

# CHAPTER 2

## FORMS OF GOVERNMENT:

# UNITARY & FEDERAL STATES

(MEANING AND FEATURES, UK AS A UNITARY STATE, USA AS A FEDERAL STATE AND INDIA AS A FEDERAL STATE WITH SUBSIDIARY UNITARY FEATURES)

On the basis of centralisation or distribution or division of powers and the relations between the central and local authorities, States are classified in two basic forms : Unitary States and Federal States. A Federal State involves a division of powers between one central/federal government on the one hand and several state governments on the other. A Unitary State vests all powers with one single central government and the local governments derive their powers from the central government. In other words, while a federation involves a division of powers between the centre and several states, a unitary state has a concentration of all powers in the hands of one central government. Both types of governments are at work in various states. States like USA, Germany, Russia, Spain, Brazil, Canada, and Australia are federal states. England, France, Japan, China and several others are unitary states. India is a federal state with subsidiary unitarian features.

### I. WHAT IS A UNITARY STATE ?

Unitary State is that state in which all the powers are vested with one central government and the local governments exist and operate only in a way as is deemed fit by the central government. It involves the creation of a single integrated system of government vested with all the powers which it can exercise by itself or through the delegation of some of these powers to the local governments. There is a single legislature, a single executive and a single judiciary for the whole country.

The local governments work as administrative units of the central government. Their powers and roles depend upon the wishes of the central government. The latter has the competence to affect at will territorial or other changes in the system of local government. Britain, France, Japan, Italy, China, Afghanistan, Albania, Algeria, Bulgaria, Bangladesh, Congo, Cuba, Czech Republic, Egypt, Finland, Ghana, Greece, Hungary, Iran, Italy and in fact almost all small states of the world are unitary states.



### 1B. SALIENT FEATURES OF A UNITARY STATE

1. **A Single Central all-powerful Government.** In a Unitary State, all powers are vested with one single central government whose authority is supreme over all parts and people of the state. It alone can legislate for the entire state. Law-making authority is not available to any other organ or institution, except that local governments can make rules under powers specifically delegated to them by the central government.
2. **Local Governments exist at the will of the Central Government.** In a Unitary State, the local governments are created and vested with powers by the central government. These work as administrative units or departments of the central government. These derive all their powers from the Central Government. These operate as the central government directs. Their boundaries and powers can be changed at will by the central government. For the exercise of their powers, these are responsible to their parent (central) government.
3. **Constitution can be Written or Unwritten.** Since there is no division of powers and all the powers are in the hands of the central government, there is no special need for a written constitution. The constitution can be written or unwritten in accordance with the wishes of the people.
4. **Flexibility of the Constitution and Administration.** The central government alone has the power to amend the constitution of the state and in this sense the constitution of a unitary state is always flexible. The central government can amend the constitution as and when required. The constitution of the state is flexible as it can be at any time changed by the central government for helping it to keep pace with the fast changing environment.
5. **Single Uniform Administration.** The existence of an all-powerful central government exercising powers over all the people and places leads to a single, stable and strong administration for the whole state. The administration is simple in organisation and direct in its approach towards all local and national issues. It has neither the complexities arising out of double citizenship and dual administration as characterise a federation, nor is it an expensive system. In every Unitary State the government is run by a single legislature, single executive and single judicial system.

In the words of **C.F. Strong**, "The two essential qualities of a unitary state may, therefore, be said to be : (1) the supremacy of the central parliament, and (2) the absence of subsidiary sovereign bodies." The Laws/Acts of the central parliament govern all people, all places and their local governments. The local governments do not usually derive their powers from the constitution. These are created and maintained by the statutes of the central parliament. These are often not constitutional but subsidiary legal bodies created by the central government.



laws passed by the British Parliament

### **Features of the UK as a Unitary State**

1. There is a Single Central Government with all legislative executive and judicial powers.
2. The British Political system is characterised by a Single Executive, Single Legislature and Single Judiciary for the whole country.
3. Local Governments operating in all local areas of the UK derive their powers from the Central Government. However, these enjoy full functional autonomy.
4. There exists no Division of Powers between the Central and Local Governments. All the powers are in the hands of the British Government. Local Governments get their powers from the Central Government i.e. the British Government.
5. Under a Single Central Parliament and a Single Central Executive, there is a system of single uniform system of law and administration in the whole country.



6. There is a single unwritten and very flexible Constitution of the UK.
7. The British Parliament enjoys the power to amend the Constitution by passing a law by a simple majority of votes of the members of its two Houses.
8. The Laws/Statutes of the British Parliament govern all people, places, institutions, and all public organisations and administration.

With all these features, the UK is a unitary state. In fact, it is the oldest Unitary State in the World.

## 2. FEDERAL STATE

A Federal State or a Federation is a state with one central (federal) government and several state governments existing side by side with the former acting for the whole territory and all the people of the state, and the latter acting within their respective provinces/or states (non sovereign states). Each exercises power over a definite sphere and performs functions as allocated to it by the constitution of the state. In other words in a federation, there is a division of powers between one central (federal) government and several state governments each of which works at the provincial level. Each is autonomous and uses its powers within its allotted sphere of powers and functions. USA, India, Switzerland, Australia, Canada, Pakistan, Russia, and in fact all large and big states are Federal States.

### 2A. FEDERAL STATE/FEDERATION : MEANING

The term "Federation" stands derived from the Latin word "*Foedus*" which means *agreement* or *treaty*. As such etymologically speaking, a federation is a state that comes into existence by a treaty or agreement among several states. When several small states decide to merge and form one big sovereign state but at the same time retain one part of authority, the other being vested with the government of the state formed by them, the system that emerges is called a 'Federation' or a 'Federal State'. As for example, USA is a federation. It was originally formed by the thirteen small states which secured independence from the yoke of British imperialism and then entered into an agreement to form the United States of America.

However, this example and the above analysis should not be taken to mean that it is the only method by which a federation can come into existence. A Federation can come into existence in another way. A big sovereign state can decide to reorganise itself as a state with one common central government and several state governments, each working within a particular portion of the territory of the state and enjoying internal autonomy of running the administration.

As such, we can define 'federation' as a state organised either when several sovereign states combine to form a single big sovereign state or when a big sovereign state reorganises itself into a federation. The hallmark of every federation is a division of powers between one central government on the one hand and several state governments on the other.



## 2C. FEATURES OF A FEDERAL STATE

A Federation or a Federal State is always characterised by several essential features. A state which has the following features can be always described as a Federation.

**I. Division of Powers.** Division of powers between the central government on the one hand and the state/provincial 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. The functions of national importance which concern all the people of the state are vested with the central government, whereas local and regional functions are in the hands of the state governments. For example, the administration of subjects like defence, foreign affairs, currency and coinage etc., are given to the former, and other subjects like local administration, prisons, education etc. are given to the latter.



There are different ways in which the division of powers between the centre and states stands effected by different federal constitutions. As for example, the US Constitution specifies the powers of the federal government and gives all other powers to the state governments. The Constitution of India defines separately the powers of the Union (federal) Government, powers of state governments, concurrent powers which are available in common to both the Union and the states, and also vests the residuary powers with the Union. The Union List contains the list of subjects under the Union Jurisdiction, the State List specifies the subjects under the jurisdiction of each state government and the Concurrent List contains subjects over which both the Union and States can legislate. As such the mode of division of powers can be different but it has to be essentially made in every federal state. It is the signpost of a federation.

**2. Written Constitution.** Since in a federal constitution there has to be effected a division of powers, it becomes essential to do so in writing in order to make it definite and binding upon both the centre and the federating states. As such, a written constitution is a must for a federation. The constitution must be 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 successful and efficient way and specify the respective areas of authority of the centre and the states. A written constitution is deemed essential for clearly laying down the relations between the centre and states.

**3. Rigid Constitution.** A federal constitution has to be a written and rigid constitution because it is to be kept immune from unilateral amendments on the part of the centre 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 system, there is prescribed a special method of making the amendments in the constitution. In the US Constitution the amendment process is a two stage process. In the first stage either the US Congress with 2/3rd majorities of its two houses or the constitutional convention called by the Congress acting on a demand made by 2/3rd state legislatures, proposes the amendment to constitution. In the second stage, the amendment proposal, as passed above, goes to the states for ratification which requires approval either by 3/4th of the several state legislatures or by special conventions in 3/4th of the states. It is only after successfully passing through both these stages that an amendment gets incorporated in the constitution. It is indeed a rigid method. Similarly in other federal constitutions also, rigid methods of amendment are provided for.

**4. Supremacy of the Federal Constitution.** In a federation, the constitution of the Federal State is the supreme law of the land. Both the central government and the state governments derive their powers from the constitution. They always work within their own spheres as demarcated for them by the federal constitution. None can violate the provisions of the constitution. In the words of K.C. Wheare, the supremacy of the constitution means that "the terms of the agreement (constitution) which establish the general (national) and regional (state) governments and which distribute power between them must be binding upon the general and regional governments. This is a logical necessity from the definition of federal government itself."

**5. Impartial and Supreme Judiciary : Special Role and Position of Judiciary in Federation.** In a federation, the judiciary performs the role of protecting the supremacy of the constitution. This is done by exercise of the power of judicial review over the laws of the central and state governments. Any law which is found to be against the constitution gets rejected at the hands of judiciary. The



existence of an independent judiciary is a necessity of federation, not only for interpreting and upholding the constitution of the federation but also for performing the role of an arbiter of disputes between the centre and states or among the states. The working of a federation always involves the possibility of disputes of jurisdiction between the centre and states. This possibility makes it essential that there must be present an umpire, a powerful impartial organisation capable of settling these disputes. As such the presence of an independent and powerful judiciary is an essential condition for a federation.

**6. Dual Administration.** A federation is characterised by dual administration (i) uniform administration of the central government for all the people of the federation, and (ii) the 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 laws the central laws and the laws of the state of which he is a resident.

**7. Dual Citizenship.** In a federation, each individual gets double citizenship one common uniform citizenship of the whole state (Federation) and the second of the province or the state of which he is the native. In the United States, each individual enjoys both the citizenship of the United States as well as of the state of which he is a native citizen. Similar has been the practice in Switzerland.

**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 second house, the units of the federation are given representation on the basis of equality. In the United States, all 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 in the Senate. Each state has been given two seats in the US Senate. Similar has been the case in Switzerland. A federal state has a bicameral legislature because one house represents the people of the Federal State and the second House represents the interests of provinces/states of the Federal State.

**9. Equality of all Federating States.** One of the key underlying principle of a federation is equality of all federating units. All states/units of the federation are equal, without any consideration of size, population and resources. It is because of this requirement that all states are given equal seats in one of the two houses of the central legislature. Each member state of a federation enjoys equal rights and autonomy.

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

**Examples of Federal states in the world :** (1) Argentina (23 provinces and 1 autonomous city), (2) Australia (6 states and 2 Territories), (3) Austria (9 states), (4) Brazil (26 states and 1 federal district), (5) Canada (10 provinces and 3 Territories), (6) Germany (16 states), (7) India (29 states 7 Union Territories), (8) Malaysia (13 states and 3 federal territories), (9) Mexico (31 states and 1 Federal District) (10) Nigeria (36 states), (11) Russia (49 oblasts, 21 republics, 10 autonomous okrugs, 6 Krays; 2 federal cities and 1 autonomous oblast), (12) South Africa (9 provinces), (13) Switzerland (26 cantons), (14) United Arab Emirates (7 emirates), (15) United States of America (50 states, 1 District of Columbia and 12 territories).



## I. USA AS A FEDERAL STATE: SALIENT FEATURES

The United States of America is a federation of 50 states. Initially, only 13 states combined to end the confederal system which they had adopted after declaring themselves independent of British rule. After their victory in the War of Independence, they decided to form a more complete union for becoming stronger and capable of resisting possible future aggressions and violations of their independence by any foreign power. The delegates of these states who met in the Philadelphia Convention, were guided by two objectives: (i) securing of a more complete and strong unity, and (ii) preserving the individual identities of the states that they represented. These two objectives and not any commitment to the theory of federalism guided them to adopt a constitutional framework providing for the creation of one big sovereign state managed by a central (federal) government and preserving identities of the member states as autonomous federating units.

Dr. O.P. Goyal writes, "Federalism was incorporated in the U.S. Constitution not as a result of pure theory or abstract philosophy. On the other hand, it was a product of political expediency, a dictate of political necessity."

The need for strength with autonomy guided the states to get united into a federal state – the USA. The 13 states combined to form a single state—the United States of America, with a well-organised federal government to run its administration. These transformed themselves into non-sovereign autonomous member states of the US federation. The federal government was given well defined and limited powers, and the remaining powers were retained by the states.

Through several well designed measures, a federal framework was incorporated in the US Constitution. A division of powers was made between the Federal Government and the State governments through a supreme, written and rigid constitution. The Supreme Court was created to settle all federal-state' disputes in accordance with its provisions. The frame-work that emerged came to be known as US federation or US federal system.

The United States of America has the following salient federal features:

**I. Division of Powers under the US constitution.** A division of powers has been made between the federal government and the states. The powers of the federal government have been specifically laid down in the Constitution and the states have been prohibited to exercise these. All other powers have been left in the hands of the states. In other words, all residuary powers have been given to the states.



The division of powers has been affected as follows :

- (a) **Powers/subjects given to the Federal Government.** Article I section 8 of the US Constitution gives 18 powers to the Federal Government. These include : power to impose and collect federal taxes ; foreign relations, treaties, foreign trade, inter-state commerce, weights and measures ; currency and coinage ; declaration of war, defence, constitution of inferior federal tribunals, promotion of science and other useful arts ; general welfare of the United States ; admission of new states to the federation, post offices and post-roads.
- (b) **Powers/subjects prohibited to the Federal Government.** Article I section 9 enumerates the powers prohibited to the federal government. The federal government cannot suspend the writ of habeas corpus; cannot make laws establishing supremacy of a religion ; cannot make laws enforceable with retrospective effect ; cannot grant titles of nobility ; cannot make laws which interfere with the freedom of religion, speech and expression ; cannot change the boundaries of any state without its consent ; and cannot take away the right of the people to assemble peacefully and to petition the government for the redress of grievances.
- (c) Further, the Congress cannot pass laws that may allow the government to conduct unreasonable searches and seizures of their premises and of every citizen's right to seek justice through public trial and by impartial jury.
- (d) **Powers/subjects vested in the States.** The powers not vested in the federal government and not prohibited to the states, have been vested with the states. Along with this, it has been specifically stated that the states are to enjoy territorial and political integrity and guarantees of Republican form of government. Territory of no state can be changed without the consent of the concerned state. In other words, residuary powers have been vested with the states of the US Federation.
- (e) **Powers/subjects prohibited to the States.** Besides the general rule that the states are not to exercise the powers which have been specifically given to the federation, the Constitution places certain specific restrictions on them. For example, the states are forbidden (1) to make an alliance or treaty with a foreign state; (2) to mint money ; (3) to maintain armies ; (4) to declare war; (5) to leaving the union ; (6) to interfere in the rights of the citizens ; and (7) to disfranchise a person on grounds of caste, colour or religion.
- (f) **Powers/subjects given to both the Federation and the States.** Certain powers have been vested with both the Federation and the states. For example, both can tax, both can borrow money, both can charter banks and other corporations, both can establish and maintain courts, both can make and enforce laws, both can take over property for public purposes, and both can spend money to provide for general welfare.

As such the U. S. Constitution provides for a definite division of powers between the federal government and the governments of states.

**2. Dual Administration.** The U. S. Constitution provides for a dual polity—the federal government at the national level and a state government in each state of the USA. These states have their own constitutions and the federal government is governed by the U.S. Constitution.



There are only two restrictions on the states:

(1) Their constitutions have to be republican in letter and spirit.

(2) No state constitution can violate or be in any way against the U. S. Constitution.

Each state enjoys autonomy in the exercise of its powers and functions in its territory. Its government exercises authority within the boundaries of the state. The Federal government exercises power in the whole of the United States and over its all people but only in respect of the spheres given to it by the Constitution.

**3. Written Constitution.** The division of powers between the federation and the states has been affected by a written constitution. The Constitution clearly demarcates the powers of the federation and the states.

**4. Rigid Constitution.** With a view to prevent a unilateral and easy amendment of the Constitution, a rigid method of amendment has been laid down by the US Constitution. The Constitution can be amended by a collective action of the federal government and the state governments. An amendment proposal has to be initiated either by 2/3rd majority of both the houses of the US Congress or by a constitutional convention summoned by the Congress acting under a demand made by 2/3rd of the several state legislatures. An amendment proposal thus passed gets incorporated in the Constitution after it secures a ratification either by 3/4th of the several state legislatures or by special conventions in at least 3/4th states. It is a rigid method and only 27 amendments have been possible so far.

**5. Constitution as the Supreme Law or Supreme Position of the Constitution.** The US Constitution is the supreme law of the land. Both the federation and the states derive their powers from it and have to exercise them in accordance with the provisions of the Constitution. Every law passed by either of them must conform to the provisions of the Constitution. The Constitution of no state can in any way violate the provisions of the US Constitution.

**6. Independent Judiciary.** Another feature of a federation, the presence of an independent judiciary, has been incorporated in the U. S. Constitution. The U. S. Judiciary has all the features which are considered essential for the independence of judiciary in a political system. The judiciary has been kept independent of the control of the Congress and the President. A clear cut separation of powers has been affected among the three organs of the government. The Supreme Court has been given the power to interpret the Constitution and act as its guardian-protector. In it has been vested with the power to settle all federal-state disputes over the division of powers written in the Constitution. The U. S. Supreme Court has the power of judicial review which enables it to reject all such laws and orders of the federal government and state governments as are held to be unconstitutional or violative of any provision of the U. S. Constitution. This role has been assigned to the Judiciary in the true spirit of federalism.

**7. Dual Judicial System.** In the United States, each state has its own judicial system which interprets and applies the state laws. Along with them, there is a common federal judicial system which interprets and applies the federal laws. Thus, there is a dual judicial system in the USA.

**8. Bi-cameral Congress.** The U. S. Constitution has made the federal legislature, i. e. the Congress, a bicameral legislature. In its lower house i. e. in the House of Representatives, the people



of the United States have been given representation. In the upper house i. e. the Senate, the states of the U. S. Federation have been given equal representation. The Senate represents the states of the federation.

**9. Equality of all States.** The US Constitution recognises the equality of all the federating states. Each state, whether big or small, sends two representatives to the Senate. In this way, the US Senate has been made the representative of the complete constitutional equality of all states. Further, the principle of equality of all states cannot be amended.

**10. Dual Citizenship.** The U. S. Constitution grants double citizenship to all the citizens. Each American has been granted a uniform citizenship of the United States of America as well as the citizenship of the state to which he belongs or resides. Though the citizenship of the federating states has little significance in law, it has been incorporated for ensuring their individual identities.

**11. A trend towards centralisation of powers in the US Federation.** In the USA also, the federal government has been working as a strong central government. Its powers have increased, are increasing and are destined to grow in future. It clearly reflects a centralising tendency. It is deemed natural and essential in the contemporary times. However, along with a strong central government the states of the US Federation continue to enjoy full functional and administrative autonomy.

With all these features, the US Constitution is a truly federal constitution. The existence of all the essential features of a federation and its working as a successful federal constitution has earned for the United States, the recognition of being a true and well functioning federation. The US Federal system is regarded as a standard federal system. However in the US federation also, the US Federal Government has become very strong federation in the USA also reflects some Unitarian Federation.



Answer the following:

1. Give the features of the Unitary form of government of U.K.
2. Give the features of the Federal State.
3. Explain all the federal features of U.S.A.