

# Federalism

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## I. Meaning:

Federalism refers to “a division of jurisdiction and authority between at least two levels of government”<sup>1</sup>. This division usually occurs between two or more constitutionally recognized levels of government; that is, levels of government separated under the nation’s constitution and with their own autonomous or semi-autonomous constitutional powers.

Subscribing to the “coming together” view of federalism, it is pointed out and elaborated that the word “federalism” has its roots in the Latin Oedus, meaning “league,” “treaty,” or “compact.”<sup>2</sup> Moreover, each level of government usually has its own particular jurisdiction; that is, areas of public policy in which it, and only it, may exercise authority or have the final authority. For example, typically the national government will have final authority over “national” issues, such as national defence, foreign policy, and treaty-making, just to name a few. By contrast, the regional governments will have power over more “regional” issues, though this can vary widely from one federation to another.

There are numerous examples of federalist governments in the world today, including (but not limited to) Canada, the United States, Australia, Argentina, Brazil, Mexico, Nigeria, the Federated States of Micronesia, and the United Arab Emirates.<sup>3</sup>

## II. Historical Background:

The ideas and institutions related to federal, political organisation of government is generally traced back to ancient Indian, Greek and Israelite antiquities. The instances of federal polities in modern times can be located mainly in the American 1787, Swiss 1848, Canadian 1867, and Australian 1901, Indian 1950. Since then the Federal form of government has had a phenomenal popularity worldwide both at national and supranational levels. Typically, political federalism originates in social, cultural and regional contexts, where the people desire unification as well as autonomy, such that the constitution seeks to ensure self rule in the regions and shared rule in the federation.

According to *Daniel Ziblatt's Structuring the State*, there are four competing theoretical explanations in the academic literature for the adoption of federal systems:

1. Ideational theories, which hold that a greater degree of ideological commitment to decentralist ideas in society makes federalism more likely to be adopted.
2. Cultural-historical theories, which hold that federal institutions are more likely to be adopted in societies with culturally or ethnically fragmented populations.
3. "Social contract" theories, which hold that federalism emerges as a bargain between a center and a periphery where the center is not powerful enough to dominate the periphery and the periphery is not powerful enough to secede from the center.
4. "Infrastructural power" theories, which hold that federalism is likely to emerge when the subunits of a potential federation already have highly developed infrastructures (e.g. they are already constitutional, parliamentary, and administratively modernized states).<sup>4</sup>

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<sup>1</sup> Jackson & Jackson: p. 189

<sup>2</sup> Daniel J Elazer, *Althusius and Federalism as Grand Design*, Jerusalem: Centre for public affair, 1992, available on Journals.cambridge.org

<sup>3</sup> <http://www.mapleleafweb.com/features/federalism-canada-basic-framework-and-operation.html>

<sup>4</sup> Daniel Ziblatt (2008). *Structuring the State: The Formation of Italy and Germany and the Puzzle of Federalism*. Princeton University Press.

### Indian Federalism:

In India, there are two governments in existence, the Union Government and the State Government. The two governments do not subordinate with each other rather cooperate with each other while working independently. Though the Indian constitution has the traits of being a federal constitution, but in its strict sense, it is not.<sup>5</sup> The presence of features which are necessary for existence of a federation is quite a unique aspect of Indian Constitution but on the other side, there are provisions which give more power to the Union Government vis-à-vis that of State governments.

Henceforth, the Indian Constitutional structure is a quasi-federal structure and it was made like this in the *Government of India Act 1935*. This Act laid down the foundations of federal form of government in India. It provided for the distribution of legislative powers between the Union and the provinces. The need for creating a cooperative relation between the provinces was felt even before the independence. The Indian Constitution has incorporated the principles in a detailed form which were actually laid down under the 1935 Act.

A well designed, and more important, well-functioning system of federal governance, by virtue of its manifold benefits, plays a key role in promoting the stability and prosperity of nations as the heights attained in development by the leading federations of the world – **USA, Canada, Australia and Switzerland** – demonstrate. On the other hand, unless carefully crafted, federal systems do not endure as evidenced by the disintegration of many of the federal formations that came into being in the last century, such as Soviet Russia, Yugoslavia, Czechoslovakia, Rhodesia, and Nyasaland.<sup>6</sup>

### Division/Distribution of Powers:

Distribution of powers is the fundamental and the most essential characteristics of the federation. The powers of State are divided into federal as well as unit governments at national and local levels. The *Seventh Schedule* in the India Constitution lays down 67 items which are attributed to the *State list* upon which State Governments can make a law, whereas there is a *Union list* containing 97 items upon which only Union Government can make a law. This makes clear that there is a structure made to fit the federal essence but the powers are divided in such a way that it ends up being a quasi-federal state

Bringing in picture the **US Constitution**, where the working of government is divided into two domains, namely the Federal and the State Governments. These governments are not subordinate to each other but are co-ordinated and independent within the scopes allotted to them.<sup>7</sup> The Indian Constitution per se is not a covenant, or a pact between the States; rather the States are the products of the Constitution and ultimately of Parliament. A renowned expert on federalism, *Professor Ronald L Watts* defends the Indian approach claiming that “In some cases, however, where territorial social diversity and fragmentation is strong, it has been considered desirable, as in Canada and India initially, and in Spain, to give the federal government sufficiently strong, and even overriding, powers to resist possible tendencies to balkanization.”

Federalism has always remained a ‘work-in progress’ or as *Iqbal Narain* puts it ‘constantly in the making’<sup>8</sup>. The federal structure needs to be altered and mended perpetually to cope up with the changing environment and emerging challenges.

### Federalism in Canada:<sup>9</sup>

In Canada the system of federalism is described by the division of powers between the federal parliament and the country's provincial governments.

### Levels of Government:

Canadian federalism has two constitutionally recognized levels of government: federal and provincial. The country also has two further forms of government, territorial and local, which are not constitutionally recognized. The following section introduces each level of government and its status within Canada's federal framework.

The first constitutionally recognized level of government is **the federal or national government**. This level is responsible for enacting and implementing laws for the whole country. In doing so, the federal

<sup>5</sup> <http://www.halfmantr.com/display-polity/161-indian-federalism>

<sup>6</sup> Amaresh Bagchi “Fifty Years of Fiscal Federalism in India – An Appraisal”

<sup>7</sup> Surendra Singh and Satish Misra “Federalism in India: Time for a Relook?”

<sup>8</sup> Copland and Rickard, 1999

<sup>9</sup> <http://www.mapleleafweb.com/features/federalism-canada-basic-framework-and-operation.html>

government is provided with its own constitutional powers and jurisdictions, which it may exercise independently from the provincial level of government.

Canada's **national Parliament** located in Ottawa, the nation's capital, is the premier institution of the federal government. It consists of the Monarchy (and his/her federal representative, the Governor General) and two legislative chambers, the House of Commons and the Senate.

The head of state for the federal government is the Monarchy; however, his/her role is primarily ceremonial under Canada's contemporary system of government. The bulk of federal power lies with the federal head of government and his/her executive council, which are officially referred to as the Prime Minister and Cabinet, as well as the elected legislative chamber, the House of Commons. The second federal legislature, the Senate, is an appointed body and exercises considerably less power relative to the elected House of Commons.

Another key federal institution is the **federal judiciary**. This includes the Supreme Court of Canada, which is appointed by the federal government and is the highest court in the country. Other important federal-level courts include the Federal Court of Appeal, the Federal Court, the Tax Court of Canada, the Court Martial Appeal Court, and the Courts Martial (the latter two are military courts). Another important federal institution is the **national public service**. This includes all of the federal government departments and agencies, which are responsible for helping the federal government form and implement policy within its jurisdictions.

**Provincial governments** form the second constitutionally recognized level of government in Canada. There are 10 provinces in Canada, each with their own provincial government: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island. These provincial governments enact and implement laws within their particular provincial territory, and are provided with their own constitutionally recognized powers, which they may exercise independently from the federal government, and from each other.

Each provincial government has its own legislative assembly, which is located in its respective provincial capital. The Monarchy or the **Lieutenant-Governor**, his/her provincial representative is the provincial head of state. However, as is the case at the federal level, this office is primarily ceremonial. Real provincial power lies, instead, in the hands of the provincial heads of government and their executive councils, and the provincial elected legislature.

There is also a provincial-level court system, which includes **provincial courts of appeal** and **provincial trial courts**. These courts are inferior to the federal Supreme Court of Canada, and typically hear criminal, constitutional, civil, family, traffic, and bylaw cases. In addition, each province has its own **provincial public service**, which includes government departments and agencies that are responsible for assisting their respective governments in forming and implementing policy within provincial jurisdictions.

Canada also has three territories, each with their own **Territorial governments**: the Yukon, the Northwest Territories, and Nunavut. Like their provincial counterparts, these are regional governments, which are responsible for enacting and implementing laws within their particular territorial area. Unlike the provinces, however, territories are not constitutionally recognized entities, with their own autonomous powers and jurisdictions. Instead, the territories fall under the legislative jurisdiction of the federal government, whom is responsible for creating territories and setting out their basic framework.

The head of state is a territorial **Commissioner**, which performs many of the same roles as a provincial Lieutenant-Governor. As is the case with provincial and federal governments, however, real power lies in the hands of the territorial head of government and his/her executive council, as well as the elected legislative assembly. Each territory has a public service and court system.

As territories are not constitutionally recognized as autonomous governments, their status within Canadian federalism is technically inferior. As such, territories do not have a legal say in constitutional amendments regarding the separation of powers between the federal and provincial levels of government. Nevertheless, it is common practice to include territorial governments in inter-governmental meetings and decision-making processes.

The final type of government in Canada is **local government**, which includes municipal, county/parish, and semi-regional councils, boards, and agencies. Like the territories, local governments are not constitutionally recognized entities with their own autonomous powers and jurisdictions. Instead, local governments fall under the jurisdiction of the provinces and territories, which are responsible for creating local governments and setting out their

#### **Federalism in USA:**

Federalism in the United States is the evolving relationship between state governments and the federal government of the United States. American government has evolved from a system of dual federalism to one of

associative federalism. The states and national government "are in fact but different agents and trustees of the people, constituted with different powers."<sup>10</sup>

Because the states were preexisting political entities, the U.S. Constitution did not need to define or explain federalism in any one section but it often mentions the rights and responsibilities of state governments and state officials in relation to the federal government. The federal government has certain *express powers* which are powers spelled out in the Constitution, including the right to levy taxes, declare war, and regulate interstate and foreign commerce. The power delegated to the federal government was significantly expanded by the Supreme Court decision in *McCulloch v. Maryland* (1819), amendments to the Constitution following the Civil War, and by some later amendments—as well as the overall claim of the Civil War, that the states were legally subject to the final dictates of the federal government.

### The Federal Government:

The United States Congress is the **legislative branch** of the federal government. It is bicameral, comprising the House of Representatives and the Senate. The House currently consists of 435 voting members, each of whom represents a congressional district. The number of representatives each state has in the House is based on each state's population as determined in the most recent United States Census. In contrast, the Senate is made up of two senators from each state, regardless of population. There are currently 100 senators (two from each of the 50 states), who each serve six-year terms. Approximately one third of the Senate stands for election every two years.

The Constitution grants numerous powers to Congress. Enumerated in Article I, Section 8, these include the powers to levy and collect taxes; to coin money and regulate its value; provide for punishment for counterfeiting; establish post offices and roads, issue patents, create federal courts inferior to the Supreme Court, combat piracies and felonies, declare war, raise and support armies, provide and maintain a navy, make rules for the regulation of land and naval forces, provide for, arm and discipline the militia, exercise exclusive legislation in the District of Columbia, and to make laws necessary to properly execute powers. Over the two centuries since the United States was formed, many disputes have arisen over the limits on the powers of the federal government. These disputes have often been the subject of lawsuits that have ultimately been decided by the United States Supreme Court.

The **executive power** in the federal government is vested in the President of the United States, although power is often delegated to the Cabinet members and other officials. The executive branch consists of the President and those to whom the President's powers are delegated. The President is both the head of state and government, as well as the military commander-in-chief and chief diplomat.

The terms 'federalism' and 'confederalism' both have a root in the Latin word *foedus*, meaning "treaty, pact or covenant." Their common meaning until the late eighteenth century was a simple league or inter-governmental relationship among sovereign states based upon a treaty. They were therefore initially synonyms. It was in this sense that *James Madison* in *Federalist 39* had referred to the new United States as 'neither a national nor a federal Constitution, but a composition of both' In the course of the nineteenth century the meaning of federalism would come to shift, strengthening to refer uniquely to the novel compound political form, while the meaning of confederalism would remain at a league of states Thus, this Project relates to the 'federalism' in different countries.

Modern federalism is a system based upon democratic rules and institutions in which the power to govern is shared between national and provincial governments. The term federalist describes several political beliefs around the world depending on context.

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<sup>10</sup> "Federalist No. 46," James Madison