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Distance Learning Programme

UPSC Mains

Polity & Governance-I





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POLITY & GOVERNANCE-I

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Indian Federalism

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Chapter

Power tends to corrupt, and absolute power corrupts absolutely.

– Lord John Dalberg-Acton

The State is an institution which is vested with colossal authority to impact the lives of the people residing within its boundaries. This power has to be organized in such a manner that it provides adequate safeguards against its potential abuse. One way to do this, is to divide political power among different centres of authority. The division of authority between the Federal Government and the States is one such method to control the abuse of power.

Federalism

The term federalism is used in political science and legal scholarship, and refers to a means of governing a polity that grants autonomy to geographically defined subdivisions of the polity. James Q. Wilson and John DiIulio Jr., defined federalism as a system of government 'in which sovereignty is shared so that on some matters the national government is supreme and on others the states, regions, or provincial governments are supreme'.

A political entity that is governed by a single central government making all significant decisions is a unitary system, whereas a group of separate political entities that have entered into an alliance that precludes conflict among them, but leaves all other decisions under the control of the separate entities is a confederation. On a spectrum of political organization, a federal setup lies somewhere in the middle of a unitary setup and a confederation.

	Confederation	Federation	Unitary
Social System/ Context	Heterogenous fractious society	Heterogenous	Usually homogenous
Centralisation	Low	Medium	Highly centralized
Examples	The first U.S. government created by the Articles of Confederation in 1777. The Confederate States of America, formed in 1861, was another confederate government. Switzerland is an example of a country that calls itself a confederation, but has a federal government structure.	United States, India, Canada etc.	United Kingdom

In the beginning of the twentieth century, most countries had a centralized government and a unitary polity. By the end of the 20th century, however, federalism had developed into a largely accepted form of political organization. Writing in 1994, Daniel B. Elazar

estimated that well over 100 of the 180 recognized sovereign states, encompassing some 80 percent of the world's population, live within polities that are either formally federal or utilize federal arrangements.

Political scientists advance various benefits of a federal system of governance. In light of its prominence as a governing arrangement in the world, it is essential to highlight the benefits this system has to offer. The following are some advantages of a federal system:

- A federal system prevents the concentration of power. Power is divided into two tiers which act as a check against absolute power vesting in a single tier. Each tier is supreme in its defined sphere and any attempt by either tier to usurp the powers vested in another, render the action unconstitutional and void.
- Federalism accommodates immense diversity; it houses multiple religions, ethnicities, linguistic and cultural communities. A federal system allows each of these diverse sections to govern themselves. A single top-down standard is not imposed on them. This promotes Unity in Diversity - the *raison d'être* for Indian Federalism.
- Federalism enhances efficiency of governance and administration. In a federation, the Union government concerns itself with issues of national significance (like security, foreign relations, etc.) whereas regional governments have the power to govern issues which have more local significance (like agriculture etc.). This accounts for peculiarities on a local level in the formation and implementation of policies. For example, a subject like agriculture is put in the State list because the land quality, soil type, requirements of irrigation, profile of a farmer are all very different across regions and the Central authority (located in the political capital) will be unable to appreciate the specific demands of the regions in formulating policies.
- Some economists render that a federal political system leads to a system which is most conducive to economic efficiency within society.
- A federal system also increases political participation. This is so because, people are able to form better connections with the leaders they vote for.

Is India a Federal Polity?

What does 'Federal' Mean?

Before we proceed to analyse the Indian polity from the standpoint of 'federalism', it is imperative that we first familiarize ourselves with what federalism really is. What does - or does not- qualify as 'federal'? And what are the essential features of a federation?

There is not a single, concrete and precise format of a federation and significant differences can be noticed across national boundaries. Scholars often make the mistake of treating the American form of federalism as the only acceptable model of a federation to the exclusion of any other system which does not conform to this model. This, however, is a counterproductive exercise as numerous countries in the world have tailored the federal structure to their own historical and socio-cultural factors. For example, the Indian form of federalism was shaped by the fact that at the time of independence, the unity and integrity of the country were threatened as India was not only divided into provinces created by the British, but there were more than 500 Princely States which had to be integrated into one nation. Many political scientists foretold of the impending 'Balkanisation of India'. To stem disintegration it was necessary for the Centre to have wider powers. Additionally, the architects of the Constitution believed that the socio-economic problems (like poverty, illiteracy and inequalities of wealth) of the country needed to be handled by a strong Central government in cooperation with the States.

American federalism is different in comparison to the Indian federalism. The American form of federalism is the oldest in the world. It became fully established largely after the American Civil War. It was the result of an agreement between the sovereign State governments and the Federal government whereby some functions were transferred to the federation. In India's case, no such agreement between sovereign entities was there and federalism took shape in the context of the Colonial British Empire. Similarly, in Canada, the federal units did not come together on the basis of an agreement.

Despite the lack of concrete definition, there is a general consensus that a federal system must have the following essential features:

- There must be two separate tiers of government having an independent legislative and administrative sphere of influence. Each unit must enjoy an independent constitutional status. The subunits must exercise exclusive jurisdiction over some sets of issues; that is, there must be some types of decisions that are reserved to the subsidiary governmental units and that the Central government may not displace or countermand (Dual Government).
- The division of power between these two levels must be done through a written constitution. This written constitution must be the supreme law of the land. This means that all powers of the Union and States must be subordinate to and controlled by the constitution.
- The supremacy of the constitution is secured through an independent judiciary vested with the final power to interpret the constitution and nullify an action on the part of the Federal and State governments.

Background of Federalism in India

After the Revolt of 1857, British India was ruled directly by the Crown. This was done by the Government of India Act of 1858. This Act abolished the East India Company, and transferred its powers of government, its territories and revenues to the British Crown. Under the Crown rule, the Government of India was unitary and all Princely State Provinces functioned under the suzerainty of the British Crown. Any authority exercised by the provinces was delegated to them by the Crown. This meant that they had no independent status of their own and that their authority could be taken away from them at the whim and fancy of the Crown with no recourse against such an action.

The Government of India Act of 1935, however, for the first time prescribed a federation, taking the Provinces and the Indian States as units. It was optional for the Indian States to join the federation; and since the Rulers of the Indian States never gave their consent, the federation was never formed. Despite this, the Part relating to provincial autonomy was given effect in 1937. The legislative powers were divided between Provincial and Central Legislatures, and within a defined sphere, the provinces were no longer delegates of the Central government, but were autonomous units of administration.

Prior to this, no purely autonomous regional units existed in India, as the British Crown exercised sovereignty over all of India (which included Provinces ruled by Princes and territories ruled directly by the British). The Act of 1935 simultaneously created and combined such regions. This is a distinct feature of Indian Federalism as normally, a federation is the result of an agreement between the autonomous regions to combine together.

Federalism and the Indian Constitution

The Constitution describes India as a 'Union of States' in Article 1. The question of whether India is a federation or not has been debated since its inception. KC Wheare described India as 'quasi-federal'. Other political scientists have referred to India as a 'unitary system with federal features'.

According to Dr. Ambedkar, the phrase 'Union of States' has been preferred to the 'Federation of States' to indicate two things; that Indian Federation is not the result of an agreement among the States like the American Federation; and the States have no right to secede from the federation. The federation is a 'Union' because it is indestructible.

The Indian Constitution contains both, federal and unitary features.

Federal Features	Unitary Features
<p>Written Constitution: India has an elaborate written constitution, which details various administrative and political provisions. It is the lengthiest written Constitution in the world.</p>	<p>Strong Centre: The division of powers in the Schedule VII of the Constitution is tilted heavily in favour of the Centre. List I of the Union has 97 subjects, whereas the State list has 61 subjects. Additionally, the Centre has the power to legislate on matters which are not found in any of the lists (residuary power) by virtue of Article 248 read with Entry 97 of the Union List.</p>
<p>Division of powers between the Union and the States is done within the Constitution itself. Part V of the Constitution establishes the Union and Part VI establishes the State polity. Further, Schedule VII consists of three lists delineating the distribution of powers between these tiers of government.</p>	<p>Emergency Provisions: There are three types of emergencies under the Constitution-National (Article 352), State (Article 356) and Financial (Article 360). In an Emergency situation, the Centre can perform the functions and take on the powers of the State. The federal structure is converted into a Unitary one without the need of any formal constitutional amendment.</p>
<p>Independent Judiciary: The Constitution establishes an independent judiciary, which has the responsibility to protect and uphold the integrity of the Constitution and the power to resolve any disputes which may arise between the federal units.</p>	<ul style="list-style-type: none"> ■ Integrated and Unified Judiciary, i.e., no separate State judicial system: The lower judiciary, High Courts and the Supreme Court form a single judicial system. This means that the High Courts are also bound by the decisions of the Supreme Court. ■ Single Citizenship: There is no separate citizenship for each of the States. All citizens are Indian only despite residing in different States. ■ No Territorial Integrity of States: By virtue of Article 3 of the Constitution, the Parliament can change the boundaries of the State by a unilateral action through a simple majority. The only requirement mentioned in the Constitution is that before

introducing a Bill effecting a change in the boundaries of a State, the President must refer the Bill to the concerned State for its views. However, the views of the State are not binding on the Parliament and it can proceed with the readjustment despite disapproval from the States concerned.

- **All India Services:** In addition to having a separate administrative system for the Centre and States, the Indian federal system also has All India Services which are common to both. This is a unique unitary feature of Indian Federation.
- **The Governor:** The office of the Governor is quite a conundrum in the Indian federal setup. The Governor is appointed by the Centre and enjoys considerable discretionary powers to affect the State governance machinery.

From the above, it can be deduced that Indian federalism tilts heavily in favour of the Union. However, on the basis of this, to render that India is not federal altogether is a fallacious stand. This is so because:

- The Indian Constitution may give the Union some extra powers in comparison to States, however, it does not establish the supremacy of the Union. Both, the Union and the States derive their authority from the Constitution (i.e., the States are not dependant on the Union for their powers) and are supreme in their spheres. The sphere of the Union may be wider than the States, but this does not mean that India is not federal.
- In the landmark S.R. Bommai case (1994), the Supreme Court pronounced that Federalism is a basic feature of the Constitution. The phrase 'pragmatic federalism' was used. In the words of Justice Ahmadi,
 - "...It would thus seem that the Indian Constitution has, in itself, not only features of a pragmatic federalism which, while distributing legislative powers and indicating the spheres of governmental powers of State and Central governments, is overlaid by strong unitary features..."

The Court observed that India has all the essential features of a federation and any attempt to dilute this principle would be unconstitutional and void.

- To say that there are no longer any real threats to the splintering of India would be complacent. Even today, one fourth of the 680 districts in India are sensitive to sequential insurgency, communal, caste or access to resources based violence and a significant number are virtually inaccessible to the civilian administration. We have contentious and unresolved border disputes with Pakistan, China and Bangladesh. These are not trivial security concerns. Consequently, strategic unitary features seem sensible.
- It must be pointed out that the actual functioning of a federation is determined by a variety of factors, including politics, history, ideology, etc. When different political parties

come to power at the Centre and the State, the central party often abuses its position and misuses constitutional provisions to gain political mileage or cause political damage. This goes against the positive morality and the spirit of the Constitution.

In summation, it can be said that India has federalism with a strong Central government.

Evolution of Federalism in India

During the colonial rule, a collective Indian consciousness had developed due to the following factors:

- Development of means of communication which brought distant parts of the country closer together.
- Spread of the English language which made the communication of ideas between linguistically diverse parts of the country easier.
- Mass mobilizations under Gandhi which politicized and inspired the feeling of pride, belonging and patriotism in the minds of the many.

Due to the above factors, geographically, linguistically, and culturally distinct and diverse parts of the country came to view themselves as a consolidated and collective unit.

Indian federalism must be understood and evaluated within the context of Indian Independence. The event of Independence and the background of the circumstances in which India – the Republic, was born were chaotic and stressed. The Partition had emphasised the Indian diversity and minimized the Unity, which was the backbone of the anti-colonial freedom movement. This flavoured the prevalent conception about federalism in India. The makers of the Constitution were wary of making the Constitution too federal and ultimately fuelling secessionist tendencies. They wanted to draft a Constitution which would not just address the violence of the Partition, but also establish a durable system of governance which could withstand the wear-and-tear of normal times. In order to do this, the Constitution also had to heed the regional diversities and inequalities. An over-unitary Constitution would alienate parts of the Union, which failed to feel like participants in India's development story. In order to accommodate these competing interests, the makers of the Constitution incorporated a reluctant federal system which was biased heavily in favour of the Centre.

In light of the above concerns, the Constitution of India gave extensive powers to the Centre. In addition to the Constitutional scheme of power distribution, the political party system has heavily influenced the working of federalism in India. The first few decades of Indian Independence were marked by the domination of the Congress at the Centre and the States. This was buttressed by Nehru's charismatic leadership which brought competing ideologies and interests to the table within the framework of the Congress; because Congress was in power at the Centre and the States, the Centre-State disputes were an internal party matter and were rarely brought out in Parliamentary or Executive discussions. This is partly the reason why Constitutional institutions like Inter-State Council were not established as the Congress office served the purpose of a discussion and collaboration forum. Additionally, institutions like the Planning Commission and the National Development Council (both created by executive resolutions) became instruments of domination of the States by the Centre. The significance of the phenomenon of single party dominance is highlighted by the incident of misuse of Article 356 in 1959 against the

Communist government in Kerala (which was a non-congress ministry). This phase is also marked by the acquiescence of the States in transferring some of their powers to the Centre. This is evidenced by the fact that States surrendered their power to impose sales tax on textile, sugar and tobacco to the Centre.

The next phase in federalism came in 1967-77. In the Fourth General Elections, there was a dilution of the single party dominance to a large extent. Though it succeeded in retaining control of the Lok Sabha, its majority was drastically reduced. Congress also lost its majority in the assemblies of eight States—Bihar, U.P., Rajasthan, Punjab, West Bengal, Orissa, Madras and Kerala. Jan Sangh emerged as the main opposition party in U.P., Madhya Pradesh and Haryana, Swatantra in Orissa, Rajasthan, Andhra Pradesh and Gujarat, SSP in Bihar, and the Communists in West Bengal and Kerala. This caused new stress-generating factors to enter Centre-State relations which became severely politicized. There was the entry of unethical practises like defections and misuse of the office of the Governor to form the government in the States. This led to a trust deficit between the Centre and States which was fuelled by a policy of aggressive centralization followed by the then Prime Minister Indira Gandhi. This finally culminated in the declaration of emergency in 1975-77.

The third phase of federalism, i.e., 1977-89 began with the elections of 1977 when for the first time since independence, the Congress was not in power at the Centre. The Janta government was formed at the Centre with the promise of decentralization of economic and political power. However, the government performed one of the first outrightly political uses of Article 356 with the dismissal of 9 State government where the Congress was in power on the pretext that Congress party had lost the faith of the people and therefore, it was against the public interest to let them continue in power. This colorable exercise of Emergency power by the Centre has flavoured the national discourse around Article 356 since then. Additionally, the rise of regional parties can also be noticed here in the fact that in Andhra, Tamil Nadu, West Bengal, etc., regional parties formed the government.

Due to this atmosphere of antagonism and mistrust, the Sarkaria Commission (1983) was appointed to look into Centre-State Relations.

Post 1989, several changes have heavily influenced the working of the federal system in the country. Politically, 1989 ushers in the phase of a multiparty system. Coalition governments have been formed at the Centre. This has placed unprecedented power in the hands of the regional parties to influence national and regional policy. Economically, in 1990 the economic reforms were introduced. This opened the gates for globalization, which imposed new responsibilities and roles for the States.

The latest phase in federalism had begun in 2014 when a single party formed the government at the Centre under Narendra Modi. Two competing and parallel phenomena can be noticed in this phase. Firstly, various moves have been undertaken by the new government, which reveal a zeal for cooperative federalism. Another trend has been observed in parallel to this move towards cooperative federalism. This is the politicization of Centre-State relations. Such politicization has been observed in the past phases of federalism as well. It refers to stressed Centre-State relations when different political parties form the government at the Centre and the States. This can be observed in the case of Delhi, where the rising tensions between the AAP government and the LG brought governance in the Union Territory to a virtual halt. Additionally, this current phase in federal relations includes the novel concept of Competitive Federalism.

Phases in Federalism	Developments
1950-1967	<ul style="list-style-type: none"> ■ Single party dominance ■ Intra-party democracy ■ Planning Commission and National Development Council used to assert domination over the States ■ States transfer powers to the Centre
1967-1977	<ul style="list-style-type: none"> ■ Dilution of Congress dominance ■ Emergence of regional party governments in the States ■ Unethical practises (like defections and misuse of office of Governor) to form governments ■ Aggressive centralization culminating in Emergency (1975-77)
1977-1989	<ul style="list-style-type: none"> ■ Outright politicization of Centre-State Relations ■ Gaping trust deficit between the Centre and States ■ Appointment of Sarkaria Commission (1983)
1989-2014	<ul style="list-style-type: none"> ■ Globalization and economic reforms impose new responsibilities on the States ■ Multiparty system comes at the Centre and becomes established ■ Punchhi Commission set up in 2003 to look into the new issues of Centre-State relations keeping in view the changes that have taken place in the polity and the economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades earlier. It gave its report in 2007.
2014	<ul style="list-style-type: none"> ■ Cooperative and Competitive Federalism ■ Politicization of Centre-State relations of Centre-State relations

Relationship Between Union and State Executive

India is a federation. Union and State governments are two main levels of governance. The laws of the Union are implemented in the States and it does not have any different area of jurisdiction. Therefore, there must be coordination between both levels of governments. The Constitution of India has laid down the norms for coordination between both levels of government.

According to Article 256, the executive power of each State shall be so exercised as to ensure compliance with the laws made by the Parliament and any existing laws which applied in the State. Further, the Union executive can give such directions to a state as would be necessary for the purpose. Thus, compliance of Union laws is mandatory for the State governments.

Article 257 stipulates that the executive power of the State shall be exercised in such manner that it does not impede the exercise of the executive power of the Union. The Union executive may also give directions to the State executive in this regard. In case, some special directions are given by the Union and State government incurs extra cost to implement it, the Union government shall compensate the concerned State government. In case both governments differ on amount of compensation, the matter shall be decided by an arbitrator appointed by the CJI.