitary; it must be federal." The Government of India Act, 1935 had been a landmark symbol in the constitutional history before the creation of our constitution made after the passing of the whole British period. This Act may be regarded the last efforts by the British rulers to guide the all round system legislative, executive or judicial on the line of federalism. It can be said that this Act has been proved a more progressive and important document in pre-constitution period. It was quite a lengthy and detailed document. By this Act the British Parliament set up a federal system in the same manner as it had done

² Das, H.H. and Mohapatra, S. "Centre-State Relations in India, p.46.

in the case of Canada,³ viz., “by creating autonomous units and combining them into a federation by one and the same Act.” All powers hitherto exercised in India were resumed by the Crown and redistributed between the Federation and the Provinces by a direct grant, under this system; the Provinces derived their authority directly from the Crown and exercised legislative and executive powers, broadly free from Central control, within a defined sphere. Nevertheless, the Centre retained control through ‘the Governor’s special responsibilities’ and his obligation to exercise his individual judgment and discretion in certain matters, and the power of the Centre to give direction to the Provinces.

It did not emerge out of any federal sentiment nor did it come in to being as a result of a compact or agreement between existing States to delegate some of their powers to a common Government. All powers hitherto exercised in India were resumed by the Crown and redistributed (in the manner similar to that of the British North America Act, 1867) between the federation and the Provinces by a direct grant under this system. Thus Indian federation became a federation of its own type.

6.1.3. POST-CONSTITUTION PERIOD

The Constituent Assembly got sovereign character by the Act of Indian Independence, 1947; it became free of all limitations. The reports of the various committees were considered by the Assembly and their recommendations were adopted as basis on which the draft of the Constitution had to be prepared. When Dr. Ambedkar presented the Draft Constitution to the Constituent Assembly, he described the Constitution proposed to be federal. The word ‘Union’ was used in Art.1 and there was no mention of the word ‘Federal’ in the Preamble or any other provision. Dr. Ambedkar was of the view that though

³ Morris-Jones, W.H., “The Government and Politics of India”, chapter-3.

there were number of exceptions from the traditional federalism in order to give Union enough strength to meet the disruptive forces-external as well as internal,- amidst which the Union was born and though in time of war it is so design as to make it work as though it was a unitary system.⁴

As to the nature of the federation proposed, the history of the Constitution making may be divided into two stages: (a) Prior to June 3, 1947,(b) After June 3,1947, when the decision to partition India into two Dominions on communal basis was announced.

6.1.3.1 PRIOR TO JUNE 1947

When the Constituent Assembly first sat, there were two major problems in the path of constructing a federal polity, namely, the communal sentiment of the Muslims and the erstwhile semi-independent Indian States. Hence in order to bring them under the federal scheme, it was inevitable that the Union should have only a minimum of enumerated powers and that the residue should be left to the units. Hence, in the objectives Resolution which was adopted in the Constituent Assembly on January 22, 1947, it was announced that the Union should have only those three powers of Defense, Foreign Affairs and communications, which has been conceded to it by the Cabinet Mission; and that the States of the Federation shall be autonomous units ; having all residuary powers left after assigning to the Union the three aforesaid subjects, together with those powers which followed by implication from the powers assigned to the Union.

6.1.3.2. AFTER JUNE 1947

When the decision to partition India and to form a separate State for the Muslims was announced, there was a consensus among

⁴ VII,C.A>D.,p.31-43.

the frame of the Constitution that the changed circumstances called for a reconsideration of the federal system proposed in the Objectives Resolution. Though, in view of the history up to the Government of India Act, 1935 and the myriads of elements still left with the Dominion of India, with their concomitant diversity of interest, it was not possible to go back to a unitary system, nevertheless, a strong Centre was an imperative necessity.

Immediately after the decision of the partition of the country had been announced, the Union Constitution Committee met on June 5, 1947 and decided that the plan of the Cabinet Mission was no longer binding in view of the partition and that, accordingly, (a) the Constitution of India should be federal with a strong Centre (b) there should be three legislative lists and whatever residue was left unremunerated should go to the Union, not the States. This overturning of the Objectives Resolution by the Constitution Committee was affirmed by the Constituent Assembly and that decision was implemented by the Union power Committee.

6.1.3.3. ACCESSION OF THE INDIAN STATES TO THE UNION OF INDIA

One of the most important and at the same time a most delicate question before the Constituent Assembly was that relating to bringing the princely States into the Indian federation. At the time of the Round Table Conference the Princes sought to protect their special status in the proposed Indian federation. They refused to agree to paramount being within the purview of the federal Government and to use a borrowed phrase clung 'leech-like' to the manifestations of their sovereignty. The Congress approach at the Haripura session in 1938 was that the Federation acceptable to the Congress was one in which the princely States participated as free units enjoying the same measure of democratic freedom as the rest of India. The same view

was expressed in the 1946 session of the Congress at Meerut. Referring to the problem of integration of States, Granville Austin observes that had the havoc of Hyderabad been repeated in even two or three other States the result could have been chaos and anarchy and the Assembly might never have finished its work.⁵ It is in this context that the Indian nation can never forget what it owes to Sardar Patel in bringing about smooth integration of the States. In doing so he showed supreme qualities of Statesmanship and nation building.

On December 21, 1946, the Constituent Assembly established its own State Committee to negotiate with the Princes' Negotiating Committee. In the Objectives Resolution it was made clear by Pandit Nehru that the Indian Union would include the States which must accede to at least three subjects suggested by the Cabinet Mission.

At the suggestion of Nehru the Political Department was merged and a new agency to deal with the States was formed. States Ministry was established soon thereafter with Sardar Patel as in--charge of it. There was steady increase in the pressure brought to bear on the States. Mountbatten for his own part put the most effective pressure on the States to accede to the Union. The Princes were told that they could not run away from the Dominion Government which was their neighbour. By Independence Day all the States excepting Hyderabad, Kashmir, Junagadh and two insignificant ones had joined the Union. The Draft Constitution divided the States into three categories. Part A States were the former provinces; Part B States consisted of former princely States and Part C States comprised centrally administered areas.

The Constitution as originally drafted contained some provisions about autonomy for the States. This exceptional autonomy was found

⁵ Austin Graville, "Indian Constitution, 1966.

by the members of the Constituent Assembly to be galling and dangerous to the viability of the Union.

On October 12, 1949, Dr. Ambedkar proposed an amendment which had the effect of "Unionizing" the former princely States. The amendment was accepted. It was then that Sardar Patel observed, as earlier mentioned, that our new Constitution was not an alliance between democracies and dynasties but a real Union of the Indian people based on the basic concept of the sovereignty of the people.

One of the remarkable features in the drafting of the Indian Constitution was about decision making by consensus. The two persons mainly responsible for that were Nehru and Patel. Each had his especial interests—Patel in the princely States, the public services, and the working of the Home Ministry (under new Constitution), and Nehru in fundamental rights, protection of minority rights, and the social reform aspects of the Constitution—and each let the other have almost a free rein in these areas. The blend in the Constitution of idealistic provisions and articles of a practical, administrative, and technical nature is perhaps the best evidence of the joint influence of these two men.

6.2. FACTOR WHICH INFLUENCED THE MAKERS OF THE CONSTITUTION.

1. It is true that the Indian Constitution is biased towards the Union as it is obvious from the above discussion but this bias was necessitated due to historical reasons and political expediency. There were several reasons for the preference. Briefly Stated, it was a reaction to all that preceded Independence and the tragedies that followed it.

2. The unevenness in political development in the country strikingly illustrated by the problems posed by princely States influenced the preference.
3. There was, inspired by the freedom of the struggle and of Jawahar Lal Nehru's understanding, a deep rooted conservative fear of the masses, unable, full of lawless desires, or irrational anger and of violent passion. This was more evident when Gandhiji was no longer on the scene.
4. There was an acute concern over what repeatedly happened in history when a well co-ordinate centripetal impulse was weak or non-existent.
5. The working of other federations-in the United States, Canada, and Australia- was largely understood, in the vital sphere of Centre-State relations as a combat between forces representing progress on the one hand reactionary status quo on the other.

Centre-State relations in a federation are determined by the conditions and circumstances which exist at the time of the framing of the Constitution. It is for this reason that no patterns of distribution of power in federations look alike. There is no identifiable label of federalism which could serve as an ideal of a federal system. The Constitution of India is neither purely federal nor purely unitary but is a combination of both. It is a Union or composite State of a novel type. It enshrines the principle that in spite of federalism the national interest ought to be paramount.

In fact, anybody who impartially studies the Indian Constitution from close quarters and acknowledges that Political Science today admits of different variations of the federal system cannot but observe

that the Indian system is 'extremely federal' or that it is a 'federation with strong centralizing tendency'.

- (i) Strictly speaking, any deviation from the American model of pure federation would make a system quasi-federal, and, if so, the Canadian system, too, can hardly escape being branded as quasi-federal. The difference between the *Canadian* and the *Indian* system lies in the degree and extent of the unitary emphasis. The real test of the federal character of a political structure is, as There is a normal division of powers under which the States enjoy autonomy within their own spheres, with the power to raise revenue;
- (ii) The need for national integrity and a strong Union Government, which the saner section of the people still consider necessary after 50 years of working of the Constitution.

We have a federal Constitution with some variations in the interest of nation. And the said variations are not capable to disturb the concept of Indian federalism. Some scholars in India have urged that the unitary bias of our Constitution has been accentuated, in its actual working. A survey of the actual working of our Constitution for the last 50 years is essential. Our federal system can be divided into four distinct phases since independence. The first phase, 1947-65 era, was marked by Nehru's undisputed sway over the country's affairs on the one hand and strong reaction to the earlier attempts of the colonial power to encourage divisive forces on the other. The second phase, 1965-71 period, was characterized first by the changes at the top and later, by the pattern of multi-party Government in the States, and the third phase, the post 1971 stage, till the declaration of emergency in 1975, features a new semblance of stability under Indira Gandhi's dominating influence. It is in this phase that the issue

of greater State Autonomy was vehemently advocated by the leader of the non-Congress Governments particularly in the States of J&K, West Bengal and Tamilnadu. This phase produced the greatest tensions and conflict in the Centre-State relations in India. The forty second amendment Act, 1976 had substantially changed the basic federal character of the Indian system but again it was restored in the same form by forty-fourth Amendment, 1978. To these three phases, one more can be added, the fourth one that is afterwards. The advent of Janata Party at the Centre in the post emergency era with its commitment with the process of devolution and centralization in policy making have led many observers to believe that a reverse process of federalism may be set in motion but all hopes were bellied. All this further indicates the development of special type of political culture. In coming chapters some of the concern areas and irritants of federal polity will be discussed.

6.3. Nature of Indian Federation

There has been great divergence of opinion amongst the writers on Political Science and for law scholars as to the nature of federation contained in the political structure set up by the Indian Constitution. It has been criticized by some constitutionalists like Sir Ivor Jennings, as being too long and complicated⁶. It has also been called un-Indian on the ground that it incorporated alien notions which had no manifest relation with the fundamental spirit of India. The Constitution, it was said, had robbed India of her patrimony, if not of her identity, as India would henceforward be governed by foreign institutions and not by the indigenous institutions and Gandhian teachings.

Such criticism, however, did not represent the general view of the Members of the Assembly. After deliberating over the matters,

⁶ Jennings, "Some characteristics of the Indian Constitution, 1953.

they decided not to go in for a Gandhian Constitution. There was also, it was felt, nothing un-Indian in adopting liberal institutions of some other countries especially those institutions which had been a source of strength and inspiration during the years of India's struggle for freedom.

The Constitution has, no doubt, been too long and detailed but this has not led to its rigidity as was apprehended by Sir Ivor Jennings. One factor which influenced the drafting of detailed provisions was the desire to effect smooth transfer of authority and thus preserves administrative efficiency. The Assembly Members believed that the detailed provisions of the Constitution would diminish the scope for litigation.

Though our Constitution is one of the lengthiest Constitutions in the world, it has been subjected to, the largest number of amendments.

Question has sometimes been raised as to what right had the Assembly elected on the basis of the restricted franchise to frame a Constitution which could be amended by Parliament only by two-thirds majority, even though that Parliament had been elected on the basis of adult franchise. A befitting answer to this question was given by Ambedkar in the following words:

"The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable Constitution it has no axe to grind. In considering the articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some article of the Constitution

which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none.”⁷

We have, therefore, to examine the provisions of the Constitution itself, apart from the label given to it by its draftsman, to determine whether it provides a federal system as claimed by members of the drafting committee and, particularly in view of the criticisms leveled against its federal claim by some foreign scholars.

The constitutional system of India is *basically* federal, but, of course, with striking unitary features. But though *our* Constitution provides essential features of a federation, it differs from the typical federal systems of the world in certain fundamental respects:

A Constitution which embodies a feature has normally the following five characteristics: (1) Distribution of power, (2) Supremacy of the Constitution, (3) Written Constitution, (4) Rigidity and the Authority of the Courts. These have been described earlier in the previous part-A of the chapter. So we may come to the conclusion that the essential characteristics of a federal Constitution are present in the Indian Constitution.⁸ But it is blamed that the Constitution does not embody the federal principle, because the Centre can in certain contingencies encroach upon the field reserved for the States. The power of intervention given to the Centre, it is argued, is inconsistent with the federal system, for it places the States in a subordinate position. In the following matters, the Constitution contains a modification of the strict application of the federal principle. Article 3, 31(3), 155, 163, 249, 256, 257, 288(2), 352, 353, 354, 356, 357, 358, 360, 365, 386 (3), 359 of the Indian Constitution contains a modification of the strict application of the federal principle. On the basis of these Articles it is asserted that the fundamental postulate of a federal polity

⁷ Making of the Constitution-H.R.Khanna.

⁸ A.I.R. 1963 SC 1241, State of W.B. V. U.O.I.

that the Central and State Governments functioning under it are co-ordinate authorities each independent within its own sphere is so greatly modified in the relationship between the Union and the States that the Indian Constitution is not entitled to be called a federal Constitution.

Where holds that the Constitution established a system of Government which is utmost quasi-federal, almost devolutionary in character; a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features.⁹

6.3.1. The Mode of formation.

Federations have commonly resulted from an agreement between independent or, at least, autonomous Governments, surrendering a defined part of their sovereignty or autonomy to a new central organism. A federal Union of the American type is formed by a voluntary agreement between a number of sovereign and independent States, for the administration of certain affairs of general concern. The peculiarity of converting a unitary system into a federal one can be best explained in the words of the Joint Parliamentary Committee on Indian Reforms:

“Of course in thus converting a unitary State into a federation we should be taking a step *for which there is no exact historical precedent*. At that moment the British Indian Provinces were not even autonomous for they are subject to both administrative and legislative control of the Government and such authority as they exercised had been in the main developed upon them under a statutory rule-making power by the Governor-general in Council. We are faced with the necessity of *creating autonomous units and combining them into a federation by one and the same Act.*”

⁹ K.C. Wheare, Federal Government.

India had a thoroughly centralized unitary constitution until the Government of India Act, 1935. Though the vision of a 'United States of India' had been at the back of the mind of Indian nationalists since the Congress of 1904 and though the Montford Report had envisaged a federation of autonomous States of British India and the Indian States under the aegis of the Central Government, the Government of India Act, 1915-19 eventually offered only Provincial autonomy. The Provincial Governments were virtually the agents of the Central Government, deriving powers by delegation from the latter.

To appreciate the mode of formation of federation in India, we must go back to the Government of India Act, 1935, which for the first time introduced the federal concept, and used the expression 'Federation of India' (S.5) in a Constitution Act relating to India, since the Constitution has simply continued the federal system so introduced by the Act of 1935, so far as the Provinces of British India are concerned.

As it has been mentioned earlier that by the Act of 1935, the British Parliament set up a federal system in the same manner as it had done in the case of *Canada*. In *Canadian* federalism the provinces of a unitary State may be transformed into a federal Union to make them autonomous. The provinces of Canada had no separate or independent existence apart from the colonial Government of Canada, and the Union was not formed by any agreement between them, but was imposed by a British statute, which withdrew from the Provinces all their former rights and then re-divided them between the Dominion and the Provinces.

It is well worth remembering this peculiarity of the origin of the federal system in India. Neither before nor under the Act of 1935, were the Provinces in any sense 'sovereign' States like the States of

the American Union. The Constitution, too, has been framed by the 'people of India' assembled in the Constituent Assembly, and the Union of India cannot be said to be the result of any *compact* or agreement between autonomous States. So far as the provinces are concerned, the progress had been from a unitary to a federal organization, but even then, this has happened not because the Provinces desired to become autonomous units under a federal Union, as in Canada. The Provinces, artificially been made autonomous within a defined sphere, by the Government of India Act, 1935. What the makers of the Constitution did was to associate the Indian States with these autonomous Provinces into a federal Union, which the Indian States had refused to accede to, in 1935.

Some amount of homogeneity of the federating units is a condition for their desire to form a federal Union. But in India, the position has been different. From the earliest times, the Indian States had a separate political entity, and there was little that was common between them and the Provinces-Punjab Direct British Rule which constituted the rest of India. Even under the federal scheme of 1935 the Provinces and the Indian States were treated differently; the accession of the native Indian States to the system was voluntary while it was compulsory for the Provinces, and the powers exercisable by the Federation over the Indian States were also to be defined by the Instruments of Accession. It is because it was optional with the Rulers of the Indian States that they refused to join the federal system of 1935. They lacked the 'federal sentiment' (*Dicey*) that is the desire to form a federal Union with the rest of India. But, the political situation changed with the lapse of paramount of the British Crown as a result of which most of the Indian States acceded to the Dominion of India on the eve of the Independence of India.

The credit of the makers of the Constitution, therefore, lies not so much in bringing the Indian States under the federal system but in

placing them, as much as possible, on the same footing as the other units of the federation, under the same Constitution. In short, the survivors of the old Indian States (States in Part B of the First Schedule) were, with minor exceptions, placed under the same political system as the old Provinces (States in Part A). the integration of the units of the two categories has eventually been completed by eliminating the separate entities of States in Part A and States in Part B and replacing them by one category of States, by the Constitution (7th Amendment) Act, 1956.

6.3.2. Position of the State in the Federation

In the *United States*, since the States had a sovereign and independent existence prior to the formation of the federation, they were reluctant to give up that sovereignty any further than what was necessary for forming a national Government for the purpose of conducting their common purposes. As a result, the Constitution of the federation contains a number of safeguards for the protection of 'State rights', for which there was no need in *India*, as the States were not 'sovereign' entities before. These points of difference deserve particular attention:

1. While the *residuary* powers are reserved to the States by the American Constitution, these are assigned to the Union by *our* Constitution [Art 248].

This alone, of course, is not sufficient to put an end to the federal character of our political system, because it only relates to the mode of distribution of powers. *Our* Constitution has simply followed the Canadian system in vesting the residuary power in the Union.

2. While the Constitution of the *United States of America* merely drew up the constitution of the national Government, leaving it “in the main (to the State) to continue to preserve their original Constitution,” the Constitution of *India* lays down the constitution for the States as well, and, no State, save Jammu and Kashmir has a right to determine its own constitution.
3. In the matter of amendment of the Constitution, again, the part assigned to the States is minor, as compared with that of the Union. The doctrine underlying a federation of the *American* type is that the Union is the result of an agreement between the component units, so that no part of the Constitution which embodies the compact can be altered without the consent of the covenanting parties. This doctrine is adopted, with variations, by most of the federal systems.

But in *India*, except in a few specified matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the bulk of the Constitution, which may be effected by a Bill in the Union Parliament, passed by a special majority.

4. Though there is a division of powers between the Union and the States, there is provision in *our* Constitution for the exercise of control by the Union both over the administration and legislation of the States. Legislation by a State shall be subject to disallowance by the President, when reserved by the Governor for his consideration [Art.201]. Again, the Governor of a State shall be appointed by the President of the Union and shall hold office ‘during the pleasure’ of the President [Art. 155-156]. These ideas are repugnant to the Constitution of the United States or of Australia, but are to be found in the *Canadian* Constitution.

5. The *American* federation has been described by its Supreme Court as “an indestructible Union composed of indestructible States.”

It comprises two propositions—

1. The Union cannot be destroyed by any State seceding from the Union at its will.
 2. Conversely, it is not possible for the federal Government to redraw the map of the United States by forming new States or by altering the boundaries of the States as they existed at the time of the compact without the *consent* of the Legislatures of the States concerned. The same principle is adopted in the *Australian* Constitution to make the Commonwealth “indissoluble”, with the further safeguard super added that a popular referendum is required in the affected State to alter its boundaries.
1. It has been already seen that the first proposition has been accepted by the makers of *our* Constitution and it is not possible for the States of the Union of India, to exercise any right of secession. It should be noted in this context that by the 16th Amendment of the Constitution in 1963, it has been made clear that even advocacy of secession will not have the protection of the freedom of expression.
 2. But just the contrary of the second proposition has been embodied in *our* Constitution. Under *our* Constitution, it is possible for the Union Parliament to reorganize the States or to alter their boundaries, by a simple majority in the ordinary process of legislation [Art. 4 (2)]. The Constitution does not require that the *consent* of the Legislature of the States is

necessary for enabling Parliament to make such laws; only the President has to 'ascertain' the views of the Legislature of the affected States to recommend a Bill for this purpose to Parliament. Even this obligation is not mandatory insofar as the President is competent to fix a time-limit within which a State must express its views, if at all [Proviso to Art. 3, as amended]. In the Indian federation, thus, the States are not "indestructible" units as in the U.S.A. The ease with which the federal organization may be reshaped by an ordinary legislation by the Union Parliament has been demonstrated by the enactments. The same process of disintegration of existing States, affected by unilateral legislation by Parliament, has led to the formation, subsequently, of several new States.

It is natural; therefore, that questioning might arise in foreign minds as to the nature of federalism introduced by the Indian Constitution.

- 6 Not only does the Constitution offer no guarantee to the States against affecting their territorial integrity without their consent, -there is no theory of 'equality of State rights' underlying the federal scheme in *our* Constitution, since it is not the result of any agreement between the States.

One of the essential principles of *American* federalism is the equality of the component States under the Constitution, irrespective of their size or population. This principle is reflected in the equality of representation of the States in the upper House of the Federal Legislature (i.e., in the Senate), which is supposed to safeguard the status and interests of the States in the federal organization. To this is superadded the guarantee

that no State may, without its consent, be deprived of its equal representation in the Senate [Art. V].

Under *our* Constitution, there is no equality of representation of the States in the Council of States. As given in the Fourth Schedule, the number of members for the several States varies from 1 to 34. In view of such composition of the Upper Chamber, the federal safeguard against the interests of the lesser States being overridden by the interests of the larger or more populated States is absent under *our* Constitution. Nor can *our* Council of States be correctly described as a federal Chamber insofar as it contains a nominated element of twelve members as against 238 representatives of the States and Union Territories.

- 7 Another novel feature introduced into the Indian federalism was the admission of Sikkim as an 'associate State', without being a *member* of the Union of India, as defined in Art. 1, which was made possible by the insertion of Art. 2A into the Constitution, by the Constitution (35th Amendment Act, 1975, by which Sikkim has been admitted into the Union of India, as a *full-fledged State* under the First Schedule. The original federal scheme of the Indian Constitution, comprising States and the Union Territories, has thus been left unimpaired. Of course, certain special provisions have been laid down in the new Art. 371F, as regards Sikkim, to meet the special circumstances of that State. Art. 371G, inserted in 1986, makes certain special provisions relating to the State of Mizoram.

6.3.3. Nature of Indian Polity.

As a radical solution of the problem of reconciling national unity with 'State rights', the framers of the American Constitution made a

logical division of everything essential to sovereignty and created a dual polity, with a dual citizenship, a double set of officials and a double system of Courts.

An *American* is a citizen not only of the State in which he resides but also of the United States, i.e., of the federation, under different conditions; and both the federal and State Governments, each independent of the other, operate *directly* upon the citizen who is thus *subject to two Governments, and owes allegiance to both*. But the *Indian* Constitution, like the Canadian, does not introduce any double citizenship, but one citizenship, viz.,--the citizenship of India [Art.5], and birth or residence in a particular State does not confer any separate status as a citizen of that State.

As regards officials, similarly, the federal and State Governments in the *United States* have their own officials to adMinister their respective laws and functions. But there is no such division amongst the public officials in India. The majority of the public servants are employed by the States, but they adMinister both the Union and the State laws as are applicable to their respective States by which they are employed. *Our* Constitution provides for the creation of All-India Services, but they are to be common to the Union and the States [Art. 312]. Members of the Indian Administrative Service, appointed by the Union, may be employed either under some Union department (say, Home or Defense) or under a State Government, and their services are transferable, and even when they are employed under a Union Department, they have to adMinister both the Union and State laws as are applicable to the matter in question. But even while serving under a State, for the time being, a member of an all-India Service can be dismissed or removed only by the Union Government, even though the State Government is competent to initiate disciplinary proceedings for that purpose.

In the U.S.A., there is a bifurcation of the Judiciary as between the Federal and State Governments; Cases arising out of the federal Constitution and federal laws are tried by the federal Courts, while State Courts deal with cases arising out of the State Constitution and State laws. But in *India*, the same system of Courts, headed by the Supreme Court, will administer both the Union and State laws as are applicable to the cases coming up for adjudication.

- (i) The machinery for election, accounts and audit is also similarly integrated.
- (ii) The Constitution of India empowers the Union to entrust its executive functions to a State, by its consent [Art. 258], and a State to entrust its executive functions to the Union, similarly [Art. 258a]. No question of 'surrender of sovereignty' by one Government to the other stands in the way of this smooth co-operative arrangement.
- (iii) While the federal system is prescribed for normal times, the Indian Constitution enables the federal Government to acquire the strength of a unitary system in *emergencies*. While in normal times the Union Executive is entitled to give directions to the State Governments in respect of specified matters, when a Proclamation of Emergency is made, the power to give directions extends to *all* matters and the legislative power of the Union extends to State subjects [Arts. 353,354,357]. The wisdom of these emergency provisions (relating to *external* aggression, as distinguished from 'internal disturbance') has been demonstrated by the fact that during the Chinese aggression of 1962 or the Pakistan aggression of 1965, India could stand as one man, pooling all the resources of the States, notwithstanding the federal organization.

(iv) Even in its normal working, the federal system is given the strength of a unitary system—

(a) By endowing the Union with as much exclusive powers of legislation as has been found necessary in other countries to meet the ever-growing national exigencies, and, over and above that, by enabling the Union Legislature to take up some subject of State competence, if required 'in the national interest'. Thus, even apart from emergencies, the Union Parliament may assume legislative power (though temporarily) over any subject included in the State List, if the Council of States (Second Chamber of the Union Parliament) resolves, by a two-thirds vote, that such legislation is necessary in the 'national interest' [Art. 249]. There is, of course, a federal element in this provision inasmuch as such expansion of the power of the Union into the State sphere is possible only with the consent of the Council of States where the States are represented.

It is true that even though there is a distribution of powers between the Union and the States as under a federal system, the distribution has a strong Central bias and the powers of the States are hedged in with various restrictions which impede their sovereignty even within the sphere limited to them by the distribution of powers basically provided by the Constitution.

(b) By empowering the Union Government to issue directions upon the State Governments to ensure due compliance with the legislative and administrative action of the Union [Arts. 256-257], and to supersede a State Government which refuses to comply with such directions [Arts.365]

- (c) By empowering the President to withdraw to the Union the executive and legislative powers of a State under the Constitution if he is, *at any* normal manner in accordance with the provisions of Constitution, owing to political or other reasons [Art. 356]. From the federal standpoint, this seems to be anomalous inasmuch as the Constitution-makers did not consider it necessary to provide for any remedy whatever for similar breakdown of the constitutional machinery at the Centre. *Secondly*, the power to suspend the constitutional machinery may be exercised by the President, not only on the report of the Governor of the State concerned but also *sue motto*, whenever he is satisfied that a situation calling for the exercise of this power has arisen. It is thus a *coercive* power available to the Union against the units of the federation.

But though the above scheme seeks to avoid the demerits of the federal system, there is perhaps such an emphasis on the strength of the Union Government as affects the federal principle as it is commonly understood. Thus, a foreign critic (Prof. Wheare)¹⁰ puts it—

“In the class of quasi-federal Constitutions it is probably proper to include the Indian Constitution of 1950...”

¹⁰ K.C. Wheare “Modern Constitution”,