UNIT 11 FEDERALISM

Structure

11.1 INTRODUCTION

Federalism is a dynamic theory of nation and state building. It is primarily a theory about institutionalised political cooperation and collective co-existence. In other words, federalism is a grand design of 'living together' in the matrix arrangement of, what Daniel Elazar conceptually terms as 'self rule plus shared rule'. Its hallmark is, to cite Rasheeduddin Khan, 'unity of polity and plurality of society'. As a theory of nation-building, federalism seeks to define state-society relationships in such a manner as to allow autonomy of identity of social groups to flourish in the constitutionally secured and mandated institutional and political space. The federal constitution recognises the special cultural rights of the people, especially the minorities. In this sense, it is very close to the theory of multiculturalism, yet different because the niceties of federalism lie in its fundamental stress on institutionalisation of diversities and facilitating sociopolitical cooperation between two sets of identities through various structural mechanisms of 'shared rule'.

As a state-building theory, federalism has three essential components: (i) formation of states and territorialisation of federal-local administration in such a manner as to promote closer contact between people and government; (ii) distribution of federal powers on a noncentralised basis; and (iii) creation of the institutions of shared rule. The first component essentially means creation of the institutions of 'self rule'. The institutions of self-rule at the macro level means creation of states, and at micro level, it refers to the institutions of local self-governance. States or regional units of administration are usually formed on the basis of relative continuity or discontinuity of spatial interaction pattern between people, culture and territory. This, in other words, means formation of states on the principle of "homogeneity with viability". The state system may include several substate arrangements like regional councils or district councils to cater to the specific cultural and administrative requirements of the people living in geo-ethnic

enclaves. The second component refers to the division of federal powers and functions on a relatively autonomous basis, where each unit has sufficient legislative competence, executive authority and financial resources to perform its function in the allotted domain efficiently and effectively.

In recent years, the notion of competence division and distribution has come into being. Competence refers to the functionally elaborated and constitutionally protected capacity of the various units of federal-regional administration. Fernandez Segado, following the Spanish example, has classified different kinds of competences into the following five categories:

> (a) *Integral Competences*: those in which a single authority—usually the state—has attributed all kinds of public functions regarding a particular matter; (b) *Exclusive but limited Competences*: those in which one authority enjoys full competence, but only to a certain extent in a particular matter. Hence, it is not the function, but the matter that is fragmented; (c) *Shared Competences*: those in which both the state and autonomous community [council] are entitled to exercise complementary parts of the same function over the same matter. This would be the case - rather frequently in matters in which the state has reserved for itself basic legislation, and the autonomous community has taken up legislative development; (d) *Concurring Competences*: those in which the competences of the state and those of the autonomous community are distinct, but converge on the same physical object; (e) *Indistinct Competences*: those awarded both to the state and to the autonomous community without any sort of distinction, and which enable them to deal with a matter in different ways.

What follows from above is the fact that competence distribution is a manifold exercise of identification and distribution of subjects on the basis of territorial import and community significance of the subject either for exclusive or shared control of policy making and its execution. In the arena of shared competence, contents of the policy over a subject are divided and distributed. This, in other words, means jurisdictional partitioning of the subject. In the realm of allotted capacity each unit enjoys almost complete autonomy of decision and execution. One may here like to mention the fact that federalism has, over the years, evolved as *policy science*, where basic objectives of the discipline seem to be efficiency and achievement of targeted goals and policies. This is a step further growth of federal theory where it draws its critical resources from the disciplines of Public Administration and Management.

As a devolutionary theory of administration and governance, federalism and federal system may follow either one or combination of the following arrangements like *noncentralisation, decentralisation and deconcentration*. Noncentralisation refers to a non-hierarchical allocation of competence. Decentralisation means conditional-hierarchical distribution of competence from one federal structure to other subordinate authority and structures. And deconcentration means a partial 'off-loading' of, usually executive authority and functions, from one authority to subordinate authority. An essential attribute of federalism is the creation of a federal political culture in which differences are sorted out through mutual negotiation, and consensus is built on matters of common concern and national importance.

The third component relates to the institutions of shared rule. This takes out federalism from being only a system of self-governance to collective governance on matters of translocal importance and mutual concern. Shared rule institutions may take variety of institutional shapes like zonal council, ministerial council, inter-state council, independent constitutional authorities like boards, commissions, planning and other regulatory bodies. The institutions of shared rule has important objective of laying down the policy norms, and developing uniformity of outlook on matters of interregional and national significance and resolving inter-state disputes.

Interestingly, there is not any exclusive and universal model of federalism. Two federal polities share some characteristics in common, but differ widely in the structure and process of governance. Federal polity builds its exclusive 'federal union' and 'federal nation' according to its own distinct social composition, cultural differentiation among the social groups, regional or subregional variation of identity and development, and desired objectives and specifications of its constitutionalism and nationalism. It is precisely the reason that each federal polity constitutes a distinct class of federalism, so is the case with Indian federalism.

11.2 CHARACTERISING INDIAN FEDERALISM: THE ESSENCE OF A FEDERAL UNION

Traditional-legal scholarship has characterised Indian federalism as '*quasi*-federal'—"a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles" (K.C. Wheare). Such characterisation probably fails to take into account a totalistic perspective of Indian federalism, its formation, growth and evolution. It is true that Indian federalism has an in-built tendency to centralise under certain circumstances, this nonetheless makes it *quasi*-federal. Within the allotted domain, the state is as sovereign as the union. In this regard, B.R. Ambedkar's speeches in the Constituent Assembly are worth recalling. During a discussion on the Emergency Provisions on 3 August 1949, he said:

> I think it is agreed that our constitution, notwithstanding the many provisions which are contained in it whereby the centre has been given powers to override the provinces, nonetheless is a federal constitution and when we say that the constitution is a federal constitution it means this, that the provinces are as sovereign in their field which is left to them by the constitution as the centre is in the field which is assigned to it. In other words, barring the provisions, which permit the centre to override any legislation that may be passed by the provinces; the *provinces have a plenary authority to make any law for the peace, order and good government of that province.* Now, when once the Constitution makes the provinces sovereign and gives them plenary powers... the intervention of the centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition, which ... we must accept that we have a federal constitution. (emphasis added)

Refuting the charge of centralism as essential and only feature of Indian Constitution, Ambedkar in the Assembly on 25 November 1949 said:

> The basic principle of federalism is that the legislative and executive authority is partitioned between the centre and states not by any law to be made by the centre, but by the constitution itself. This is what constitution does. The states under our constitution are in no way dependent upon the centre for their legislative or executive authority. The centre and the states are co-equal in this matter. It is difficult to see how such a constitution can be called centralism. It may be that the constitution assigns to the centre too large field for the operation of its legislative and executive authority than is to be found in any other federal constitution. It may be that the residuary powers are given to the centre and not to the states. But these features do not form the essence of federalism. The chief mark of federalism lies....in the partition of the legislative and executive authority between the centre and the units by the constitution. This is the principle embodied in our constitution. There can be no mistake about it. It is therefore, wrong to say that the states have been placed under the centre. Centre cannot by its own will alter the boundary of that position. Nor can the Judiciary.

The principle on which the founding fathers divided powers between the centre and the states was that the division of powers must be in consonance with the distribution of responsibilities. The centre has been assigned the important roles of: (i) nation-building and nation preserving; (ii) maintaining and protecting national unity and integrity; and (iii) maintaining constitutional political order throughout the union of India. The states have been assigned only those subjects which are purely local in nature. Besides, having autonomy of legislation, regulation and execution of the subjects assigned to it, the states are expected to coordinate, cooperate and execute the policies of union specially with regard to those belonging to the nation-building aspect.

Federal union as envisaged by the framers of the constitution, would essentially have following three components: (i) At the societal level, it seeks to build a social union, permitting pluralism (of group life) to flourish within the broader framework of secularism. A social union has to function through the instrumentality of local self-government. (ii) At the national-political level, it seeks to establish a political union, functioning through a synthesised construct of parliamentary democracy and federalism. The emerging model is that of the parliamentary federalism seeking to achieve the three basic objectives of federal nation building namely, accountability, autonomy and integration. (iii) The federal union also seeks to establish an economic union through planned national economic development. The national economy is expected to remove graded inequality among the regions and the classes through various measures of capacity building and prevention of polar accumulation of wealth, resources, industry and technology. The economic union is expected to provide a minimum level playing field to each unit of the federation.

In this context, it may be mentioned that the founding fathers had specifically perceived federalism as instrument of nation-building, therefore made the political system adequately resilient and adaptable to the vagaries of national development. It is in accordance with

the imperatives of national development and the maintenance of national unity and integrity that the degree of federalism may vary from time to time. Indian federalism is complex enough to defy any singular generalisation and characterisation. At best, one can characterise it as *Union type federal polity.* Such a polity usually combines the features of a dual federalism (i.e., divided sovereignty); cooperative-collaborative federalism (a model of collectivism, where union and states collectively resolve and take decision on the issues of common concern); and the interdependent federalism (a model of reciprocal dependence, if states depend heavily on union government for fiscal help, so the union government on the states for execution of its policies and programmes).

11.3 SALIENT FEATURES OF INDIAN FEDERALISM

The union type federal polity presupposes the essential balancing of two inherent tendencies namely, *unionisation and regionalisation.* The unionisation process allows Indian federalism to assume unitarian features (popularly referred to as centralised federalism) when there is a perceived threat (internal or external) to the maintenance of national unity, integrity and territorial sovereignty of India on the one hand, and the maintenance of constitutional-political order in the states on the other. However, union's prerogative of perception and definition of 'threat' is not absolute. This is subject to review by the Apex Court. This has become evidently clear from the Supreme Court's ruling in the S.R. Bommai case. It is only in the abnormal times (as the spirit of the Emergency Provision suggests) that the Indian federalism assumes the characteristics of a unitarian polity. However, more than this, the unionisation process constitutionally bestows upon the union government with added responsibility of securing balanced economic growth and social change across the regions and social segments through means and measures of mixed economy and state regulated welfare planning. In this endeavour, the constitution envisages the role of the states as coordinating partners to the union government. Beyond this, the unionisation process has no more political meaning and relevance.

Alongwith the unionisation principles, the constitution of India also recognises 'regionalism and regionalisation' as valid principles of nation-building and state formation. A close scrutiny of the constitutional provisions reveals that the constitution of India acknowledges and recommends the formation of a multilevel or multilayered federation with multiple modes of power distribution. The multilayered federation may consist of a union, the states, the substate institutional arrangements like regional development/ autonomous councils, and the units of local self-government at the lower levels. While the union and the state constitute the federal superstructure, the remaining two constitutes the federal substructure. Each level has constitutionally specified federal functions, which they perform almost independently of each other. However, the superstructure exercises certain fiscal and political control over the substructures. Developmental funds to the substructure are released by the two superstructures. Many of the decisions of the regional councils are subjected to the approval by the concerned states.

As a matter of fact, the constitution of India promotes both the symmetrical and asymmetrical distribution of competence. This variegated system first lays down the general principle of power distribution, having symmetrical application to all states of

the union. Then, there is provision for special distribution of competence and power sharing arrangements between the union and the select states. There are many provisions like Article 370, 371, 371A-H, fifth and sixth schedules which allow for a special type of union-state relations. To put succinctly, these provisions restrict the application of many union laws; delimit the territorial extent of the application of the parliamentary acts having bearing upon the law making power of parliament and the concerned state legislatures; and, bestows upon the office of Governor with special powers and responsibility in some states like Arunachal Pradesh, Sikkim, Assam, Manipur, Nagaland, Jammu & Kashmir, Maharashtra and Gujarat. If we closely examine the above mentioned constitutional provisions, it appears that the federalism in India has been fine tuned to accommodate ethnic diversity and ethnic demands like application of customary law in the administration of civil and criminal justice etc. It is for reasons of accommodating ethnic features in the formation of polities that the constitution permits for the ethnic self governance through specially created institutions like autonomous regional or district councils. A few dozen such councils exist in the northeast regions and other parts of India. These councils seek to protect and promote the indigenous identity and development.

At the fourth level exist the units of local self-governance. With the passage of 73rd and 74th Constitution Amendment Acts, the constitution of India further federalises its powers and authority at the village and municipal levels. The Panchayati Raj Institutions (PRIs) are mainly developmental in functioning. Constituted through direct election, the Panchayats and Municipal bodies are expected to: (i) build infrastructure of development like road, transport etc.; (ii) build and maintain community assets; (iii) promote agricultural development through management and control of minor irrigation and water management; soil conservation and land improvement; (iii) promote social forestry and animal husbandry, dairy and poultry; (iv) promote the development of village industry; and (v) manage and control of education and health at the local level. In nutshell, the PRIs are institutions of empowering people for self-government. From the federal point of view, the relationship between PRIs, the state and the centre exist on the *one-to-one* basis. While many of the developmental schemes of the centre are implemented by the Panchayats without any interference by the state, the state government allocates a certain percentage of its development plans and budget to the Panchayats.

What has been shown above is the fact that Union type federalism of India essentially functions on the basis of territorial decentralisation, which combines both the centre-periphery and noncentralisation models of federalism. If federalism in India deviates from the classical reference to American federalism, it is only for the purpose of accommodating diversity and to serve its national interests. But in no way it alters the participatory features of federal governance. It is because of its being multilayered that one finds both the symmetrical and asymmetrical systems of power distribution.

11.4 THE MEANING AND IMPLICATION OF THE WORD 'UNION'

The Article 1 of the Indian Constitution declares India as the Union of States, thereby implying the indestructibleness of the union and the unity of India. By implication, no

unit possesses the right to secede. It is the sole prerogative of the union to form the states by way of division, merger and alteration of the existing internal boundaries of India. The union also possesses the right to admit any new territory in the union of India. Today India consists of 28 states and seven union territories. By and large, the union of India has reorganised its units on the four structural principles of state formation. These principles, as laid down by the States Reorganisation Commission (1955) include: (i) preservation and strengthening of the unity and security of India; (ii) linguistic and cultural homogeneity; (iii) financial, economic and administrative considerations; and (iv) successful working of the national plan. As far as possible, the Union of India has attempted to reorganise its units on the relative congruence of 'identity boundary' and 'administrative boundary'. Language, culture and ecology have decisive impact on the ongoing process of reorganisation. Though union has sole prerogative of state formation, it does so only on the basis of resolution passed by the Legislative Assembly of the affected states.

Another implication of the word 'Union' is that Indian federalism is not a compacted federalism between two preexisting sovereign entities. The union has come out in existence only through the unified will of the people of India, nourished during the national movement. This is probably the reason that the Upper Chamber (Rajya Sabha), expected to represent the interests of the units of federation, does not have symmetrical (equal) representation. It is composed on the basis of proportionality of population size. According to the population size each state has been allocated respective number of seats in the Rajya Sabha. Thus, while Uttar Pradesh has got 31 seats, the smaller states like Manipur, Goa, etc., have been allocated only one seat.

As a logical consequence of the word 'Union', the union and its constituent units are governed by single constitution. Each unit draws its authority from the same constitution.

Interestingly, the union and the states do not have the constitutive authority to amend the essential or basic features of the constitution. The legislative authority of the union and states are expected to mend the ways for the achievement of constitutional goals and to facilitate the harmonious administrative functioning of the union and the states. Though Union has power to amend the Constitution, the same cannot be exercised unilaterally. There are many provisions like revision of the entries in the three lists of the seventh schedule; representation of states in Parliament; the amendment provision and procedure as laid down in the Article 368; the provision related to Union Judiciary and the High Courts in the states, legislative relations between the union and states; election to the President and Vice President; extent of the executive power of the union and the states; provisions related to the High Courts for union territories, which cannot be amended by the union Parliament without ratification and approval by not less than half of the states of the federation. This places the states on equal federal footing with the union.

An integral federal union creates a federal nation based on the principle of equality of status and opportunity. Therefore, one does not find double citizenship in the Indian constitution. Culturally people of India may be plural and diverse, but politically they constitute one nation—a civic-political nation. Such a nation has one common all India

framework of administration and Justice. This does not mean that constituent units cannot have its own administrative setup. The all India services are common to the union and state. Their basic function is to secure the interests of the union as a whole across the regions of India. Article 312 of the constitution provides "if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for the creation of one or more all India services common to the Union and the states". These are some of the general features of union type federalism.

In Indian federalism, we find two broad types of centralisation of federal powers—*circumstantial* and *consensual.* As mentioned above, the constitution entrusts centre with important powers of protecting the Union from 'internal disturbances' and 'external threat' such as war and aggression. The internal disturbances include physical breakdown in case of natural calamities, political and constitutional breakdown, and financial-economic crisis. The articles from 352 to 360 deal with certain emergency situations and its impact on the working of the federal system. The constitution, here subscribes to the theory of 'safety valve', whose objectives include:

i) *To protect the units of the federation* from external aggression, internal aggression, subversive terrorist activities and armed rebellion against the state.

ii) *To maintain the Constitution*: By virtue of this, the constitutional political order is restored, which otherwise gets disturbed because of the mal-administration, ministerial crisis (emerging in the event of unclear electoral verdict or hung assembly or governmental instability caused by the frequent defection and breakdown of party system) natural calamities and other such physical and political disorder.

iii) *To protect the unity and integrity of the federal nation:* The union can assume to itself the power of the state government when a particular state government itself goes against the territorial integrity of India or subverts the constitutional process in the state.

iv) *To take out the union and the provinces from financial crises and economic disorder*: The essence of the financial emergency lies in the "realization of one supreme fact that the economic structure of the country is one and indivisible. If a province breaks financially, it will affect the finances of the centre; if the centre suffers, all the provinces will break. Therefore, the interdependence of the provinces and the centre is so great that the whole financial integrity of the country is one and a time might arise when unitary control may be absolutely necessary", said K.M. Munshi in the Constituent Assembly on 16 October 1949.

Circumstantial centralisation has another dimension too. On a resolution of the Council of States (Rajya Sabha), the union Parliament can make laws with respect to any matter enumerated in the state list and as specified in the resolution for the whole or any part of the territory of India (Art. 249).

Another feature of Indian federalism is the *centralisation* by *consent or consensual centralisation* which Article 252 provides. "If it appears to the Legislatures of two or more states to be desirable that any of the matters with respect to which

Parliament has no powers to make laws for the states except as provided in articles 249 and 250 should be regulated in such states by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those states, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly..." This provision has intended objective of regulating issues of common concern between two states, which otherwise is not possible due to diversity of law and diverse perception of the issues. Consensual centralisation allows centre to arbitrate and frame common policy approach to those subjects in the state list, which have assumed national or translocal importance. This enabling provision provides for the better coordination of inter-state issues.

11.5 INTER-STATE COORDINATION

For coordinating inter-state and union-state relations and for consensual working of federal system, the constitution expressly provides for the constitution of inter-state council or other such subject and territory specific councils. The first ever inter-state council was constituted on 28 May 1990. Principally being a recommendatory body, the council is expected to perform the following duties.

a) investigating and discussing such subjects, in which some or all of the state, or the state, or the union and one or more of the states have a common interest, as may be brought up before it;
b) making recommendations upon any subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and
c) deliberating upon such other matters of general interest to the states as may be referred by the chairman to council.

In this context one may like to reiterate the fact that constitutional provisions relating to federalism avoid exclusionary characteristics of dual federalism. The basic ethos of Indian federalism is coordinated and cooperative functioning of the union, where centre and states are equal partners in making the union a success. Even the overwhelmingness of centre to centralise federal powers and curtail states' autonomy is mostly circumstantial. The centre cannot exercise these powers arbitrarily. It has been sufficiently subjected to the principles of parliamentary accountability, scrutiny and approval and due process of law.

11.6 DISTRIBUTION OF COMPETENCE

Distribution of federal powers is essentially based on the notion of territoriality and specification of subjects accordingly. Thus, matters of local interests or those subjects which do not have transboundary implications have been put together under the state lists. The list comprises 62 items or entries over which the state legislature has exclusive competence of legislation and execution. The list includes such subjects like public order and police, local government, public health and sanitation, agriculture, forests, fisheries, sales tax and other duties. The union list enumerating 96 items empowers union Parliament to legislate on matters of foreign affairs, defence, currency, citizenship, communication, banking, union duties, taxes, etc.

However, there are subjects like industry, mines and minerals, which find place in both the lists. To find an explainable answer to this, one has to look into the types of competence available in the federal scheme of India. Broadly, there are three types of competence: one, on which the respective sets of government has *exclusive and distinct competence*. It is rarely that on item like defence, foreign affair etc., delegation of authority is made by the union government. Two, on items like industry, mines and minerals, the state government has *exclusive but limited competence*. On these subjects, its competence is subjected to the regulation by the union government in order to serve the larger public and national interests. Lastly, there are items of concurrent jurisdiction (List three) on which each unit of the federation enjoys *exclusive but concurring competence*. In the event of conflict, it is usually the union law that prevails over states' laws. On matters of nonenumerated item, the union government has been vested with residuary powers of legislation.

So far as the distribution of executive authority is concerned, it generally follows the scheme of distribution of the legislative powers. In other words, executive powers of the union and state governments are co-extensive with their respective legislative competence. In the case of state government, its executive authority over a legislative field has been subjected to the qualificatory restriction of 'doctrine of territorial nexus'. However, as D.D. Basu observes, it is in the concurrent sphere where some novelty has been introduced. "As regards matters included in the concurrent Legislative List (i.e. List III), the executive function shall *ordinarily* remain with the states, but subject to the provisions of the constitution or of any law of Parliament conferring such function expressly upon the union". Thus, under the Land Acquisition Act 1894; and Industrial Disputes Act, 1947 [Provisio to Article 73], the centre has assigned to itself all the executive functions pertaining to these two acts. However, of importance are some of the exclusive executive powers of the union, defiance or noncognisance of the same by the states may attract plenary action as it amounts to the violation of the constitution. This includes union's powers to give directions to the state governments; ensuring due compliance with union laws; ensuring exercise of executive power of the state in such a manner as not to interfere with the union's executive power; "to ensure the construction and maintenance of the means of communication of national or military importance by the state; to ensure protection of railways within the state, to ensure drawing and execution of schemes specified in the directions to be essential for the welfare of the Scheduled Tribes in the states, securing adequate provision by the state for instruction in mother tongue at the primary stage; ensuring development of Hindi language in the state, and above all, "to ensure that the government of a state is carried on in accordance with the provisions of the constitution". Also, during emergency of any type, the union government may regulate through its power of issuing directions the manner in which the executive power of the state has to be exercised. In other words, the state has been assigned certain obligatory duties under the federal constitution of India.

The centre-state administrative relationship is based on the principle of division [Jurisdictional partitioning of control and execution of decisions over a subject matter], coordination and cooperation in policy and planning. In many areas, while centre retains its exclusive legislative competence, it, however, delegates powers of ancillary legislation and exclusive executive competence to take decisions independently to the states. The

centre administers directly only on the matters pertaining to defence, foreign affairs including passports, communications (post and telegraphs, telephones), the union list taxes, and industrial regulation. On rest of the enumeration in the union lists, the administrative function is exercised by the states 'under statutory or executive delegation'. It has been rightly pointed out in one of the *commentaries* on Indian constitution that "there seems to be no element of subordination, although cooperation is occasionally made compulsory. The constitution details the essential features of the union-state administrative relations, and raises no walls of separation between them. There is no rigid pattern of allocation of responsibilities. The union Parliament may confer powers, and may impose duties under laws pertaining to the union list matters. The President may entrust functions to the state governments "in relation to any matter, to which the executive power of the Union extends... The state executive functions can, notwithstanding anything, be entrusted either conditionally or unconditionally" to the central government. In actual practice the states exercises a large measure of executive authority even within the administrative field of the union government...." (*Kagzi's The Constitution of India,* Vol. I, 2001).

The financial relation between the union and state is based on the principle of sharing and equitable distribution of resources. The constitution also makes "distinction between the legislative power to levy a tax and the power to appropriate the proceeds of a tax so levied". The centre and the states have been assigned certain items to impose and levy taxes. There is no concurrent power to either of the units of the federalism to impose and levy taxes. Provisions have also been made to extend financial help in the form of grants and loans to the states. The amount of grant-in-aid has to be decided by Parliament. Also, any development project initiated by the state with the prior approval of the centre for the purpose of promoting the welfare of the Scheduled Tribes in that state or raising the level of administration of the scheduled areas has to be funded by the centre as grants-in-aid charged on the Consolidated fund of India.

In the distribution of financial competence, each unit has been granted exclusive taxes. The list of exclusive taxes to the union include custom, corporation tax, taxes on capital value of assets of individuals and companies, surcharge on income tax etc. Similarly exclusive taxes to the states include land revenue, stamp duty, succession and estate duty, income tax on agricultural land, sales tax [This is now being supplemented by a new system of Value Added Tax] etc. Given the fact that the volume of revenue raised from different tax sources by the state may not be adequate enough to meet its budgetary and plan proposals, the constitution provides for the sharing of proceeds of taxes earned by the union. The modalities of collection, appropriation and sharing vary from case to case. Thus while some duties such as stamp duties and duties of excise on medicinal and toilet preparations as are in the union list are levied by the union but collected and appropriated by the states (Article 268). Taxes on the sales or purchase of goods and taxes on the consignment of goods are levied and collected by the union, but the proceeds are then assigned by the union to those states within which they have been levied. Also certain taxes, such as taxes on non-agricultural income, duties of excise as are included in the union list, except the medicinal and toilet preparations are levied and collected by the union and they are then divided between union and states in certain proportion. Further, the union and the states have been assigned separately the non-tax

revenues. The principal sources of non-tax revenues of the union are the receipts from Railways, Post and Telegraph, Industrial and Commercial undertakings at union such as Air India, Indian Airlines etc. Similarly the non-tax revenue of states include receipts from forests, irrigation and commercial enterprises like electricity, road transport and industrial undertakings such as soap, sandalwood, Iron and steel in Karnataka, Paper in Madhya Pradesh, Milk supply in Mumbai, Deep-sea fishing and Silk in West Bengal.

It is true that the tax base of the state is not adequate enough to meet all the expenses and developmental requirements of the state. This is so because of the overall nature of Indian economy. As stated above, federal union seeks to establish a closely integrated economic union, where union has been assigned the important responsibility of socio-economic reconstruction of the nation. Economy is national, where regional development is taken care of by the union. Federal finance is directed to achieve this objective. Usually, federal grant to state follows certain objective parameters laid down from time to time by an autonomous body known as Finance Commission of the India. However, adequate care is always being taken to remove economic imbalances across community, class and regions. Special care is also being taken up for the development of backward segments of the society through different special assistance programmes of the Union.

11.7 WORKING OF FEDERAL SYSTEM

During the first four decades of the working of the constitution, the federalism in India exhibited a strong centralising tendency wherein the union government accumulated powers beyond its constitutional competence. It is true that the constitution permits for the circumstantial concentration of federal powers in the union, but it nowhere means suspension of federal autonomy and powers of the states even during normal times. How the centre has encroached upon the autonomy of states? The union government adopted several methods of encroachment: the foremost being its exclusive power of defining what is national and public interest. This prerogative has been used frequently to enlarge its legislative competence and to encroach upon legislative authority of the state on the matters of state lists. The seventh schedule makes entries of main subjects only. Over the years, the centre has evolved the practice of legislating upon the subsidiary matters/subjects either to give effect to main subjects, or to seek national uniformity on a particular item in the larger public interest. As a consequence, the centre has encroached even upon the subjects, originally assigned to the states. To illustrate, "Acts passed by Parliament by virtue of entries 52 [Industries] and 54 [Regulation of mines and mineral development] of the union List are typical examples. Under entry 52, Parliament has passed the (Industries Development and Regulation) Act, 1951. As a result, the union now controls a very large number of industries mentioned in schedule 1 of the Act. The constitutional effect is that to the extent of the control taken over by the union by virtue of this act, the power of the state Legislatures with respect to the subject of 'Industries' under entry 24 of the state list has been curtailed. This Act also brings under central regulation agricultural products such as tea, coffee, etc. Similarly, Parliament has, by making the requisite declaration of public interest under entry 54 of the union list, enacted the Mines and Minerals (Development and Regulation) Act, 1957. The legal

effect is that to the extent covered by this Act, "the legislative powers of the state legislatures under 23 [Regulation of Mines and Mineral Development] of the state list have been ousted," observes *Sarkaria Commission on Centre State Relations.* As a consequence, approximately about 93 percent of the organised industries fall directly under the control of the union.

By way of omission, addition and transfer, the union government through different amendment acts has brought changes in the distribution of competences, as under seventh schedule of the constitution, between centre and states. Thus forty-second amendment act omitted entries 11 (education), 19(forest), 20 (protection of wild life), 29 (weights and measures), and seventh amendment act omitted entry 36 (acquisition or requisitioning of property) from the state list. As a result, the state list now contains only 61 subjects, instead of 66 subjects as originally provided. On the other hand, forty-second amendment act by way of transfer added four new entries in the concurrent list. They include 11A (administration of justice), 17A (forest), 17B (Protection of wild animals and birds), 20A (population control and family planning), and 33A (weights and measures), besides important substitution made in the entries 25 (education) and 33 (trade and commerce). As a result, we have 51 entries in the concurrent list. In the union list, we find three important inclusions: 2A (deployment of armed forces), 92A (taxes on sale or purchase of goods in the course of inter state trade or commerce), and 92B (taxes on the consignment of goods).

Besides, through substitution method, the centre has enhanced the ambit of its 'eminent domain'. Along with it, "centralized planning through the Planning Commission is a conspicuous example of how, through an executive process, the role of the union has extended into areas, such as agriculture, fisheries, soil and water conservation, minor irrigation, area development, rural construction and housing etc. which lie within the exclusive state field." It has been rightly pointed out by D. D. Basu that the activities of the Planning Commission "have gradually been extended over the entire sphere of the administration excluding only defence and foreign affairs, so much so, that a critic has described it as "the economic cabinet of the country as a whole...." In spite of being an advisory body, its political and bureaucratic clout has gone to the extent of verticalising the nature of federal grants to the states. It now appears more as a regulatory body attenuating the politicisation of transfer of resources at the command of the union to the states.

Contrary to the wisdom of founding fathers, Article 356 has been used, abused, misused and overused for more than 100 times. On an objective estimation, it has been used for about 30 times to 'maintain the constitution', and rest of the times abused to settle political score, usually dictated by the ruling party at the centre. The most detrimental aspect of its abuse is that in most of the cases it has negated the basic premises of parliamentary democracy and federalism. This article requires a thorough laying down of norms as to prevent its misuse. Besides Sarkaria Commission's recommendation in this regard, Judicial pronouncements (of Supreme Court) in the famous case, *S.R. Bommai vs. Union of India (1994)* are here worth mentioning. The Court held that the Presidents satisfaction, though subjective in nature, is the essence of this article. However, the President's satisfaction must be based on some relevant and objective material. President's

power is conditional, and not absolute in nature. If Court strikes down the Presidential proclamation, 'it has power to restore the dismissed government to office and to revive and reactivate the Legislative Assembly. Till the proclamation is approved by both the Houses of Parliament, the Legislative Assembly should not be dissolved, but be kept under suspended animation. On parliamentary disapproval of the proclamation, the dismissed government should be revived in the state. However, of far reaching significance is the Court's observation about the secularity of the state. The Court held: "secularism is one of the basic features of the constitution. While freedom of religion is guaranteed to all persons in India, from the point of view of state, the religion, faith or belief of a person is immaterial. To the state, all are equal and are entitled to be treated equally. In matters of states, religion cannot be mixed. Any state government which pursues unsecular policies or unsecular course of action acts contrary to the constitutional mandate and renders itself amenable to action under Article 356." What is required in order to prevent its abuse is a two-fold exercise of: (i) ensuring, by rule and convention, the maximum objectivity and transparency in the exercise of this power by the President and Governor, and; (ii) to codify the stipulated grounds on which this article can be invoked. While ensuring its restrictive use, the basic object under this article should be to restore the constitutional order in the state.

There are many other critical areas, such as reservation of state bills by the Governor, financial allocation of resources between union and state, growing politicisation and subjectivity of the institution of Governor, directives from union, deployment of para military forces etc., which have affected the smooth working of union-state relations. The net affect has been the excessive concentration of power in the union. Thus, what is now required is the 'off loading' and 'deconcentration or devolution' of powers from centre to states; and from states to the panchayats and municipal bodies. In fact, what is required is the redistribution of competences among three schedules—7, 11 and 12 of the constitution. The federal restructuring, without disturbing the basic scheme of the constitution, is required to make the principle of autonomy a reality. In the changing context of state-society relationship, redistribution of competences would, in all probability, facilitate the attainment of three basic objectives of the constitution: unity, social revolution and democracy. Being mutually dependent, 'inattention to or over attention to', as Granville Austin warns, any one of them will disturb the stability of the *Indian Nation.* And exercise for stability should not be the sole prerogative of the centre. It is a collective exercise of union, state and the people.

11.8 DECONCENTRATION INITIATIVE TAKEN BY THE UNION

As of today, the *Report of* the Sarkaria Commission is considered as piecemeal effort to provide resilience to the successful working of federal system. The Commission, by and large, has found the union type federal polity, not only suitable but essential to build the federal nation of India. However, it recommended for the 'off loading' of the some of the union's function to the states, and it further underlined the need for evolving transparent procedural norms in implementing some of the controversial federal provisions such as Article 356 etc. It also stressed the need for evolving the cooperative-collaborative

federal culture in which both the union and the states would work as equal partner in building an integral federal union. Altogether, the commission made 230 specific recommendations. In a further development, the Government of India constituted Inter-State Council in 1990. The Council has been entrusted with the task of examining the reports of the Sarkaria Commission in the first instance, and to evolve consensus on the possible change in the structure and process of inter state relationship. Out of the 230 recommendations of the Sarkaria Commission on which Council took decision, altogether 108 recommendations have so far been implemented, 35 have been rejected and 87 are under implementation. The remaining 17 recommendations of the Sarkaria Commission pertaining to Article 356, deployment of paramilitary forces in the states, compliance with union's directions and laws made by Parliament (Article 256 and 257), and effect of the failure to comply with, or to give effect to, directions given by the union government etc. have been considered by the subcommittee of the Council. The Council has rejected six recommendations pertaining to the role of Governor and 18 on All India Services. Out of 44 recommendations on financial relations the Council has accepted 40 and rejected the remaining 4. So is the case with 'Reservation of Bills'. There seems to be no disagreement between the centre and states on 33 recommendations belonging to the head 'Economic and Social Planning'. Divergence of views still prevail on issues like role of Governor, industries, mines and minerals etc.

Some of the consensus decisions of the Council include: (i) residuary powers of legislation should be transferred from union list (entry 97) to concurrent list; (ii) as a matter of convention, states must be actively consulted by the centre while legislating on concurrent list. "This is because laws enacted by the Union, particularly those relating to matters in the concurrent list, are enforced through the machinery of the states and consultation is essential to secure uniformity", (iii) consultation with states by the centre should be made obligatory in the matters of appointment and selection of the Governor. To give effect to, the constitution may be suitably amended. To ensure impartiality and neutrality of the office of Governor, the person so appointed should not be intimately connected with the active politics. "Persons belonging to the minority communities should also be considered for gubernatorial posts". Also, the Governor, as a matter of convention, should not "return to active partisan politics after relinquishing office, even though he or she would be eligible for a second term or for election to the office of Vice President or President of India. This was [is] necessary to ensure the functioning of a Governor in an independent and impartial manner". Further, the special powers given to the Governor in some states have to be exercised by him in his discretion. When a no-confidence motion is pending against a Chief Minister, the Governor may not concede his request for proroguing the House, rather the Governor may summon the Assembly on his own. Instead of head rolling at the Governor's place (Raj Bhawan), the majority must be tested on the floor of the House; (iv) time bound clearance of state bills referred to the President by the Governor. The state bills should not generally be reserved for presidential consideration, except for the constitutional specification and for the purposes referred to by the Sarkaria Commission in its report: (v) approved the alternative scheme of devolution of share in central taxes to the states and the transfer of taxation from the union list to the concurrent list; (vi) amending Article 356 [proclamation of emergency in a state on the grounds of breakdown of constitutional machinery] as to provide the material grounds on which this provision may be proclaimed; (vii) delegation of powers

to the state governments for diversion of forest land for developmental use; (viii) revision of royalty rates under Mines and Minerals (Regulation and Development) Act every two years, instead of four years; (ix) formulation of a uniform policy on the creation or abolition of the Legislative Council in the states; (x) formulation of a comprehensive central legislation on taxes imposed by the local bodies of the states on the commercial operation of central undertakings, etc. Much of these decisions of the Council are in the form of laying down the political-executive norms of federal practice. This does not require a major revision of the constitution.

11.9 CONCLUDING REMARKS

Over the years, the Indian federalism has shown enough resilience to adapt and to accommodate structurally and politically the various pressures of federal state formation. It has accommodated the various identity-linked demands for statehood. It has also, as mentioned above, attended to the institutionalisation of societal autonomy as it gets reflected in the northeastern regions of India. The federal democracy has decentralised itself to the level of village self-governance. As a matter of fact, federalism in India is publicly perceived, as an instrument of people's empowerment, and to that extent federal democracy seems to be working successfully. Similarly, in the arena of union-state relationships one finds almost total unanimity among political parties and the units of federation to follow the recommendations of Sarkaria Commission in building a cooperative-collaborative model of Indian federalism. It is precisely the reason that today one does not find such demands of yesteryears like scrapping of Art 356 etc. The growing salience of regional parties in the national decision making process in the present era of coalition governance show the participatory strength of Indian federalism.

Another interesting development that one witnesses is the growth of competitive federalism among the states. In the present liberalised market economy of India, the centre is withdrawing itself from many crucial sectors of socio-economic development. The state is allowed [of course, under the rules and regulations framed by the centre] to negotiate for foreign direct investment. This does not mean that states have treaty making power. The competitive federalism has another dimension too. The developed or developing and performing states like Andhra Pradesh, Karnataka, etc, are demanding greater shares in the financial allocation made by the centre. They argue that central allocation should be linked to the performance level of the state. Thus rule for minimum level playing field should be relaxed. This nonetheless may have adverse impact of the underveloped states like Bihar, Uttar Pradesh, etc. We should never forget that the basic objective of an economic union is to maintain minimum regional balance in term of growth and development. Here the role of centre assumes critical federal significance. As a means of nation-building, federalism in India has largely succeeded in building a *federal union and a federal nation.*

11.10 SUMMARY

This unit introduces the concept of federalism—its meaning and essence focussing on the characteristics and salient features of Indian federalism. Federalism implies collective governance through: (i) formation of states and territorialisation of federal-local

administration in such a manner as to promote closer contact between people and government; (ii) distribution of federal powers on a noncentralised basis; and (iii) creation of the institutions of shared rule. Indian federalism is characterized as 'quasi-federal' with an in-built tendency to centralise under certain circumstances. The legislative and executive authority is partitioned between the states and the centre by the Indian Constitution. Though India is a union of states, no unit possesses the right to secede and are governed by a single constitution. It is only under unusual circumstances (like an emergency) that Indian federalism assumes the characteristics of a unitarian polity. There are two broad types of centralisation of federal powers—circumstantial and consensual in order to protect the units of the federation from external aggression, maintain the Constitution, protect the integrity of the nation and take the union out of financial crises. Federal powers are distributed between the states and the union on the basis of territoriality and specification of subjects with matters of local interest like public disorder, police, agriculture, sanitation, fisheries, sales tax being put under the state list. Subjects like foreign affairs, defence, currency etc are put in the union list.

Over the years, federalism in India did exhibit a strong centralising tendency, encroaching upon the subjects originally assigned to the states enhancing its domain through various means. The Report of the Sarkaria Commission is considered an effort to provide resilience to the successful working of the federal system. The union type federal polity is considered essential for India but the Commission recommended transferring some of the union's functions to the state and evolving transparent norms to implement some of the controversial federal provisions. Federalism in India is perceived as an instrument of peoples' empowerment and to that extent and as a means of nation building it has been functioning successfully in building a federal union.

11.11 EXERCISES

1) Do you agree with the view that India is "a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles"?

2) Discuss the circumstantial and consensual centralisation of federal powers in India.

3) Discuss the working of the federal system in India.