

UNDERSTANDING CONCEPT OF FEDERALISM

Concept of federalism as incorporated in Indian constitution -2016 UPSC

1. A CONSTITUTION CAN BE EITHER UNITARY OR FEDERAL ? BUT WHAT DOES THAT MEAN ?

Constitution can be either : unitary or federal.

1. UNITARY: The totality of the powers of the State is vested in one government.
2. FEDERAL : The totality of governmental powers and functions are divided between the Centre and the states.

2. HOW CAN WE SAY WHETHER A PARTICULAR CONSTITUTION IS OF FEDERAL NATURE ? We should look into 5 essentials.

Five Essentials of Federal Character:

1. The Constitution must be written
2. It must be rigid
3. It must be supreme law of the land
4. There must be division or distribution of powers between the Union or Federal Government and the various States or Provinces
5. There must be an independent and impartial judiciary to interpret the Constitution and the Laws.

TRACING THE ORIGIN – INDIAN FEDERATION :

1. Idea of federalism first recommended by simon commission 1927 and its report.
- In 1st Round Table Conference : they talked about “All India federation with a self-governing British India.
 - Government of India Act 1935 : had provisions to make federation with 11 Governor’s Provinces and 650 Native States.

- The Cabinet Mission Plan in 1946 contemplated the division of the country into three Zones, Zone A, Zone B and Zone C, based on the concentration of Hindus and Muslims. Zones B and C included Muslim dominated areas.

DEBATE IN CONSTITUTENT ASSEMBLY :

1. The Constitutions of USA, Switzerland and Australia are considered rigid constitutions. While, the British Constitution is considered flexible because amendment procedure.
2. The makers of our constitution while providing for two sets of government at the centre and in the states provided for *division of powers favouring the Central Government*, appointment of the Head of the State government by the Central Government, single unified judiciary, single citizenship indicate the unitary nature of our federalism. Therefore, it is said that India has a quasi-federal set up.is easy and simple
3. Article 1 of the constitution declares that **India, that is Bharat**, shall be a Union of States.

WHY WAS INDIA AN “UNION” NOT “FEDERATION” ? Instead of the word “federation” the word “Union” was deliberately selected by the Drafting Committees of the Constituent Assembly to indicate two things viz. (a) that the Indian Union is not the result of an agreement by the states and (b) the component states; have no freedom to secede from it.

FEDERAL FEATURES OF INDIAN CONSTITUTION :

1. The distribution of legislative power between the Union and the States which gives to the Union exclusive power to legislate in respect of matters contained in List I, and a concurrent power to legislate in respect of matters contained in List III of Schedule VII (Article 246)
2. The power given to Parliament to legislate on exclusively State subjects, namely,
 - a) with respect to a matter in the State List in the national interest Art. 249
 - b) in respect of any matter in the State List if a proclamation of emergency is in operation Art 250.
 - c) For two or more States by consent of those States (Art. 252)

3. Provisions for proclamation of emergency and the effect of such proclamation (Art 353 and 353)

4. Provisions included in the Constitution which are to be operative “unless provision is made to the contrary by Parliament by law” or words to the same effect.

5. Provisions regarding the amendment of the Constitution.

SO OUR CONSTITUTION IS WHOLLY FEDERAL IN NATURE?

a) In *West Bengal v. Union of India AIR 1963 SC 1241* the Supreme Court observed: “The Indian Union is not a true federation”

b) In *State of Rajasthan v. Union of India (AIR 1977 SC 1361)* it was held that states could not assert any right based on the supposed federal character of the Constitution. Supreme Court said: “The Constitution is amphibian in sense that it can move either on the federal or the unitary plane. When action is taken under Article 356 the movement is on the unitary plane.”

UNITARY CHARACTER: Single citizenship, All India Civil Services, Unified Judiciary, single Election Commission, the Finance Commission, and the Planning Commission also establish the unitary character of our constitution.

CASE LAW :

Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. # *Hinsa Virodhak Sangh v. Mirzapur Moti Juresh Jamat, (2008) 5 SCC 33 : AIR 2008 SC 1892*

SO CENTRE IS UNREGULATED, UNTRAMELLED ?

The Constitution of India has created a federation but with a bias in favour of the Centre. Centre has been made far more powerful vis-a-vis the States... But that *does not mean that the States are mere appendages of the Centre*. Within the sphere allotted to them, States are **supreme**. The Centre cannot tamper with their powers." S.R.BOMMAI case clarifies to that point.

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