

HISTORY OF POLITICAL FEDERALISM

- One-party Federalism (1952-1967) - In this period, the charisma of the regional leaders of congress & the emergence of linguistic autonomy movement marked the regional assertion over the national politics.
- According to Yogendra Yadav & Suhas Palshikar, Congress's success was "a combination of its state level organization along with Nehru's charismatic leadership & popular appeal.
- In Kerala, the dissolution of the Communist govt led by E. M. S. Namboodiripad in 1959, by the Centre under Nehru's watch, was an exceptional case in federal relations.
- The limitations of the consensual federalism & the beginning of a more confrontational federal interaction had emerged.
- Assertion of regional identities - resulted into regionalization of territorial autonomy - passing of the Official Language Act, 1963 taken as imposition of cultural norms, increased resentment
- Expressive' Federalism (1967-1989) - defeat of regional leaders of congress in 1967 marked the era of expressive" & more active & directly conflictual federal dynamics
- Scholar Bhagwan D. Dua argued that due to the "excessive use of president rule", the "autonomy of states has been reduced to a farce during 1970s.
- Regional demands led by the Akalis in Punjab & All Assam Students Union (AASU) in Assam emerged.
- The political ambitions of the non-Congress state actors in Jammu and Kashmir, Andhra Pradesh, Tamil Nadu and Karnataka were also coming to the centre stage of national politics.
- According to Paul Brass, "The process of consolidating power in India is inherently tenuous & the power begins to disintegrate immediately at the maximum level of concentration".
- The pluralist, regionalist & decentralising tendencies will invariably reassert themselves against any centralized authoritarian regime.
- In 1984, the newly elected Union govt under Rajiv Gandhi had to accommodate the regional demands for autonomy & decentralisation in the states.
- Multiparty Federalism (1989-2014)- decline of Congress party & poor opposition & no available alternative created a political vacuum - paved way for the coalition of non-Congress parties comprising of some regional parties along with the outside support of the BJP & Communist Party of India (Marxist) to form the National Front Govt at the Centre led by Prime Minister V.P. Singh
- The coalition govt in the early years led by non-Congress and non-BJP parties, many of which were regional outfits, tried to lead the country and provide decentralization.
- Beginning of a stable phase of coalition politics at the national level from 1999 to 2014.
- The coalition of regional parties can only provide a stable political arrangement at the national level when they are united around a national political force, which is the Congress or the BJP.
- The regional actors found it preferable to support either of the national coalition groups to get more effective political representation & better access to the resources of power.
- This era of multi-party coalition in national politics witnessed new fronts of Centre-State tussle over national issues like foreign policy, national security decisions, & economic reforms.
- The return of 'Dominant Party' Federalism (2014-present) - proclamation of president rule in the states like Arunachal Pradesh, Uttarakhand & Jammu & Kashmir in this period once again revealed the centralising intentions of the strong Union govt.
- The governor's role in government formation in states like Goa, Manipur and Maharashtra raised questions about the governor's preference for the ruling party at the Centre
- Centrally sponsored schemes became the vehicles to carry central political influence in states
- The regional parties with strong appeal based on sub-nationalism & cultural identity & counter-homogenisation in Tamil Nadu, Orissa & West Bengal, have been more successful in fighting the centralization in their respective region.
- Sharing of powers & responsibilities between the three levels of govt. is a key element of the concept, which involves participative policymaking.
- The existing & largely underutilised Interstate Council, created under Article 263 & mandated to deal with coordination between States, has been totally ignored.

FEDERAL PHILOSOPHY

- Competitive federalism, where States would compete with each other to attract investments & also hopefully provide better public goods & services.
- States are unevenly equipped to engage in fair competition, since regional disparities in the provision of basic needs and social sector services are overwhelming.
- Enhanced devolutions across the board do not address this problem, which requires a new asymmetric federalism framework that remains to be defined.

- A key element in fostering cooperative federalism is the respect for the mandate of elected govts, even those run by opposition parties.
- Current party system is fragmented along federal lines, the need is still felt to include State parties in federal coalitions, even when technically not necessary.
- The way alliance partners are treated thus becomes an important element in federal functioning.
- Federal hegemony under the majority party rule
- Cooperative federalism with opposition-ruled States becomes an altogether more difficult proposition, given the absence of a viable working relationship.
- The refusal to recognise the legitimacy of a parliamentary opposition – is a serious problem
- The federal principle requires a genuine will to share power – the ideas of partnership and participation are crucial to its success.
- Cooperative federalism is , to go beyond brute parliamentary majorities & grapple with the multilevel government-opposition matrix, which constitutes the architecture of federal power-sharing.
- There is in the authoritarian personality an inbuilt factor for majoritarianism.
- The need for States to have both financial & cultural autonomy
- Share of States in the divisible pool of Central taxes from 32% to 42% beyond this measure, the Centre has not inspired much confidence regarding its commitment to federalism.
- The Commission has been using the 1971 Census for population data to ensure that States that have been successful in family planning are not penalised.
- This came in the wake of the 42nd Amendment to the Constitution which froze the distribution of Lok Sabha seats among States for 25 years, which was extended for another 25 years, in 2001.
- Schemes like MGNREGA or NRHM helps to fetch credit to state govt more than that of centre as its implementation is with the state govt .
- Doctrine of “occupied field” enshrined in Art 254(1) if there exists a Central law on a concurrent subject, then a State law cannot override it.
- Art. 254(2) provides that if a State law receives presidential assent after due consideration, then it can apply in contravention to the Central law in that particular State.
- According to SC, what the govt cannot do directly, it cannot do indirectly. This reiteration used to strike down the attempts of the govt to put down the “colourable legislation” , means laws the govt is not qualified to pass, disguised as other laws. .
- ISC & NITI Aayog should be merged into one constitutional forum to improve institutional participation of state govt in inter-governmental affairs.
- It will enhance the institutional status of the NITI Aayog by being attached to a constitutional body i.e. the ISC.
- To make the ISC a truly federal rather than a central body, its secretariat should be shifted from the Union Home Ministry to the Rajya Sabha secretariat so that it would be under the direction of a neutral federal functionary, the vice-president of India rather than Union home minister
- When Central govt has no majority in parliament (on a concurrent subject), is faced with public opposition, it will concede authority to States to pass the laws as they see fit & get the President to approve them.
- Cooperative federalism, implies the Centre & states share a horizontal relationship, where they “cooperate” in the larger public interest - enable states’ participation in formulation & implementation of national policies.
- Competitive federalism is a vertical relationship between the Central & state govt or between state govt (horizontal).
- In post 1990s economic reforms, States need to compete among themselves & also with the Centre for benefits.
- Under globalisation, made the already existing inequalities & imbalances between states starker.
- This gave rise to concerns about states’ freedom to formulate their own growth policies.
- The cooperative federalism is not a theoretical subject, rather it is a practice under a continuous process of evolution.
- Karnataka has a body similar to the National Development Council which facilitates better consultations between States & local bodies.
- Licchavi kingdom of northern India in 6th century BC – celebrated example of republican system.
- European union is an example of federalism at transnational level
- Globalisation made countries to integrated tightly, so external influence of powerful financial & political entities tends to limit the freedom of states- weakening of public institutions- generated ‘competitive federalism’.
- 5th century BC republican states of Lichchavi & Sakya had an institutional system -called Santhagara to debate issues of vital importance to the republic- a dispute over sharing of water of Rohini river between the Sakyas & Koliyas. Sakya military commander favoured war – Buddha opposed –defeat exiled him but institution established
- Marble cake model’ of federalism - shared and overlapping responsibilities and acts as partners – unlike India - Indian federation has a built-in bias in favour of union
- Constitution did not accept concept of local self govt envisaged in Lord Ripon's resolution of 1884.

- Bottom up planning - Articles 243G, 243W and 243ZD – mandates all states to create district planning committee(243ZD) & metropolitan planning committee
- The share of Centrally Sponsored Schemes in budgetary allocation increasing .
- India fiscally most centralised country in the world even unitary China is more decentralised than us.
- Periodic reorganisation & review are important to avoid stress accumulation on political systems.
- Ideologies of modernity & enlightenment were a consequence of secular & industrial economic order that required a different non-primordial-identity based economic , political & social system to flourish
- Federalism is the deepening of democracy
- Political democracy – increased popular participation in governance & public affairs
- Dominant economic systems of modern systems have favoured for more centralised political systems.
- The strong unitary biased shows consciousness of constituent assembly regarding unity & integrity of India as an aftermath of partition of country
- First two decades after independence marked by mix of politics of identity and politics of scarcity – tension areas of this period were around identity, language & boundaries .
- Deregulation is when, new independent regulatory mechanisms have replaced old state agencies though new autonomous institutions are not made democratically accountable.
- First phase of federal development witnessed stunted growth of institutional devices designed to cope with needs of cooperation & coordination
- Asymmetrical federalism & special provision , special status were applied where unequal states or regions burst into discontentment – accommodative constitutional engineering – art 370 & 371
- New modes of participation & decision emerged through federal coalition to which parliamentary system and constitution is yet to adopt
- With the increase in the penetration of local body governance , remarkable rise in regional & caste based parties along with the clamour for separate state .
- Daniel J. Elazar in his seminal work ‘ Exploring Federalism,’ 1987 explained the federalism as “self rule plus shared rule.
- Institutionalised cooperation & negotiated settlements of disputes.
- Federalism emerged as grand theory of freedom preserving & justice promoting doctrine.
- Indian federalism - Johannes Althusius’s principles of ‘ association’ and symbiosis where symbiotes communicates “ (1) things, (2) services, & (3) common rights (jura)
- Federalism as ‘public good’, & as principle of independence & interdependence – as a principle of diversity accommodation & ethnic self- governance , principle of promoting civic-territorial nationalism.
- Classical federalism – nature of contract determines the extent of state rights – dual federalism.
- Post classical federalism – decentralised without hierarchy subordination – participatory in ethos & characteristically coalitional in governance.
- Federal units have constitutive federal rights to autonomy & jurisdictional independence.
- Murray Forsyth – status of the member units – 3 constitutional rights – the right of existence – the right of autonomy – the right to participate.
- Federalism does not offer any ideal type – it defies theoretical singularity & definitional monocentricity .
- Federalism always requires a model centric appraisal than a single stroke theoretical generalisation
- Founding fathers deliberately avoided any doctrinal fixity , instead they innovated & scripted a new form of federalism which retains metatheoretical proposition and core philosophy of federalism but departs in its structural design and framework of resource redistribution and power relationships
- State & centre are constitutionally obliged to achieve national, regional, local goals of the union — Neither of the structure is independent of the other – S.R. Bommai case.
- The theory of federalism as propounded by constituent assembly is that of jurisdictional federalism ,which methodologically applies centre-periphery and non-centralised matrix models of power sharing , negotiated or circumstantial transfer and delegation of authority
- Region, regional & regionalisation has been constitutionally documented as autonomous space for the formation of future polities , a site of further democratisation or decentralisation of governance , promotion of ethnic self governance to find content for federal nationalism – social autonomy also.
- Unitary feature provides two forms of centralisation of powers – 1) circumstantial centralisation & 2) Consensual centralisation
- Art 353 (a)- the executive power of the union shall extend to the giving of direction to any state as to the manner in which the executive powers thereof is to be execute .
- Art 356 (C) – Union can make incidental or consequential provisions for suspending in whole or in part the operation of any provision relating to anybody or authority of the state .
- Each article from 370 onwards and 5th & 6th schedule represents distinct model of autonomy – granting of specific right to grant identity, right to development & right to self governance – communitarian and functionally local autonomy.
- Art 40- promotion of local governance as self sufficient unit of rural-urban governance .
- UNDP Report 2004 debunked the notion that ,cultural diversity leads to clash of civilisation –

diversity and protecting minority rights are crucial for development. It saw India as an example of 'how poor and diverse country can perform well with multicultural policies .

- Building federalism in post-conflict societies is difficult
- A political system based on federal structure will be more likely to keep new entity stable.
- Montague-Chelmsford Report on Constitutional Reforms (1918) which stated: "our conception of the centralized future of India is a sisterhood of states, self-governing in all matters of purely local or provincial interest. Over this congeries of States would preside the Central Government."
- The Simon Commission Report (1929) also proposed schemes for devolution of financial powers and sharing of income tax proceeds between the Central government and the provinces.
- Federal form of govt came into existence where a unitary form of Govt was not possible owing to a strong sentiment of local patriotism.
- Federalism is a modern conception its theories and practices in modern Times are not older than American federation of 1787.
- Federalism is the result of historical evolution - sprang from the necessity of weaker States which organised into the union.
- Dr. Ambedkar on states' rights: " The overriding powers do not form the normal feature of the Constitution. Their use & operation are expressly confined to emergencies only".
- Dr Rangarajan :-" meeting the challenges of globalisation, the Indian federal structure must respond in such a way to as to create a large common market within the country. Restrictions on movement of goods and various other obstacles have to go, he said, adding that reform of the tax system has become essential."

FISCAL FEDERALISM

- Federalism is based on trust between its various constituent units.
- In the Goods & Services Tax (GST) scenario, States have foregone some taxation powers (octroi, entry tax, luxury and entertainment taxes, etc.) but have powers to levy taxes through panchayats and municipalities.
- After the GST amendments to the Constitution, States have power to levy tax on sale of petrol, diesel, etc. and these would be revenues of the respective States.
- Under Article 269A(1) the GST Council — & not the FC — has the powers to make recommendations in relation to sharing of taxes from inter-State trade.
- States have a vote in the GST Council. However, Articles 270(1A) and 270(2) provide that taxes levied under the GST laws will be shared in the manner 'prescribed' in Article 270(2) — which takes us to the FC, and not the GST Council.

- Recommendations of the FC are placed before Parliament & States have no role in the debate.
- There is no provision for an aggrieved State to challenge the FC report or seek its enforcement.
- State Finance Commission (SFC) is a unique institution created by the 73rd and 74th Constitutional Amendments to rationalise and systematise State/sub-State-level fiscal relations in India
- A cursory survey of the composition of SFCs would reveal the overwhelming presence of serving and retired bureaucrats rather than academics.
- The SFC is modelled on the UFC created under Art 280 & exemplified in Articles 243I & 243Y.
- While the UFC is tasked with rectifying vertical and horizontal imbalances at the Union-State level.
- The Constitution treats a local govt on a par with a State govt, especially when it comes to sharing of financial resources
- SFCs have to consider nearly 2.5 lakh local govt to promote minimum essential services in rural and urban areas.
- SFC is the institutional agency to implement the golden rule of cooperative federalism that every citizen should be assured minimum public goods irrespective of her choice of residence.
- Art 280(3) has been amended to add clauses (bb) and (c) in order to take measures to augment the resources of panchayats & municipalities on the basis of the recommendations "made by the finance commission of the state.
- SFC can not ignore Art 243G & 243W which speak of planning "for economic development and social justice" & Art 243ZD which mandates that every State constitute a district planning committee for spatial planning and environmental conservation at the sub-State level.
- UFC did not analyse the reports of SFCs
- The shortfall in GST collection for 2018-2019 was 22% when compared to projections Payments have been delayed as well.
- The Centre has imposed a series of cesses, which are not part of the divisible pool and not shared with the States
- States are being required to spend more to help common citizens and save livelihoods. The Centre is providing almost negligible support.
- In 2017, the Centre made a promise to the States that a certain minimum amount of GST revenues will be guaranteed to every State for every year until 2022.
- The Centre has therefore proposed that the States should borrow money to bridge this gap and that it will act as a guarantor to facilitate this borrowing.
- State govts don't have the powers to levy direct taxes or indirect taxes to earn additional revenues.
- A State's finances are not in the hands of the State government any more.

- Centre accepted the 14th Finance Commission's recommendation to increase the share of the states in the central tax pool from 32% to 42%
 - B. R. Ambedkar opposed an amendment to put a ceiling on the Sales Tax to be levied by provinces
 - The revenue collection in 2014-15 on octroi in Mumbai Corporation was Rs 6,733 crores which is individually around 42 % of the entire finance generated there.
 - N C Saxena, former member of the erstwhile Planning Commission, says centralisation opens up the chances of corruption at high levels.
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