UNIT 11: NATURE OF INDIAN FEDERALISM: DIVISION OF POWERS BETWEEN THE UNION AND THE STATES

UNIT STRUCTURE

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11.1 LEARNING OBJECTIVES

After going through this unit, you will be able to :

- describe the nature of Indian federalism
- explain the federal features of the Indian Constitution
- explain the unitary or non-federal features of the Indian Constitution
- discuss the division of powers between the Union and State governments
- present an estimate of Indian federalism

11.2 INTRODUCTION

You have already come to know that India has two sets of government, one at the Centre and the other in the States. This is an important feature of a federal government. In this way, there are some other features as well, which can prove that India has a federal form of government. But the Indian Constitution has also some non-federal features which are opposite to the features of a federal government. Because of this, India is not regarded as a true federation. In this unit, we will discuss all these in detail.

11.3 NATURE OF INDIAN FEDERALISM

One important thing, here, is to be noted that the Constitution of India has not described India as a federation. On the other hand, Article 1 of the Constitution describes her as a "Union of States." This means, India is a union comprising of various States which are integral parts of it. The Indian Union is not destructible. Here, the States can not break away from the union. They do not have the right to secede from the union. In a true federation, the constituting units or the States have the freedom to come out of the union.

India is not a true federation. It combines the features of a federal government and the features of a unitary government which can also be called the non-federal features. Because of this, India is regarded as a semi-federal state. Prof.K.C. Wheare describes it as "a quasi-federal state". The Supreme Court of India also describes it as "a federal structure with a strong bias towards the Centre". Let us now discuss the federal and the unitary or non-federal features of the Indian Constitution.

11.3.1 Federal Features of the Indian Constitution

- **Two sets of government:** India has two sets of government - the Central or Union government and the State government. The Central government works for the whole country and the State governments look after the States. The areas of activity

of both the governments are different.

- **Division of Powers:** The Constitution of India has divided powers between the Central government and the state governments. The Seventh Schedule of the Constitution contains three lists of subjects which show how division of power is made between the two sets of government. Both the governments have their separate powers and responsibilities.
- **Written Constitution:** The Constitution of India is written. Every provision of the Constitution is clearly written down and has been discussed in detail. It is regarded as one of the longest constitutions of the world which has 395 Articles 22 Parts and 12 Schedules.
- **Supremacy of the Constitution:** The Constitution is regarded as the supreme law of the land. No law can be made which will go against the authority of the Constitution. The Constitution is above all and all citizens and organizations within the territory of India must be loyal to the Constitution.
- **Supreme judiciary:** The Supreme Court of India is the highest court of justice in India. It has been given the responsibility of interpreting the provisions of the Constitution. It is regarded as the guardian of the Constitution.
- **Bi-cameral legislature:** In India, the legislature is bi-cameral. The Indian Parliament, i.e., the legislature has two houses - the Lok Sabha and the Rajya Sabha. The Rajya is the upper house of the Parliament representing the States while the Lok Sabha is the lower house representing the people in general.

These are some of the features of a federal form of government and the Indian Constitution has included them in it. The Constitution has also included some unitary or non-federal features which are discussed as below:

11.3.2 Unitary or Non-Federal Features of the Indian Constitution

- **Division of powers is not equal :** In a federation, power are divided equally between the two governments. But in India, the Central government has been given has been given more powers and made stronger than the State governments.
- **Constitution is not strictly rigid :** The Constitution of India can be amended by the Indian Parliament very easily. On many subjects, the Parliament does not need the approval of the State legislatures to amend the Constitution. But in a true federation, both the Union and the State legislatures take part in the amendment of the Constitution with respect to all matters. Therefore, those constitutions are rigid and difficult to amend.
- **Single Constitution:** In India, we have only one Constitution. It is applicable to both the Union as a whole and the Stares. There are no separate constitutions for the States. In a true federation, there are separate constitutions for the union and the States.
- **Centre's control over States:** The Centre exercises control over the States. The States have to respect the laws made by the central government and can not make any law on matters on which there is already a central law. The centre can also give directions to the States which they must carry out.
- **Rajya Sabha does not represent the States equality:** In a true federation, the upper house of the legislature has equal representation from the constituting units or the States. But in our Rajya Sabha, the States do not have equal representation. The populous States have more representatives in the Rajya Sabha than the less populous States. The upper house of the Indian Parliament, that is, the Rajya Sabha is not properly representative of all the States of Indian union.
- **Existence of States depends on the Centre:** In India, the

existence of a State or a federating unit depends upon the authority of the Centre. The boundary of a State can be changed by created out of the existing States.

- **Single citizenship:** In a true federal state, citizens are given dual citizenship. First, they are the citizens of their respective provinces or States and then they are the citizens of the federation. In India however, the citizens enjoy single citizenship, i.e., Indian citizenship or citizenship of the country as a whole.
- **Unified judiciary:** India has a unified or integrated judicial system. The High Courts which work in the States are under the Supreme Court of India. The Supreme Court is the highest court of justice in the country and all other subordinate courts are under it.
- **Proclamation of emergency:** The Constitution of India has given emergency powers to the President. He can declare emergency in the country under three conditions. When emergency is declared, the Union or Central governments become all powerful and the State governments come under the total control of it. The State governments lose their autonomy. This is against the principles of a federation.

Thus, we find that though India has adopted a federal form of government, yet there are various features of our Constitution which are non-federal or unitary. The framers of the constitution wanted to have a strong central government and therefore, had made every attempt to the make the central government more powerful than the state governments. There are various reasons for this. India is a vast country where the people of different religious, languages, races, castes, etc. are residing. In order to maintain unity and integrity among them, a strong centre was thought to be necessary. Again, to perform the vast responsibility of a modern welfare state and for the economic development of a newly independent country, a strong centre with sufficient resources and authority was essential. Further, to establish India, in the international forums, the central government needed to be powerful.



LET US KNOW

1. The unitary features are also called non-federal features because they are the features of a government which is opposite to a federal government.
2. In a unitary government, there is only one government which rules the whole country. There are no state governments like that of a federal government.
3. The state of Jammu and Kashmir has its own separate constitution but it also works under the Constitution of India.



ACTIVITY 11.1

Find out a country which is regarded as a true federation.

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CHECK YOUR PROGRESS

Q 1: The Constitution has described India as a Union of States. (True/False)

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Q 2: Who described India as a "quasi-federal" state?

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Q 3: Write any four federal features of the Indian Constitution.

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Q 4: Mention any four non-federal features of the Indian Constitution.

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11.4 CENTRE-STATE RELATIONS: DIVISION OF POWERS BETWEEN THE UNION AND THE STATE GOVERNMENTS

Generally, three models are followed in the matter of division of powers in a federation. In the first model, the powers of the Centre are defined and the residuary powers are left to the States. This model is found in America. In the second model, the powers of the federating units or States are defined and the residuary powers are given to the centre. Canada follows this model. And in the third model, the powers of both the governments are clearly laid down. Australia has this model of federation. In India, we follow the combination of both the Canadian and the Australian models.

The Constitution of India divides powers between the Union and the State governments. The Seventh Schedule of the Constitution includes three lists of subjects - the Union List (100 subjects), the State List (61 subjects) and the Concurrent List (52 subjects). The Central or Union Government has exclusive power to make laws on the subjects which are mentioned in the Union List. The States have the power to make law on the subjects which are included in the Concurrent List. With regard to the Concurrent List, both the Central and State governments can make laws on the subjects mentioned in the Concurrent List. Finally, the subjects which are not mentioned in the above three lists are called residuary powers and the Union government can make laws on them.

It may be noted here that in making laws on the subjects of the Concurrent list, the Central government has more authority than the State governments. And on the subjects of the State List also the Central government has indirect control. All this shows that though the Indian Constitution has clearly divided powers between the two governments, yet the Central government has been made stronger than the State governments.

We can discuss the division of powers between the two governments in India under three headings, such as, legislative relations, administrative relations and financial relations with reference to the three lists.

11.4.1 Legislative Relations

So far as the legislative relations between the Central government and the State governments is concerned, the Central government has been given exclusive power to make law on the subjects of the Union list. The union list has 100 subjects. These subjects are of great importance for the country and uniform in character. So, these subjects are given to the Union government. Some such subjects are defence, foreign affairs, currency and coinage, citizenship, census, etc.

The State governments can make laws on the subjects mentioned in the State list. The State list has 61 subjects. The subjects which are of local importance and may vary from State to State are included in the State list. Some subjects of the State list are - law and order, public health, forests, revenue, sanitation, etc. Though the State governments have power to make laws on the subjects of the State list, yet the Central government, on certain occasions, can also make laws on these subjects. For example, during the period of emergency, the Parliament makes laws on State subjects.

The Concurrent list has 52 subjects. On these subjects both the central and the state governments can make laws. The subjects which are of great importance and uniform in character but man require local variations, are included in the Concurrent list. In respect of Concurrent list also, though both the governments can make laws on the subjects included in the list, yet the laws made by the Central government will prevail over the State laws in case of a conflict between the two. Some subjects of this list are – economic planning, social security, electricity, education, printing and news papers, etc.

In case of residuary powers, the Union government has exclusive power to make laws. The States have nothing to do in this regard.

Thus, we find that in legislative matters, the Union Parliament

is very powerful. It has not only exclusive contral over the Union list and the residuary powers, but it has also dominance over the Concurrent list and the State list.



LET US KNOW

1. The Parliament can make a law on State subjects if the Rajya Sabha passes a resolution by a 2/3 majority that such a law is necessary for national interest.
2. Sometimes the Governor of a state can reserve certain bills passed by the state legislature for the consideration of President.

11.4.2 Administrative Relations

As in legislative maters, in administrative matters also, the Central government has been made more powerful than the States. The Constitution has made it clear that the State governments cannot go against the Central government in administrative matters. The State governments have to work under the supervision and control of the Central government. The States should exercise its executive powers in accordance with the laws made by the Parliament. The Central government can make laws for maintaining good relations between the Centre and the States. It can control the State governments by directing them to take necessary steps for proper running of administration. If the State fails to work properly or according to the Constitution, it can impose President's rule there under Article 356 and take over its (the State's) administration. Again, there are some officials of the Central government, working in the States, through which it can have control over the State governments.



LET US KNOW

1. Article 257 of the Constitution lays down that the executive authority of every State shall be exercised in such a way that it does not impede or prejudice

the exercise of the executive power of the Union.

2. There are some functionaries of the Union government who serve the State governments. The Governor of a State is appointed by the President who acts as a central agent in the State. The Chief Justice and the Judges of a High Court are appointed by the President and he can also remove them if a resolution is passed by the Parliament in this regard. The offices of the All India Services are appointed by the Central government but they serve in different States.



ACTIVITY 11.2

Find out the State in India where President's rule was used for the first time.

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11.4.3 Financial Relations

To run the administration properly, both the Central and the State governments need adequate sources of income. The income of the government comes mainly from various taxes imposed by it. In financial relations between the two governments, we will discuss how the sources of income are adjusted between the to governments.

There are certain taxes like land revenue, tax on agricultural income, estate duty, etc., which are levied and collected by the States. They are the sources of State revenue. Some taxes are there like stamp duty, excise on medicine, toilet preparations, etc. which are levied by the Union but collected and appropriated by the States. There are some other taxes also which are the sources of income of the Union government alone. They are revenue earned from railways, posts and telegraphs, wireless, broadcasting, etc.

In financial matters also, the central government is more

powerful than the States. The President of India has the power to make alterations in the distribution of revenues earned from income-tax between the centre and the States. The Centre has also the power to great loans and great-in-aid to the State governments. The Comptroller and Auditor General India and the Finance Commission of India which are the central agencies also have control over the State finances.



CHECK YOUR PROGRESS

Q 5: In which Schedule of the Constitution, we find the three lists of subjects?

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Q 6: The Union list has 96 subjects. (True/False)?

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Q 7: Discuss the administrative relations between Central and State governments. (within 50 words)

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Q 8: Discuss the financial relations between Central and State governments. (within 50 words)

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11.5 AN ESTIMATE OF INDIAN FEDERALISM

The Constitution of India has described India as a "Union of States" and not a federation. Dr. Ambedkar, the Chairman of the Drafting Committee of the Indian Constitution, while explaining the meaning of the phrase, said that though India was to be a federation, it was not the result of an agreement by the States to join a federation which is why no state had the right to secede from it. The federation is a union, because it is indestructible. He again said that the States are sovereign in the field which is left to them by

the Constitution as the centre is in the field which is assigned to it.

So, though the Constitution makers made the Central government stronger than the State governments, yet they wanted a cooperative federation. They wished that States would perform their functions in their allotted spheres freely and both the governments would co-operate rather than confront each other.

But the real working of the Constitution in all these years shows that the Centre has grown stronger day by day and that the States have become just like administrative units of the Centre. They have not been able to work freely and independently. The Centre has been changing the boundary of the existing States from time to time in which the consent of the concerned States was not regarded as necessary. Again, the Centre has also been using Article 356 to have control over the States mostly in a discriminating way. The role of the Planning Commission has also been contributing to the strength of the Central government in financial matters. The Planning Commission exercises control over the working of the State governments and thus reduced the position of the States to the units of local administration in a unitary system of government.

But the States are always resenting the stronger position of the centre and demanding autonomy so that they can work independently in their own matters. The Rajamanner committee, the West Bengal Government Memorandum on Union-State Relations, the Anandpur Sahib Resolution and the J & K Assembly Autonomy Resolution have all given a call for the grant of more powers to the States. The Sarkaria Commission, in its report while accepting the need for a strong Centre also favoured the devolution of more powers to the States in some areas. The demand for State autonomy has become stronger with the emergence of the regional political parties in different States and with their growing influence in national politics.

In recent years, we have seen an important development in the working of Indian federalism. No single national political party has been able to secure absolute majority in the Parliament to form the government independently. Various regional and local political parties have been emerging and playing crucial role in the formation of coalition governments at the

Centre. This development to some extent has changed the face of Indian federalism.

However, India has been continuing with a strong Central government. But, it is hoped that Coalition politics will enable Indian federalism to bring about some positive changes in the Center-State relations, particularly, in the use of Article 356 by the Central government, role of the Governor in a State and the distribution of financial powers between the two governments. These are some of the issues which have been constraining Centre-State relations from the very beginning.



LET US KNOW

In 1983, the Sarkaria Commission was established by the Central government to study the question of the Centre-State relations and to suggest reforms, if necessary. This commission emphasised co-operative federalism in India. It is a fact that India has a strong Central government but it should not always try to interfere in the matters of the States. Both the governments should respect one another's power or authority and work harmoniously.



11.6 LET US SUM UP

- India has various features of federal government. But India is not regarded as a true federation, as it has many non-federal features as well. The Central government has control over the State governments and the State governments are to work under the authority of the Central government although they have a certain degree of autonomy in their respective spheres. Accordingly, India combines both federal and non-federal or unitary features with unitary features outweighing the federal features.

- Some of the federal features of the Indian Constitution are : exsitence of two sets of government, division of powers, written constitution, supremacy of the constitution, supreme judiciary and bi-cameral legislature.
- Some of the unitary features of the Indian Constitution are : division of powers is not equal, single constitution, single citizenship, proclamation of emergency, etc.
- The Constitution of India divides powers between the Union and the State governments. The Seventh Schedule of the Constitution includes three lists of subjects - the Union List, the State List and the Concurrent List. With regard to the Concurrent List, both the Central and State governments can make laws on the subjects mentioned in the Concurrent List.
- The subjects which are not mentioned in the above three lists are called residuary powers and the Union government can make laws on them.



11.7 FURTHER READING

1) Chander, Prakash.(2000). *Indian Government and Politics*. New Delhi :Cosmos Bookhive Pvt. Ltd.

2) Ghai, K.K.(2007). *Indian Government and Politics*.New Delhi: Kalyani Publishers.

3) Kapur, Anup Chand and Misra, K.K. (2006). *Select Constitutions.*New Delhi : S. Chand and Company.

4) Pylee, M,V. (2006). *Constitutional Government in India.* New Delhi:S. Chand and Company.

11.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: True

Ans to Q No 2: Prof. K.C. Wheare

Ans to Q No 3: i) two sets of government; ii) division of power; iii)Written constitution, iv) supreme Judiciary

Ans to Q No 4: i) division of powers is not equal; ii) single constitution; iii) Constitution is not strictly rigid; iv) unequal representation of States in the Rajya Sabha

Ans to Q No 5: Seventh Schedule

Ans to Q No 6: True

Ans to Q No 7: As in legislative maters, in administrative matters also, the Central government has been made more powerful than the States. The State governments have to work under the supervision and control of the Central government. The States should exercise its executive powers in accordance with the laws made by the Parliament. The Central government can control the State governments by directing them to take necessary steps for proper running of administration.

Ans to Q No 8: To run the administration properly, both the Central and the State governments need adequate sources of income. The income of the government comes mainly from various taxes imposed by it. There are certain taxes like land revenue, tax on agricultural income, etc., which are levied and collected by the States. They are the sources of State revenue. Some taxes are there like stamp duty, excise on medicine, etc. which are levied by the Union but collected and appropriated by the States. There are some other taxes also which are the sources of income of the Union government alone. They are revenue earned from railways, posts and telegraphs, etc. In financial matters also, the central government is more powerful than the States.



11.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: Mention some subjects of the Union List.

Q 2: Mention any two federal features and any two unitary features.

Q 3: Why is India regarded as a semi-federal state?

Q 4: What are residuary powers?

B) Short Questions (Answer each question in about 150 words)

Q 1: Discuss the federal features of the Indian Constiution.

Q 2: Discuss the non-federal or unitary features of the Indian Constitution.

Q 3: Discuss the legislative relations between the Centre and the States.

Q 4: Discuss the financial relations between the Centre and the States.

C) Long Questions (Answer each question in about 300-500 words)

Q 1: Examine the Centre-State relations under the Indian Constitution.

Q 2: Present an estimate of Indian federalism.

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