THE NATURE OF THE INDIAN CONSTITUTION

Is the Constitution of India Federal ?—According to the traditional classification followed by the political scientists, Constitutions are either unitary or federal. In a unitary Constitution the powers of the Government are centralised in one government viz, the Central Government. The provinces are subordinate to the Centre. In a federal Constitution, on the other hand, there is a division of powers between the Federal and the State Governments and both are independent in their own spheres.

There is a difference of opinion amongst the constitutional jurists about the nature of the Indian Constitution. One view is that it is a quasi-federal constitution and contains more unitary features than federal. The other view is that it is a federal constitution with a novel feature adopting itself to national emergencies. The view of the framers of the Constitution is that the Indian Constitution is a Federal Constitution. Dr. Ambedkar, the Chairman of the Drafting Committee, observed thus, "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 (States) nonetheless, is a Federal Constitution ".[1]

But some constitutional jurists hesitate to characterize the Indian Constitution as federal. It is, therefore, necessary to ascertain firstly, what federal Constitution is and what are its essential characteristics, and secondly, to examine whether our Constitution possesses those characteristics.

Federal Principle —"By the Federal Principles", Prof. Wheare[2] observes, "is meant the method of dividing powers, so that the general and regional Governments are each within a sphere co-ordinate and independent. Both the federal and the regional Governments are co-ordinate and independent in their spheres and not subordinate to one another".

The American Constitution is universally regarded as an example of federal Constitution. It establishes dual polity or dual form of Government, i.e., the Federal and the State Governments. The powers of both the Central and the State Governments, are divided and both are independent in their own spheres. The existence of co-ordinate authorities independent of each other is the gist of the federal principle.

Prof. Wheare, after giving the above definition as to what the federal principle is, himself proceeds to examine whether the American Constitution satisfies the above test. He observes: "Are we to confine the forms to cases where the federal principle has been applied completely and without exception? It would not be sensible to do this. After all, the Constitution of the United States itself, as originally drawn up contained at least exception to the federal principle in that the Senate was composed of representative selected by the Legislatures of the State. Thus a part of the general Government of the United States was dependent to some extent upon a part of the regional Government. This exception to the federal principle was maintained in law until 1913. Yet the American Constitution from 1787-1913 was and must be called a "federal Constitution" for the federal principle was predominant in it. Thus the criterion is "fa the federal principle predominant in the constitution! If so, that Constitution may be called a "federal Constitution". If, on the other hand, there are so many modifications, in the application of the federal principle that it ceases to be of any significance, then the Constitution cannot be termed as federal. This appears to be the most instructive and responsible way in which to use the term 'federal Constitution'. It seems essential to define federal principle rigidly, but to apply the term 'federal Constitution' more widely.[3] Thus Dr. Wheare accepts that exceptions are permissible provided federal principle is predominantly retained in the Constitution.

Essential characteristics of a federal Constitution

A federal Constitution usually has the following essential characteristics :—

Distribution of Powers—The distribution of powers is an essential feature of federalism. Federalism means the distribution of the powers of the State among a number of co-ordinate bodies each originating in and controlled by the Constitution.[4] The basis of such distribution of powers is that in matters of national importance, in which a uniform policy is desirable in the interest of the units, authority is entrusted to the Union, and matters of local concern remain with the States.

(2) **Supremacy of Constitution** —A federal State derives its existence from the Constitution, just as a Corporation derives its existence from the grant by which it is created. Hence, every

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[1] Constituent Assembly Debate, Vol. 4, p. 133, See also Constituent Assembly Debate, Vol 5, pp. 33-36.
[2] K.C. Wheare—Federal Government, p. 27; Jennings—Some Characteristics of the Indian Constitution,
[3] K.C. Wheare—Federal Government, p. 15 (4th Ed., 1963).
[4] A.V. Dicey—The Law of the Constitution, p. 157 (10th ed.).

power, executive, legislative or judicial whether it belongs to the nation or to the individual State is subordinate to and controlled by the Constitution.[5] The Constitution in a federal State constitutes the supreme law of the land. Prof. Wheare says' that those two institutions—the supreme Constitution and the written constitution are then, essential institutions to a federal Government. The supreme Constitution is essential if Government is to be federal; the written Constitution is essential if federal Government is to work well.[6]

(3) **A Written Constitution** —A federal constitution must almost necessarily be a written Constitution. The foundations of a federal State are complicated contracts. It will be practically impossible to maintain the supremacy of the Constitution unless the terms of the Constitution have been reduced into writing. To base an arrangement of this kind upon understandings or conventions would be certain to generate misunderstandings and disagreements.[7]

(4) **Rigidity** —natural corollary of a written constitution is its rigidity. A constitution which is the supreme law of the land must also be rigid. In a rigid Constitution the procedure of amendment is very complicated and difficult. This does not mean that the Constitution should be legally unalterable. It simply means that the power of amending the Constitution should not remain exclusively with either the Central or State Governments. A Constitution of a country is considered to be a permanent document. It is the supreme law of the land. This supremacy of the Constitution can only be maintained if the method of amendment is rigid.

(5) **Authority of Courts** —In a federal State the legal supremacy of the Constitution is essential for the existence of the federal system. The very nature of a federal State involves a division of powers between the Central and State Governments under the framework of the Constitution. It is, therefore, essential to maintain this division of powers between the two levels of Governments. This must be done by some independent and impartial authority above and beyond the ordinary bodies whether federal or State legislatures existing under the Constitution. The judiciary has, in a federal polity, the final power to interpret the Constitution and guard the entrenched provisions of the Constitution.
The Indian Constitution possesses all the essential characteristics of a federal Constitution mentioned above. The Constitution establishes a dual polity, a system of double Government with the Central Government at one level and the State Government at the other. There is a division of powers between the Central and the State Governments. Each level of Government is supreme in its own sphere. The Constitution of India is written and is supreme. The provisions of the Constitution which are concerned with federal principles cannot be altered without the consent of the majority of the States. The Constitution establishes a Supreme Court to decide disputes between the Union and the States, or the States inter se interpret finally the provisions of the Constitution.

But, as said earlier, some scholars hesitate to characterise the Indian Constitution as truly federal because according to them in certain circumstances the Constitution empowers the Centre to interfere in the State matters and thus places the States in a subordinate position which violates the federal principle.[8] They, therefore, use such expressions for it as "quasi-federal', 'unitary with federal features' or 'federal with unitary features'.[9] In the opinion of Prof. Wheare -The Constitution establishes a system of Government which is almost quasi-federal a unitary State with subsidiary unitary features rather than a federal State with subsidiary unitary features'? Jennings has characterised it as 'a federation with a strong centralising tendency'.[10]

Let us now examine what are those provisions of the Constitution which are produced in support of the above argument and how they modify the strict application of the federal principle. In the following matters, it is pointed out, the Indian Constitution contains the modifications of the federal principle:—

(1) **Appointment of Governor** —The Governors of the States are appointed by the President (Articles 155 and 156) and answerable to him. This is, however, not a matter of much

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[5] Ibid, at p. 144.
[6] K.C. Wheare—Federal Government, p. 56.
[7] It can be said that a written Constitution is not logically required by the federal principle The truth seems to be that while it is essent.al for a Federal Government that its Constitution is supreme to the extent defined above, it is also essential for a good federal government that the supreme constitution be written -K.C. Wheare-Federal Government, p. 56
[8] In State of West Bengal v. Union of India, AIR 1963 SC 1241, the Supreme Court has held by majority that it is not truly federal. However, Subba Rao, J., in his dissent treats it basically federal.
[9] K.C. Wheare—India's New Constitution Analysed, 1950 ALJ 22
[10] Jennings—Some Characteristics of the Indian Constitution, p. 1.

significance, for, the Governor is only the constitutional head of the State who shall normally act on the advice of his Ministers. There are provisions in the Constitution under which the Governor is required to send certain State laws for the assent of the President. The President has power to veto those State laws e.g., Arts. 200, 288(2). But whatever be the letter of the Constitution, in practice there are not many examples where the President has vetoed the State Laws. The only example has been the Kerala Education Bill.[11] But here also the Centre obtained the advisory opinion of the Supreme Court before sending it back to the State Legislature for suitable amendments in the light of the Court's opinion,

(2) **Parliament's power to legislate in the national interest** —Under Art. 249 Parliament is empowered to make Jaws with respect to every matter enumerated in the Slate List if the Rajya Sabha passes a resolution by 2/3 majority that it is necessary in the national interest. There cannot be any objection to this provision : First, no one will deny that if a subject in the State List assumes national character. Parliament should make a law on it. In normal course this cannot be done unless the Constitution is amended. But in this provision we have devised an expedient way by which without formally amending the Constitution we can achieve the desired effect, namely, the acquisition by the Centre of the power to administer and legislate upon a subject which has assumed national importance. Secondly, it should also be noted that this power is given to Parliament by the Council of States itself by passing a resolution supported by 2/3 majority of the members present. Thus, in effect by this device the Constitution is amended by the agreement of majority of the States. We, therefore, fail to understand how Article 249 places the State in subordinate position.

(3) **Parliaments' power to form new States and alter boundaries of existing States** — The Parliament of India may form new States; it may increase or diminish the area of any State and it may alter the boundaries or name of any State (Art. 3). The very existence of the State thus depends upon the sweetwill of the Union Government. The power conferred on Parliament to make territorial adjustment is better explained on the historical basis. The Government of India, for the first time, establish federal polity in India. It deliberately created the constituent units of the federation although they had no organic roots in the past. The framers of the Constitution were well aware of the peculiar conditions under which and the reasons for which the States were formed and their boundaries were defined and so they deliberately accepted the provisions in Article 3 with a view to meeting the possibility of the redistribution of the State territory after the integration of Indian States. The provisions in Art. 3 take into account the fact that the Constitution contemplated readjustment of the territories of constituent States which might arise in future.

(4) **Emergency provisions** —The Constitution envisages three types of emergencies: (I) emergency caused by war or external aggression or armed rebellion (Art, 352); (2) emergency caused by failure of constitutional machinery in States (Art. 356); and (3) financial emergency (Art. 360). When the proclamation of emergency is made under Art. 352, the normal distribution of powers between the Centre and the States undergo a vital change. Parliament is empowered to make laws with respect to any matter enumerated in the State List. The Centre is empowered to give directions to any State as to manner in which the State's executive power is to be exercised (Art. 256). Further, the President may by order direct that all or any of the provisions of Arts. 268 to 279 relating to distribution of revenue between the Centre and the State shall take effect with such exception or modifications, as he thinks fit. Under Art. 356, if the President is satisfied that Government of a State cannot be carried on in accordance with the provisions of the Constitution he can dismiss the State ministry and dissolve the Legislature and assume all the functions of the State. Thus the normal distribution of powers between the Centre and the States, which is the basic element of a federal constitution,- is completely suspended. It is alleged that these provisions enable the Union Parliament to convert the Union into a unitary State which vitally affects the federal character of the Indian Constitution.

Do these provisions modify the federal character of the Indian Constitution?

"The correct view", observes Dr. V.N. Shukla, "is that emergency provisions which come into operation only on the happening of the specific contingencies, do not modify or destroy the federal system. It is rather a merit of the Constitution that it visualises the contingencies when the strict application of the federal principle might destroy the basic assumption on which our Constitution is built. The Constitution by adopting itself to a changed circumstances strengthens the Government in its endeavour to overcome the crisis. In an emergency the behaviour of each federal Constitution is very much different from that in peace time. Though the Constitution of the U.S.A., Australia and Canada do not expressly provide for enlargement

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[11] In re, Kerala Education Bill; AIR 1958 SC 956.

of federal power during the periods of emergency, but during the two World Wars, the defence power of the Federal Goverment was given so extended an interpretation by the courts that these countries behaved more likely unitary than federal State. For the above reasons we maintain that the Indian Constitution is federal in nature."[12] Prof. Wheare has coined a phrase 'quasi-federation' as applicable to India but he has nowhere defined what a 'quasi-federation' is. "It is not necessary to use such a vague term 'quasi-federal' to characterise it". The term 'quasi-federal' is extremely vague as it does not denote how powerful the Centre is, how much deviation there is from the pure 'federal model' or what kind of special position a particular quasi-federation occupies between a unitary State and a federation proper. The fundamental principle of federation is that the powers are distributed between the Centre and the States and that is done by the Constitution. That is what the Constitution does. The States do not depend upon the Centre, for, in normal times the Centre cannot intrude. It may be that the Centre has been assigned a larger role than the Sates but that by itself does not detract from the federal nature of the Constitution, for it is not the essence of federalism to say that only so much, and more power, is to be given to the Centre.[13] Prof. Wheare appears to feel that the American Constitution is truly of federal type. He says 'among examples of federal constitutions there may be mentioned those of the United States, Switzerland and Australia'. It may, however, be clearly understood that the nature of federalism is more of historical growth based on a nation's necessity. To accept the same pattern of federalism in all countries is well nigh impossible. With all respects to Prof. Wheare, we may tell him that federalism varies from place to place, and from time to time depending on so many factors—historical, geographical, economical and political. So what is good for America is not necessarily good for India. The people of a country can take in only the required dosages, otherwise they may stunt or destroy their growth. Federalism is not like the set pattern of coats to wear. It is a clock of varying organised pattern befitting each wearer and helping him to the next and superior stages of federalism. India's federalism is unique and good for itself. America's federalism is not perfect as it is stated to be. It has got its own drawback. Indian Constitution is sufficiently federal. It is not less federal than American federalism which on paper is of higher degree but in the actual practice the leaning is towards centralisation of national interest. The term quasi is a misnomer. India is federal and America is more federal in the outline of the constitution in practice there is not much difference between the two,[14] It may be that we deviated in respect of certain matters from the strict federalism as operating in the U.S.A. or Switzerland, but the reasons are obvious. The Indian Constitution makers defined the Indian federal structure not with an eye on theoretical but on practical considerations in designing federalism. Under the impact of world wars, international crisis, scientific and technological progress and developments and the emergence of the ideal of social welfare State, the whole concept of federalism had been undergoing a change for sometime throughout the world. There are centralising tendencies in evidence in every federation and whether it is in U.S.A. or in Australia, strong and powerful national governments have emerged in every federation. The framers of the Indian Constitution took note of these tendencies and kept in view the practical needs of the country designed on federal structure not on the footing that it should conform to some theoretical, definite or standard pattern, but on the basis that it should be able to subserve the need of the vast and diverse country like India. The Indian Constitution, therefore, constitutes a new bold experiment in the area of federalism.

In short, it may be concluded that the Constitution of India is neither purely federal nor purely unitary but is a combination of both. It is a union of composite State of a novel type. It enshrines the principle that inspite of federalism, the national interest ought to be paramount. Thus, the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth.[15]

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[12] V.N.Shukla- Constitution of India. P.40 (1969)

[13] M.P.Jain- Indian Constitution Law, P. 347 at P. 357 (3rd edi, 1978)

[14] V.G.Ramchandra- 1958(SCI), P. 79.

[15] Jennigs – Some Characteristics of Indian Constitution, p. 55.