
UNIT 22 FEDERALISM: PATTERNS AND TRENDS

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22.1 INTRODUCTION

Over centuries and decades, federalism has been evolving through several experiences of ruler vs. subjects, public vs. government, and constituent units vs. federal unit which in common signify the necessity and importance of the human concern for widening the space for 'unity' in diversity. It has been passing through difficult terrain of trial and error, differences and conflicts, compromises and disagreements as well as tolerance and denial in the volatile field of power and politics. Federalism, which succeeded in most of the modern liberal democracies operational in modern societies, has now entered a new phase of broader political integration whereby it is no longer constrained by rigid notion of Austinian State sovereignty. Modern developments in transportation, social communications, technology, globalisation and other modern means of interactions have all contributed to such a paradigm shift in the modern world. On the other hand, the Austinian sovereignty is held in high esteem in non-modern countries (dysfunctional liberal polity with illiberal/non-liberal social bases), thus according primacy to territorial unity over the need for acknowledging popular sovereignty and the viable projects for nation building. However, the relevance of federalism has remarkably grown over the years due to its inherent viability of institutional and operational mechanisms in forging unity in diversity.

Federalism is one of the most important and dynamic aspects of discourse in the political sphere of democratic governance and unity. It is basically intended to create and sustain a united polity and coherent society in multicultural and diverse societal realities. Federalism is not a descriptive but a normative term that advocates multi-layered

governments combining elements of self-rule and shared-rule. It is premised upon the expectation and rationality of promoting unity in diversity by accommodating, preserving and representing distinct identities within a larger political union. In the opinion of Ronald L. Watts, the essence of federalism as a normative principle is the perpetuation of both union and non-centralisation at the same time. In other words, federalism aims at achieving some degree of political integration based on the wisdom of diversities to compromise upon the common goal of sustaining unity. What we can call more appropriately as the federal exercise of diversified territorial and non-territorial ethnic groups to legitimise the principles of democratic governance.

Daniel J. Elazar looked into the rationality of political integration rooted in the principle of self-rule and shared-rule. He says that political integration on a federal basis demands a particular set of relationships, beginning with the relationship between the two faces of politics, power and justice. On the one hand, politics deals with the organisation of power, in the words of Harold Lasswell, with “who gets what, when and how.” Politics, however, is simultaneously concerned with the pursuit of justice—with the building and maintenance of good polity, however defined. All political life represents some interaction of these two faces of politics, whereby the organisation and distribution of power are informed by some particular conception of justice, whereas the pursuit of justice is shaped (and limited) by the realities of power. In a limited form, federalism is generally studied as the subject of the distribution and sharing of power but in its broadest sense is presented as a form of justice with particular reference to autonomy and participatory polity. Federalism is supposed to have the attributes of establishing rational and democratic relationship between justice and power, thus retaining the great urge for unity along with great respect for territorial and ethnic identities.

22.1.1 Dislocating the Agenda of Nation-Building

There have been quite disastrous results in many multicultural and bi-communal societies which earlier had the experience of colonial rule or which adopted an alien system of governance with the prime purpose of seeking equality and justice. It is not important for any national leadership to simply borrow alien concepts and principles of managing society and polity in pursuit of the free exercise of freedom. It seems rather more important for them to look into the aspect of voluntary conformity and suitability of political mechanisms for governing a society. One can take some fundamental objectives such as constitution-making, state building and nation-building as the most unavoidable tasked responsibilities for a multicultural nation and a multinational state. How far the national leadership of post colonial or west-ward looking countries have looked to these dimensions of national solidarity at the broader level?

The experiences have been reversed on this question where respective national leadership, who claimed to represent masses and nationalities, adopted the principles of governance and representation on a colour-blind premise. There are a number of cases where major national group or community has been occupying all the privileges and incentives created by the modern notions of power and politics by depriving and marginalising other smaller national groups or communities which are generally referred as minorities. As a result national leadership of some non-modern societies (which do not generally

accept this kind of sweeping remark and generalisation) have taken up the western wisdom in the reformative (in some cases symbolic only) form to cater to the needs of their multicultural societies. Some countries in Africa, Asia and Eastern Europe have responded more positively unlike those who idealised modern schemes of governance in non-modern societies. Therefore, it seems reasonable to also question the pre-conceived rationality for example of protecting minorities under a federal-democratic polity.

But there has been very minimal attention to realities beyond institutions. They are individuals, masses, communities or groups. The basic purpose of any political set up is to seek strength from its social base where people, either homogeneous or multicultural, matter at the beginning and the end. As per the available information and findings, modern societies of Western Europe and Canada did take the interests of national minorities and co-founders of the procedural republic who differed with national majority section on ethnic factors (language, religion or culture based). The federal polity succeeded in most of these modern societies mainly because of important factors of territoriality and the indoctrination of liberal-contractual individualism. Most of them have national minorities who have strong and impressive zonal existence which otherwise is not the same in those countries where several religions, sects and races lived and cohabited for centuries.

22.2 DEBATING THE TERM AND ITS UTILITY

The word—federalism as a political doctrine of political management has never been free from its controversial interpretations. It seems to be eligible for both traditional and modern societies as it exists in both. It is sometimes taken as exclusively liberal and sometimes quite accommodative. On the one hand, federalism is focussed on the polity of territorial unit. On the other, its logical territorial interpretation also implies the greater need for its relevance to societal needs. Federalism seems to be comprehensive and inclusive than it is generally described. The practical necessity of federalism requires it to be socially viable and answerable. But the main problem is that it has been described more as subject of liberal discourse. It is generally said and rightly so, as per its historical growth has taken place, that federal principle and arrangements suit the modern temper. As basically covenantal arrangements, they fit a civilisation governed by contractual relationships.

The whole edifice of federalism is based on the liberal premise of modern society in which individuality and civic community form the basis of compromise and relationship among persons and groups for achieving highest form of political integration. Federalism does not entertain traditional kind of group rights-based pluralism but rather post-traditional pluralism. At the very initial stage, federalists argue that civil society has its own origins in a covenant or compact and must be based on consent. Federal principles grow out of the idea that free people can freely enter into lasting yet limited political associations to achieve common ends and protect certain rights while preserving their respective integrities. The federal idea rests on the principles that political and social institutions and relationships are best established through covenants, compacts or other contractual arrangements rather than, or in addition to, simply growing organically.

Therefore, federalism gave its impression of success of being territorial in political prescription which better served the interests of modern societies. People having linguistic

and religious (mainly sectarian) homogeneity with territoriality were identified as sub-national federal units which shared powers with federal government under the principles of self rule and shared rule in Europe, USA, Canada, India and in other countries. But federalism has not so far broadened its conceptual premise to include the interests of dispersed minorities though its interpretations and explanations by scholars indicate adequate space for minorities in polities.

It is the best efforts made in the respect of forging everlasting human relations that can only be possible for them when they operate in liberal premise or in modern civic sense of organising relations. This has been possible in those societies where communities have produced individuals of society not unified but united on certain terms and conditions for sharing powers and justice. Such a description is hardly to match with the experiences of many societies where the base of relationships could not be made either at the personal or group levels while stepping into a modern system of governance yielding power and justice. But it does not mean that federal principles are meaningless for non-modern societies or where consensus lacked in state and constitution building. This may not be applicable in universal form but it is certainly very suggestive in following the just pattern of relationship to share power and justice.

Even in the world of its origin, particularly since 19th century, federalism has extended its length of relevance from political to social. It deals with the proper relationships among people as individuals, or in families and groups, as well as in their capacity as citizens, whereby they relate to each other federally, that, is as partners respectful of each other's integrity while cooperating for the common good in every aspect of life, not just in political realm. Federalism also emphasises the existence of essentially permanent religious, ethnic, cultural or social groups around which political life must be organised. Whether or not the polity is formally structured around those groups, they serve as its pillars. So the federal principles of governance also provide an opportunity to consider both citizenship rights and differential rights. It is another matter how do we organise it in the context of the societal needs?

Most federal polities are not consciously informed by the idea of federalism as a social phenomenon and tend either to ignore or reject it. The assessment of social dimension is based on the degree of what can be termed consociational behaviour present in apolitical polity. Under the essential territorial category, otherwise advocated by many, of federalism, territory becomes the basis for political action. Every interest is located in formally defined political territory which can gain some measure of expression more or less proportional to its strength, simply by making use of the country's political mechanisms. Elazar says that territorial division of power can also be used to protect minorities and minority communities by allowing them greater autonomy within their own political jurisdictions. Thus it is very clear that federal territoriality does not mean to deprive minorities within the territorial federal unit of their due rights in power-sharing and federal commitment to justice.

22.3 PATTERNS OF FEDERALISM

Possibly one can take up the subject of the pattern of federalism at three levels—'internal crust' (basic features), 'broad spectrum' of non-unitary forms of governance,

and country-specific pattern of federal polity. Meaningful study of federalism necessitates efforts to look at federal political system (patterns) and political process (trends) which are concerned with organising governing constitutionally in a certain way and then to live up to the constitutional demands. In the earlier stages of the history of modern federalism, structural considerations were not only primary but were also essentially, in the words of Elazar, 'the be-all and end-all' of the concern for federal arrangements. As a result, the construction of adequate federal structural would result in functional federalism. It is, therefore, important to find common structural characteristics of federations as a specific form of federal political system, which can be identified to all federal systems. Elazar found three most essential characteristics and operational principles. They are written 'constitution', 'noncentralisation' and 'areal division of power.' To him all constitutions follow one or another of five basic models: the constitution as (1) frame of government and protector of rights; (2) code (which reflects the reality of politics in which the character of the regime is sufficiently problematic for changes in the authority, powers, or functions to require explicit consent); (3) revolutionary manifesto or social character; (4) (tempered) political ideal; (5) modern adaptation of an ancient traditional constitution.

Quite similar to above findings, Ronald Watts counts the following structural characteristics: two orders of government each acting directly on their citizens; provision for the designated representation of distinct regional views within the federal policy-making institutions, usually provided by the particular form of the federal second chamber; a supreme written constitution not unilaterally amendable; an umpire to rule on disputes between governments; and processes and institutions to facilitate intergovernmental collaboration for those areas where governmental responsibilities are shared or inevitably overlap. Recent writings of Watts confirm the notion of two or more orders of government combining elements of shared-rule for some purposes and regional self-rule for others as "basic essence" of federalism. He further says that it is based on the objective of "combining unity and diversity": i.e. of accommodating, preserving and promoting distinct identities within a larger political union. What basically distinguishes federations from decentralised and confederal governance is that in unitary systems the governments of the constituent units derive their authority from the central government, and in confederations the central institutions are empowered by the constituent units. In a federation, each layer of government is empowered by the constitution.

However, it is important to mention that some polities can be identified as hybrids incorporating features of different political experiences. In some federations like Canada, Malaysia, South Africa, India and Pakistan, the federal governments have overriding powers over the constituent units. They have been labelled as quasi-federations on different occasions of their development. On the other hand, predominantly federations like Germany and Switzerland have confederal elements. Similarly, the European Union which began as a modern European confederal arrangement is now entering in a decisive phase of being a federation. In the modern and post-modern epochs federalism has emerged as decisive means of accommodating diversities for their distinctive expressions on the one hand and building united polities on the other.

Federal arrangements employ different ways for the application of federal principles. In the words of Elazar, federalism can be considered a genus of political organisation of

which there are several species. Europe knew of only one federal arrangement, confederation. Two centuries ago, the United States invented modern federalism and added federation as a second form, one that was widely emulated in the nineteenth century. He defines federation as a polity compounded of strong constituent entities and a strong general government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers. Since World War II, some new federal arrangements have developed and employed to pursue federal principles of governance.

Federalism, as may be normatively understood as both political and social-cultural phenomenon with the basic objective of securing unity in diversity, cannot overlook several varieties of political arrangements deeply associated with the term federalism. Elazar originally identified six varieties of federal arrangements in 1987 which later became sixteen forms of autonomy or self-rule. Six include unions, consociations, confederations, asymmetrical federal arrangements, leagues, local and non-governmental federalism other than federations. Elazar identified three principal models of modern federalism—the American system, the Swiss system, and the Canadian system. Federations are compounded polities, combining strong constituent units and a strong general government, each possessing powers delegated to it by the people through a constitution, and each empowered to deal directly with the citizens in the exercise of its legislative, administrative and economic powers, and each directly elected by the citizens. Ronald Watts identifies 25 countries that meet the basic criteria of a federation.

Introduction of modern federalism to build the United States as a federation was basically a new political arrangement as a supplementary alternative to Jacobinism and modern nation-state which claimed that its combination of territory, government and public should be considered exclusive, embracing a single united people and possessing a common centre. Moreover, nation-state is supposed to be exclusive in their sovereign powers which do not suit federal solution. The Americans, opposed to the sixteenth-century European view of the sovereign state, found sovereignty vested in the people who set limits on governmental authority. To Elazar, twenty-one additional states are not formally federal but have, in some ways, incorporated federal arrangements, principles, or practices into their political systems to accommodate the heterogeneity. They can be grouped into three basic categories: legislative unions constitutionally decentralised unitary systems, and consociational unions on a non-territorial basis. Technically unitary states (like UK) differ from undiluted unitary systems (like France) because the former uses federal arrangements to accommodate diversities within that union.

22.3.1 Unions

Unions are polities that were consciously and deliberately united or compounded out of what were formerly separate identities either by consent or force in order to preserve integrity of constituent units which in return respect their respective integrities exclusively through the common organs of the general government rather than through dual government structures. New Zealand and Lebanon are examples. Belgium, prior to becoming a federation, had sound federal principles for the unity of Flemings and Walloons. A legislative union can be defined as a compounded polity in which the

constituent units find their primary constitutional expression through common institutions. The United Kingdom is a long-standing legislative union. It is a compound of four countries and several offshore islands. Its polity is based on political arrangements that guarantee Scotland its own local administration, law, church, and central bank; Wales, a measure of cultural home rule and administrative autonomy; Ulster, home rule with its own legislature; and the islands of Guernsey, Jersey, Man, and Sark off the British coast, substantial constitutional autonomy in their internal government. Legislative unions generally unite unequal polities.

22.3.2 Consociations

The constitutional decentralisation of unitary states, an ancient device, has appeared in different forms. The Netherlands, union of original provinces, provides for considerable devolution to the provinces and their municipalities. In decentralised unitary states, local governments avail constitutional guarantees for considerable autonomy in some areas, but local powers are guided by the central government. Consociations are non-territorial federations in which polities are divided into permanent transgenerational religious, cultural, ethnic or ideological groupings known as 'camps', 'sectors', 'pillars' federated together and jointly governed by coalitions of leaders. In other words, consociations are federalised unions of ethnic (including tribal) groups that, though not organised territorially, have acquired corporate characteristics of their own and secured constitutional arrangements to preserve their respective integrities within a common polity. Arend Lijphart, Gerhard Lembruch, and others have termed such polities consociational, borrowing the term from Johannes Althusius. The Netherlands, Belgium, Lebanon, and Cyprus (1960-63) can be called consociations. Consociational arrangements seem to have a road-map for power-sharing.

22.3.3 Confederations

Confederations are built upon several pre-existing permanent national communities which join together to form a common government for certain limited purposes (for foreign affairs, defence or economic purposes). The common government is dependent upon constituent states. Confederations disappeared during the modern epoch because confederal schemes failed to mobilise political support to maintain themselves in an age of exclusive nationalism. Confederations such as the Holy Roman Empire, the medieval city leagues of Germany, Belgium, and Italy and the United Provinces of the Netherlands either disintegrated or were constituted as consolidated states. Switzerland (during 1291-1847) and the United States (1776-1789) were confederations. At present the European Union represents as confederal body. Demise of confederal arrangements is rooted in the idea of the nation-state possessing complete sovereignty and encompassing a single nation.

22.3.4 Asymmetrical Federal Arrangements

Asymmetrical federal arrangements are sought for uniting smaller states with a larger polity and they are premised upon the federal principles of internal autonomy and self-government for the former. Such arrangements are sometimes known as free association

manifested in associated states, federacies and condominiums. The Netherlands Antilles and the Netherlands and Puerto Rico and the United States are particularly good examples of associated states and federacy, respectively. There are more than twenty such arrangements. Associated states are similar to federacies, but they can be dissolved by either of the units acting alone on prearranged terms established in the constituting document or a treaty. The relationship between New Zealand and the Cook Islands is an example. Condominiums are political units whose governance is shared with two or more external political entities in such a way that the inhabitants have substantial internal self-rule. Andorra functioned under the joint rule of France and Spain during 1278-1993.

22.3.5 Leagues

Leagues represent a combined effort of entirely independent polities in some lasting ways to be managed by common secretariat rather than a government. Members can voluntarily withdraw from the league.

Local and non-governmental federalism is applied on the local plane and are growing in number and scope. Federalism is here introduced as a solution to look into local issues. The Canadian experiments, particularly in Ontario are good examples of the use of federal principles and arrangements. The Indian experiment of strengthening local self-governments by enactment under 73rd and 74th constitutional amendments can be reasonably brought in the category of local federalism. This has been called as the third tier of Indian federal polity but it is basically local federalism because it seeks political integration ranging from metropolitan rural regions. However, it is open for debate and discussion. Non-governmental associations are also organised along federal principles in modern democratic countries. Labour unions and business, both public and private are examples.

22.4 STRUCTURE AND TYPOLOGY OF FEDERALISM

Federalism is still a highly debated subject matter in different parts of the world because of the lack of universality of structural and operational factors. This has been so due to its origin and operational dynamics in different circumstances. The historical experiences of a country in dealing with matters of distributive governance, autonomy and common desire for co-existence, based on compromises and other factors basically determine the structure and process of federal governance in that particular country. Similarly the dynamics of operational reality and pattern of interaction between constitutional institutions and societal build the federal edifice which may differ from country to country. Most of the federations, which resulted through democratic means and practices, have a common feature—desire for federal unity in general and constituent autonomy in particular.

Elazar found federalism as much a matter of process as of structure, particularly if process is broadly defined to include a political-cultural dimension as well. Watts says that the specific form of allocation of the distribution of powers has varied relating to the underlying degrees and kinds of common interests and diversity within the particular

society in question. Different geographical, demographic, historical, economic, security, linguistic, cultural, intellectual and international factors and their relations have been significant in contributing to the strength of the motives for union and for regional identity and therefore affected distribution of powers in different federations. Constitutional structural patterns of a federation are greatly affected by the working of the government and fundamentally of society. Social forces and territorial identities thus affect and influence operational aspects of federalism. The relationships between a society, its constitution fabrics and processes are not static but involve continual mutual interaction. Therefore, a federation becomes a subject of deep analysis of the interplay of forces that affect each other and the finality of that political exercise.

Daniel J. Elazar, Ronald L. Watts, John Kincaid, Daniel Thurer, Wolf Linder, Thomas Fleiner, Nicholas Haysom, and some other scholars have been concerned over the impact of changing nature of the world, regional configurations, and domestic transformations upon the evolution of federations. The first arises from the impact of globalisation, which has been instrumental in the increased merging of domestic and international policy issues. This has radically affected international relations and foreign policies within federations. Constituent polities of federal governments are now frequently involved directly both in trans-border arrangements with the constituent units in neighbouring countries. A second major issue arises from the dynamics of multi-cultural diversity, ethnic bargaining, internal tolerance and the frequency of multi-cultural conflicts in federal societies. A third issue is about the appropriate assignment of responsibilities and of the fiscal resources to different federal layers.

22.4.1 Distribution of Powers

The most fundamental characteristic of federations is the constitutional distribution of powers between two or more orders of government. Several devices are therefore required to maintain twin federal principles legitimising the scope of independence and interdependence of federal government (common polity) and constituent polities, each have a substantially complete set of governing institutions of their own with the right to modify those institutions unilaterally. Both separate legislative and administrative institutions are necessary. The main purpose of federal pattern is to enable each government to operate within its area without dependence upon the other and to have the structural wherewithal to cooperate freely with the other's institutions. Thus the structural pattern of federalism seriously assigns the task of the distribution of powers in federations.

In Anglo-Saxon tradition, each order of government has generally been assigned executive responsibilities in the same fields for which it has legislative powers. Classical examples are the USA, Canada, and Australia. This pattern reinforces the autonomy of the legislative bodies by assuring each government to implement its own legislation. In Canada and Australia where the parliamentary executives are responsible to their legislatures, it is only in legislative and executive jurisdiction that the legislature can exercise control over the body executing its laws. In some federations, there are constitutionally mandated provisions for dividing legislative and administrative powers between different layers of government. They are to be distinguished from temporary delegations of legislative and

executive authority that also occur in many federations. Constituent polities in Switzerland, Austria, Germany, India and Malaysia are constitutionally responsible for implementation and administration of a wide range of federal legislation.

In most federations, federal governments have exclusive jurisdiction in the matters of international relations, defence, the functioning of the economic and monetary union, major taxing powers and inter-regional transportation. Constituent polities are assigned with social affairs (including education, health services, social welfare, labour services), maintenance of law, security and order, and local governments. Some matters like foreign relations and finance have become areas of serious concern for constituent polities which, in some federations, have asserted to play important role together with federal governments.

In European federations like Switzerland, Austria and Germany, administrative responsibility has not coincided with legislative authority. As a result, constituent governments are constitutionally assigned the administration of many areas of federal legislative authority. This enables the federal legislature to lay down considerable uniform legislation to be applied by the constituents in ways that take account of varying regional circumstances. The trend, however, has not been corresponding to the structural pattern. Even in the Anglo-Saxon federations, federal governments have transferred substantial responsibilities related to federal programmes to the constituent polities often by providing financial assistance through grants-in-aid programmes. As a result, federal-constituent sharing in the latter's sphere. Differing trends are also found in Malaysia, India and also in Belgium and Russia.

There are variations in the form of the distribution of legislative authority. In federations like Canada, Switzerland and Belgium, most of the legislative powers rest either with the federal or constituent polities. The fields of exclusive jurisdictions are more specifically defined in Swiss and Belgium federations. On the other hand, exclusive jurisdictions assigned to the federal governments of the USA and Australia are very much more limited with most federal powers being identified as shared concurrent powers. In Austria, Germany, India and Malaysia, there are fairly extensive categories of exclusive jurisdictions and concurrent powers. By contrast to a wide concurrent jurisdiction in the USA, India, Australia and Malaysia, only agriculture, immigration, old age pensions and benefits, and export of non-renewable natural resources, forest products and electricity energy are specified concurrent subjects in the Canadian constitution. The Canadian exception can also be found in the concurrent area of old age pensions in which provincial law would prevail in case of conflict with federal law. As a result Quebec has its own pension system.

In most federations (like the USA, Switzerland, Australia, Austria, Germany, Belgium and erstwhile Czechoslovakia) the residual powers, not mentioned in the constitution, rest with the constituent polities which are created by a process of aggregating previously separate polities. The residuary powers rest with the federal government in federations which evolved through devolutionary efforts of the centralised system, like India, Canada and Malaysia. The residuary powers become significant subject of attention when the lists of legislative powers are not expansive. They are relatively insignificant in case of

federations like India, Malaysia and to a lesser extent Canada than in case of the USA, Australia and Germany where constituent powers are enumerated but simply covered by a substantial unspecified residual power. The trend in the latter's case is directed towards centralisation. In practice the courts read the maximum "implied powers" into the specified federal authority at the expense of the scope of residual powers of the constituent polities. In India, Malaysia and also Canada, extensive emergency and overriding powers rest with the federal government to interfere into constituent matters.

22.4.2 Allocation of Financial Resources

Allocation of financial resources is one of the most crucial subjects of interests in federalism. Constitutions of most of the federations specify the revenue-raising powers of federal and constituent governments. The federal governments usually retain major taxing powers such as customs, excise and corporate income taxes. In case of India and Austria, personal income tax has remained exclusively federal. Federal and constituent governments share sales and consumption taxes in most federations. Despite the tax sharing factor, the federal governments seem to predominate because of the federal power to prevail over the concurrent area and because of the limited revenue-raising sources with the constituent polities. Besides, there are two important sources for raising funds—public borrowing and profit of public corporations and enterprises. The distribution of expenditure powers in each federation corresponds to the legislative and administrative responsibilities of each government. Wherever, the administration of many federal legislation is constitutionally assigned to the constituent polities as in Switzerland, Austria, Germany, India and Malaysia, the constituents have broader expenditure responsibilities. Spending power of governments in a federation is generally not restrained by listed legislative and administrative jurisdiction. Federal governments have used their general spending power in areas of exclusive constituent jurisdiction by providing grants. As a result, they possess a "general" spending power, which normally become contentious in intergovernmental relations. The constitutions of the USA, Canada and Australia do not specify a general spending power but in case of India and Malaysia the federal governments are clearly empowered to provide grants to the constituents.

Most federations have the arrangements for correcting vertical and horizontal financial imbalances by making financial transfer from one level of government to another. Besides the proportionality factor, conditional and non-conditional transfers also affect the degree of constituents' dependence. Federal transfers to the constituents, "golden lead" as it is referred to in Germany, may undermine their autonomy in many regards. Equalisation transfers scheme (for the remedy of regional disparities in wealth among regions within a federation) are quite common among most federations except the USA, but the scope of transfers has been greater in some such as Germany, Canada and Australia than in others such as Switzerland. The equalisation scheme is based on agreed formula in Switzerland, Canada, Germany, Austria, Malaysia, Belgium and Spain than in India and Australia based on the recommendation of standing or periodic commissions.

Federations have also developed institutions and processes to deal with imbalances. In Federations characterised by a separation of executive and legislative powers within

each layer of government (the USA and Switzerland), the primary arena is federal legislature to deal with imbalances than in other cases characterised by fused parliamentary executives, where the primary arena has been that of executive federalism, i.e. negotiations between the executives belonging to the two layers. The Federal government in India and Australia play the main role in establishing expert commissions for determining distributive formulae, which collect representations from the constituents. Malaysian National Finance Council, composed of federal and constituent representatives, is the second pattern. In Germany, Austria, Switzerland, Belgium and the USA, representatives of the constituents in the federal legislature are involved in approving grants process to the constituents. Canadian experience is the fourth pattern where equalisation formulae, other tax transfers and tax agreements are determined by the federal government. Most notably, India, Australia, Malaysia, Germany and Canada have come up with a variety of intergovernmental councils, commissions and committees to facilitate adaptation of the financial arrangements.

Entrusted with one of the important tasks of building relationships between governments as being partners within a federation, most federal constitutions have developed some means to facilitate extensive cooperation, and coordination. Informally they are carried out through direct communications, between ministers, officials and representatives of federal and constituent governments and formal institutions like standing and ad hoc meetings involving ministers, legislators, officials and agencies of different governments. A noteworthy feature is the prevalence of “executive federalism”, (Canada, Australia, Germany, India and Malaysia) i.e. the predominant role of governmental executives (ministers and their officials), in intergovernmental relations in parliamentary federations where first ministers and cabinet ministers responsible to their legislatures tend to predominate within both layers of governments. In addition, there have been inter-constituent relations, which are dealt with cross-boundary issues affecting neighbouring constituents. Sometimes inter-constituent cooperative efforts have been extended to cover all the constituents within a federation. This is referred to as “federalism without Bern” in Switzerland and “federalism without Washington” in the USA.

22.4.3 Principle of Bicameralism

Most federations, except Ethiopia, the United Arab Emirates and Micronesia, have adopted the principle of bi-cameralism, representing the federal second chamber for equal representation of the constituents. However, there is enormous variation among federations in the method of selection of members, the composition, and the powers of the second chamber, and consequently its role. In Australia, the USA, and Switzerland, the citizens of the constituent polities directly elect its members. They are indirectly elected in Australia and India. In Germany, the members of the Bundesrat are delegates of their Land cabinets, holding office in the federal second chamber ex-officio as members of their Land executive and voting in the Bundesrat in a block on the instructions of their Land governments. In Canada, members of the second chamber are appointed by the federal Prime Minister and hold office until their retirement at 75. Malaysia, Belgium, and Spain have a mixed membership through indirect elections and appointments. Where there are parliamentary executives, the house that controls the executive inevitably has more power, consequently limiting the role of the second chamber. This has raised

question over the effectiveness of the constituents within parliamentary federations, except that of the Australian Senate and German Bundesrat. South Africa has adopted the German model with some modifications.

22.4.4 Supremacy of Constitution

The supremacy of the constitution is also one of the most important aspects of federalism for effective implementation in guiding the federal and constituent governments. Given the dynamics of federal relations and complexities, the factor of inter-dependence, competition and possible conflict, most federations have prepared themselves to resolve conflicts through electoral or judicial means. Most federations rely upon the combination of these processes. Electorates express and support their preferences by voting in periodic elections at both layers in federations. In the case of Switzerland, the electorate can play adjudicating role through legislative referendum. In addition to mandates, most federations have relied on judiciary—Supreme Courts serving as final adjudicator in the USA, Canada, Australia, India, Malaysia and Austria. Some federations like Spain, Germany and Belgium have Constitutional Courts. The Swiss federal Tribunal may rule on the validity of cantonal laws. However, there are some questions about the extent of governmental influence on the court and its composition.

So far as the issue of the constitutional amendment is concerned, one has to look into amending powers of the layers of the governments. Federalism requires balance between rigidity and flexibility by providing different amendment procedures for different parts of the constitution. The Canadian constitution has five different procedures for amendment involving varying degree of rigidity. Both Houses of the federal legislature (of USA, India, Malaysia by special majority, Switzerland and Canada by simple majority) are generally engaged in the approval of amendments concerned with the distribution of powers and integrity of the constituent governments. In addition such amendments require either approval by a special majority of the constituent legislatures, as in the case of the USA and Canada, or a majority of state legislatures as in India, or by referendum requiring a double majority and majorities in a majority of constituent governments in case of Switzerland and Australia. In the case of Malaysia, major amendments affecting the Borneo constituents require their concurrence.

As it was pointed out earlier the interplay between the federal structures and societal forces determine trends in federal polities which can be observed in modern societies pursuing regional autonomy and inclusion of minorities. The structures can be decisive elements of enforcement in statist paradigm pursuing nation-states. But the federal notion itself is in conflict with the location of sovereignty in nation-states. Trend has been quite disturbing in countries where communities, better expressed as minorities and majorities, have remained attached to their group consciousness, thus historical in their character and manifestations. Unlike the modern societies, the individualist paradigm remained infertile in the historical societies, thus identifying them as countries of people rather than of individuals and public.

Two examples can be taken under this category—Nigeria and India. The former has a more positive trend because of its federal farsightedness in terms of consociational

management of the polity. The latter has approached consociational approach in dealing with the State of Jammu and Kashmir together with some special rights to tribal dominated states and sub-state regions. But the sizeable minorities particularly are not only marginalised but the soft victims of prejudiced forces operating at different levels in violent and normal situations. For example, the federal autonomy to the state (take the case of Gujarat and many more earlier) enshrined in the Indian Constitution, which resisted any kind of intervention from the Union, failed completely to save the lives, properties and the rights of minorities (guaranteed under provisions of the Fundamental Rights, Indian Penal Code and Criminal Procedure Code, Service Rules and instructions of the National Human Rights Commission). Therefore, Indian federalism could not qualify the test of creating a non-majoritarian and compounded democracy to ensure even security to the individuals belonging to minorities. Moreover, there is strong tendency of centralisation in Indian federalism.

Therefore, the trend of federalism in historical societies is different from their modern counterparts. That trend is largely influenced by the vision and constructive efforts of governmental and non-governmental structures and processes, which are the results of cooperative efforts among individuals belonging to different groups and regions. Examples are the more achievements and fewer failures of the American, Australian, Canadian, Austrian, Belgian, Swiss and German federalism. Their respective internal tolerance and solidarity in their democratic exercise of powers of multicultural societies are now being influenced positively by the forces of globalisation and technological advancements. As a result, they were united in their efforts in taking up issues of federal solutions and federalisation like their active role in Bosnia Herzegovina, and building a united single Europe.

In other words, their federal efforts and political initiatives have finally shifted towards federalism which originally evolved from confederal arrangements. Even a non-federal country like Italy adopted regionalism kind of federal solution in of its areas. In Italy, five ethnic minorities were given special status regions in Valle d' Aosta (French speaking), Alto-Adigo (German speaking of South Tyrol), Sardinia and Sicily where most active separatist movements were granted special status regions. Similarly Friuli-Venezia Giulia (Slovene minority) was granted special regional status with 15 ordinary regions. Belgium reconstructed its consociational arrangement for making it more egalitarian and federal in character. Spain, consisting of 17 autonomous communities possessing the right to self-rule, is further required to look reasonably into demands of the Basque country. Thus, modern federalism which has been taken up by the modern liberal democratic countries as a political package of collective participation and development for all individuals and regions, has not been sincerely tried by non-liberal and traditional societies where challenges are multiplying day-by-day.

22.5 SUMMARY

Federalism is intended to create and sustain a united polity and coherent society in multi cultural and diverse societal realities. It is a normative term which advocates multi-layered governments combining elements of self-rule and shared-rule accommodating and representing distinct identities within a larger political union. Federalism is supposed