

The Nature of Indian Constitution

Introduction

Constitutions are either unitary or federal. In the unitary government, the powers of the government are centralised in the central government & the states are subordinate to the centre. In the federal constitution, there is a division of power between the states & the central government & both are independent in their own spheres.

There is a huge difference of opinion when it comes to the nature of the Indian Constitution. Some jurist like Kenneth C. Wheare, said that India is quasi-federal i.e. "similar to a federal system" because it has some features of federal and some of the unitary Constitution. However, according to the makers of the Constitution, it is federal in nature. Even Dr. B. R. Ambedkar defined it as a federal Constitution, although the centre has certain powers to override the provinces.

What is a Federation?

A Federation is always characterised by the following essential features:

1. **Division of Powers:** Division of powers between the central government on the one hand and the state/unit governments on the other is an absolutely essential condition of a federation. In it one part of the authority and power of the state is vested with the central government and the rest is vested with the state governments. Each works within a definite and defined sphere of functions.

There can be different ways in which the division of powers between the centre and states is affected by different federal constitutions. As for example, the US Constitution specifies the powers of the federal government and vests the rest with the state governments, while the Constitution of India defines separately the powers of the union (federal government), powers of the states and concurrent powers which are available in common to both the

union and the states, and vests the residuary powers with the union. As such the mode of division of powers can be different but it has to be essentially affected in every federal state. It is the sign post of a federation.

2. **Written Constitution:** Since in a federal constitution there is to be affected a division of powers, it becomes essential to effect it in writing in order to make it definite and binding upon both the centre and the states. As such a written constitution is a must for a federation. The constitution is the deliberate and conscious act of political construction. It must be a written and enacted constitution only then can it affect the division of powers in a clear and efficient way.
3. **Rigid Constitution:** A federal constitution has also to be a rigid constitution because it is to be kept immune from unilateral amendment efforts on part of The Centre Government or states. Only the central government and the state governments together can have the power to amend the constitution. Further, in order to maintain stability of the federal organisation, there is prescribed a special method of making the amendments in the constitution.
4. **Supremacy of the Constitution:** In a federation the constitution is the supreme law of land. Both the central government and the state governments derive their powers from the constitution. They always work within their own spheres as demarcated by the constitution. No one can violate the provisions of the constitution.
5. **Special Role of the Judiciary:** For protecting the supremacy of the constitution. Such a judiciary is also essential for performing the role of an arbiter of disputes between the centre and states or among the state governments in respect of their areas of action and power.

The working of a federation always involves the

possibility of rise of disputes of jurisdiction between the centre and state governments and here there must be present an umpire, a superior organisation capable of settling these disputes. An independent judiciary armed with the power of interpreting the constitution and of regular such central and state laws as are found to be against the letter and spirit of the constitution, is an essential condition of a federation.

6. **Dual Administration:** A federation is characterised by dual administration— one, uniform administration of the central government for all the people of the federation and the other state administrations which are run by the governments of federating units and which differ from state to state or region to region. Each citizen has to obey two sets of law—the central laws and the laws of the state of which he is the resident.
7. **Dual Citizenship:** In an ideal federation, each individual gets a double citizenship—one common uniform citizenship of the whole state (Federation) and the second of the province or state of which he is the resident. In the United States, each individual enjoys both the citizenship of the United States as well as of the state of which he is the native resident. India do not follow the feature of dual citizenship.
8. **Bicameral Legislature:** In a federation, the legislature of the federal government is made a bicameral legislature. In one house the people of the federation are given representation while in the other house the units of the federation are given representation on the basis of equality.

In the United States, the people of the country have been given representation in the House of Representatives and the fifty states of the US federation have been given equal representation, two seats to each state, whether big or small, in the upper house i.e. the Senate. The same is the case in India where representation in second house or Upper house is on the basis of population of the state.
9. **Equality of all Federating States:** One of the key underlying principles of the federation is to treat all states/units of the federation equal, without any consideration for the differences in their size,

population and resources. It is because of this requirement that all states have been given seats in one of the two houses of the central legislature and each enjoys equal rights and autonomy.

These are the essential features of a federation. Any state which has all these features can be legitimately described as a federation.

What is a Confederation?

A confederation is a system of governance, in which the constituents (states or provinces) come together for political, economic, security or administrative reasons. Entering a confederation is entirely voluntary and depends on the government of every individual states – or on the local authority in the case of provinces. Once entered the confederation, the constituents maintain their sovereignty and their powers (almost entirely), and there is no superior, unified, central government. Depending on the structure of the confederation, there might be a weak central body, appointed by all constituents, created to speed up bureaucratic processes and facilitate communication. In a confederation there is,

- i. Unitary budget;
- ii. Common military;
- iii. Common foreign policy strategy;
- iv. Common diplomatic representatives; and
- v. Common legal system.

The United States started as confederation and later turned into a federation once the constitution was created, signed and ratified by all members. The concept of confederation is similar to the principles on which international organizations stand. For instance, the European Union has similar structure, even though it is not officially defined as such, in particular because there are legally binding documents that prevent states to enter and exit the union as they please.

Similarities between Federation and Confederation

Despite their natural differences, federation and confederation have some aspects in common:

- In both cases, various states, countries or provinces come together to create a new entity for matters of political, economic and security convenience. Federations and confederations only exist if there is a common agreement among constituents. Indeed, members need to adopt a common constitution

to become part of the federation, while entering a confederation is not binding; and

- ❑ In both cases, being part of the federation or the confederation should benefit member states. In the first case, constituents give up part of their sovereignty in order to receive protection, security and economic or political advantages. In the second case, states and provinces enter the confederation to create a stronger entity and enjoy administrative and economic advantages without losing power or authority.

Difference between Federation and Confederation

- ❑ Federation and confederation are political and strategical agreements among countries or provinces, created in order to enable the constituents to enjoy political and economic benefits. In spite of some similarities, the two concepts are quite different:
- ❑ Confederations were very popular in ancient Greece and during the Middle Age, but there are not many examples of existing confederations. International organizations have a similar structure, but have legal treaties and enforcement mechanisms, while confederations were loose agreements with no written constitution. Conversely, federations are more common today, and many confederations formed centuries ago evolved into federations;
- ❑ The powers and responsibilities of the central authority vary greatly between the two. First of all, there is no central government as such in a confederation, but rather a weak body elected by member states, while the federal government has great power and influence over the constituents. In a confederation, the central government has no power de facto, and it is only in place to facilitate the decision-making process and speed up communication. Conversely, when states come together to create a federation, they create a new nation state, with a functioning and powerful central government. The constituents lose part of their autonomy and authority, and the central government acquires the ability of making decisions regarding national security, military, foreign policy and diplomacy; and
- ❑ The ties among states and provinces are much

stronger in the case of the federation. Indeed, in a confederation, states agree to come together for various purposes, but they are not legally tied together and can technically back up or exit the confederation whenever they want (depending on the type of confederation). Conversely, in a federation, there are binding legal agreements that prevent states from leaving the union. Relations among states within a federation are stronger as the different entities come together to create a new nation state.

Main Federal Features of the Indian Constitution

1. ***Written Constitution:*** The Indian Constitution is a written document containing 395 Articles and 12 schedules, and therefore, fulfils this basic requirement of a federal government. In fact, the Indian Constitution is the most elaborate Constitution of the world.
2. ***Supremacy of the Constitution:*** India's Constitution is also supreme and not the hand-made of either the Centre or of the States. If for any reason any organ of the State dares to violate any provision of the Constitution, the courts of laws are there to ensure that dignity of the Constitution is upheld at all costs.
3. ***Rigid Constitution:*** The Indian Constitution is largely a rigid Constitution. All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament. Such provisions can be amended only if the amendment is passed by a two-thirds majority of the members present and voting in the Parliament (which must also constitute the absolute majority of the total membership) and ratified by at least one-half of the States.
4. ***Division of Powers:*** In a federation, there should be clear division of powers so that the units and the centre are required to enact and legislate within their sphere of activity and none violates its limits and tries to encroach upon the functions of others. This requisite is evident in the Indian Constitution. The Seventh Schedule contains three Legislative Lists which enumerate subjects of administration, viz., Union, State and Concurrent Legislative Lists. The Union List consisted of 97 subjects, the more

important of which are defence, foreign affairs, railways, posts and telegraphs, currency, etc.

The State List consisted of 66 subjects, including, inter-alia public order, police, administration of justice, public health, education, agriculture etc. The Concurrent List embraced 47 subjects including criminal law, marriage, divorce, bankruptcy, trade unions, electricity, economic and social planning, etc.

The Union Government enjoys exclusive power to legislate on the subjects mentioned in the Union List. The State Governments have full authority to legislate on the subjects of the State List under normal circumstances. And both the Centre and the State can't legislate on the subjects mentioned in the Concurrent List, the residuary powers have been vested in the Central Government.

5. Independent Judiciary: In India, the Constitution has provided for a Supreme Court and every effort has been made to see that the judiciary in India is independent and supreme. The Supreme Court of India can declare a law as unconstitutional or ultra vires, if it contravenes any provisions of the Constitution. In order to ensure the impartiality of the judiciary, our judges are not removable by the Executive and their salaries cannot be curtailed by Parliament.

6. Bicameral Legislature: A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation. The Constitution of India also provides for a bicameral Legislature at the Centre consisting of Lok Sabha and Rajya Sabha.

While the Lok Sabha consists of the elected representatives of people, the Rajya Sabha mainly consists of representatives elected by the State Legislative Assemblies. However, all the States have not been given equal representation in the Rajya Sabha.

7. Dual Government Polity: In a federal State, there are two governments—the national or federal government and the government of each component unit. But in a unitary State there is only one government, namely the national government.

So, India, as a federal system, has a Central and State Government.

Unitary Features of the Indian Constitution

1. Strong Centre: The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the USA, they are vested in the states. Thus, the Constitution has made the Centre very strong.

2. States Not Indestructible: Unlike in other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.

3. Single Constitution: Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard was the case of Jammu and Kashmir which has its own (state) Constitution till 2019.

4. Flexibility of the Constitution: The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.

5. No Equality of State Representation: The states are given representation in the Rajya Sabha on the

basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

6. **Emergency Provisions:** The Constitution stipulates three types of emergencies—national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.
7. **Single Citizenship:** In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country. The other federal states like US, Switzerland and Australia have dual citizenship, that is, national citizenship as well as state citizenship.
8. **Integrated Judiciary:** The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.
9. **All-India Services:** In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.
10. **Integrated Audit Machinery:** The Comptroller and Auditor-General of India audit the accounts of not

only the Central government but also those of the states. But his appointment and removal are done by the President without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.

11. **Parliament's Authority over State List:** Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.
 12. **Appointment of Governor:** The governor, who is the head of the state, is appointed by the President. He holds office during the pleasure of the President. He also acts as an agent of the Centre. Through him, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.
 13. **Integrated Election Machinery:** The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.
 14. **Veto Over State Bills:** The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.
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