

## **center-state Relations in India**

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**Week 01: Centre-State Relations: Nature of Indian Constitution**

**Lecture 01: Concepts of Federalism and Theories of Federalism**

Greetings to all of you. So this is a new course what we are launching under the platform of NPTEL SWAM on the Central State Relation. And in this course we aim to cover nuances of the Central State Relations, how it has developed, how it is growing and what are the challenges. And with this regard we have divided the subject into different modules. Today is the first module, first lecture in which we are going to give a theoretical aspect of federalism where we will be discussing concepts of federalism. We will discuss theories of federalism and we will also discuss two popularly prevalent models of federalism so that you get a kind of overview on the very functioning of the federalism or the idea has come into existence that is what is the aim to that is what is the idea underlying sharing this perspective with you in the very first lecture.

So in this lecture we will be sharing concepts of federalism and theories of federalism. Now when you look at concept of federalism we know very well that in law reference always goes to Latin language possibly because of the reason that in those days Latin language was used for crafting legal text and the literature indicates that Latin language was used because it was a mode of learning for the educated class and the educated class found that Latin language conveys the meaning in a very precise term and that precision gives the advantage in relation to law and legal language and that is why you must have come across with the references of Latin language Latin maxim while understanding different concepts in law. Similarly here also we look at the very genesis of the word federalism which literature says has come from the word foedus which means treaty compact or contract and foedus gets its origin from Latin word fides meaning trust and you can very well look at the connect because federation is about trust federal structure is about functioning on that trust between the Centre and the States. So federalism as an idea is about distribution of powers between the Centre and the States distribution of power between the Centre and the States where sovereignty or the political power is divided between the Central and the State government or what you may call it also as Union and the provincial government and that division is done in such a way so that both the governments they operate within their domain their sphere with independence.

So there is a sort of independence, independence between what we call as constituent units, constituent unit is one is the Centre and the other is the provinces. So they are sovereign within that sphere they are autonomous within that sphere what Constitution guarantees them and that is why it says that federalism is the distribution of power among the States originating in and controlled by the Constitution. So please take note of this very fact that it is the division or distribution of power is legitimized through a constitutional process and that is why in a federal system you find that constitutional supremacy becomes a key feature and in a federal structure you also find because of this key feature the responsibility of judiciary to interpret the Constitution so that political ambitions of the Centre or the State should not become a driving force for identifying width and breadth of that sovereign power because sovereign power is something which has been agreed upon and becomes part of the foundational document and everything gets governed on the basis of the State and responsibility is interested upon the judiciary that in the situation of conflict you resolve and try to give a guideline that how conflict can be minimized or eliminated. So federalism is about a system of government based on division of constitutional power and the division of power is among Centre and the State and both the Centre and the State work in their sphere which is guaranteed to them and each of them they are autonomous and not subservient to each other. The moment it becomes subservient then the character changes and it becomes unitary, the moment the provincial government gets its legitimacy from the Union government then the structure becomes unitary.

Now Indian federal structuring is unique for this reason that the Constitution lays down the division of power between the Centre and the State and also Constitution gives a distinct status to third tier government what popularly known as local government in India known as municipality or panchayat system. So in India we do have three layer of system which collectively can be called to be part of federal structuring Centre State and Local government where local government also draws power and conformant of function as per the Constitution. Let us look at theories of federalism. There are three well known theories classical theory, origin theory and functional theory. Now when you look at this theories proponents of classical theory they are Dicey, Harrison Moore, Bryce, Robert Garran, KC Wheare and in classical theory this jurist they have described federalism as something in a very textual sense, in a very classic sense that what federalism is all about on a very theoretical plane where they have said that certain condition needs to be fulfilled for calling a structure a federal one and what according to them are the prerequisites this has to be a written Constitution both levels of government and there has to be interdependence of each level of the government.

Interdependence is all equally important. So independence within their own sphere and on the common national interest there has to be interdependence and written Constitution is very important because it is the Constitution which is the source of that autonomy. So that the State government shall exercise the function in that given autonomic structure without any interference from the Centre. So this second one is origin theory. Origin theory is more based on this very idea that what factors led to the creation of country as a federal one.

What are the factors which contributed to that? That what are the cause responsible for the creation and sustenance of federalism? So unlike in classical theory where it was all discussed on a very theoretical plane that what federalism is here it defines federalism in terms of that what are the circumstances which has led to this dual system of the Centre and the States. What are those circumstantial factors and forces which played a defining role in accepting that model? And what we look at is that when you look at it critically with comparison with the classical one where factors are not considered. So under this origin theory we also try to look at when we say that the factors led to federal modeling that what are the problems which persist in that political setup which federal system is proposing to solve or to address. Political motives play a significant role in the development of federalism. Why it plays an important role because after all there is a kind of agreement to come together by political forces on defined terms and condition.

And that is why jurist William S. Livingston says that nature of the society and the diversities that are geographically grouped together give rise to the federal structure. So Livingston explains that what factors are conducive for federal model. It says the society which is a diverse one where we need to accommodate that diversity those values diverse values then federal structuring becomes an acceptable model for that diversity

KC Wheare also says that multiple factors or the combination of multiple factors describes origin of federalism which includes desire for the establishment of the Union and the regional government and the capacity to fulfill the desire. The desires may be common defense social and economic advancement. So, if there is a fear of external aggression the territories may decide to join hands. So, that the fear of external aggression can be minimized. Socio-economic development can become a factor when they find that coming together joining hands will help in accumulating resources and with that resources better socio economic development can be attained.

And that is how you find another scholar William H. Riker he says that federalism is one of the ways to solve the problems without the use of aggressive imperialism. Because you can very well visualize that if a accommodative approach of federal structuring is not working possibly that may the alternate which political leaders or the rulers may look for is to acquire the territory. And that is why it says it is ways to solve the problems without the use of aggressive imperialism. The merit of political theory is that that it represents federalism as essentially a political solution to different solutions that involve the potential of political bargain.

So, you can very well look at it that in this theory it is more of seeing federalism federalist structure as a solution to the geopolitical problem. Next is the functional theory. Functional theory proposes a dual federalism based on the existence of two coordinate and independent levels of government in a federation. Where the jurisdiction is well demarcated, jurisdictions with regard to which in which jurisdiction central government will play and in which direction the regional government will have their say. Where they can operate independently there should not be any kind of interference.

And the maintenance of functional division between the two levels of the government is the key to the maintenance of genuine federal structure. So, that unnecessary there should not be any encroachment. Functional theory in modern day gave rise to the concept of cooperative federalism which we are discussing in the coming lecture. Now, as I said that there are two models, two models which generally we find for the formation of the federal structure in the world. One model is holding together and another one is the coming together.

Now, holding together is about envisaging a situation where the power is devolved from the Centre to the periphery in order to prevent the breakup of a country. So, it is like tacitly agreeing to allow the Centre to play, interventionist role, the role to interfere intervene when the larger national interest is at stake. So, this holding together structuring States that the authority of the nation to be distributed between the central government and the constituent units. So, you can very well say that in holding together the idea of nation becomes central. At the same time constituent units they get considerable degree of autonomy in governing their internal affairs.

They do have considerable number you know it is not that on any whimsical ground, any flimsy ground the Centre will take away the autonomy. They have come together for a larger interest, but then whatever the subject matters divided, demarcated they need to work in the subject matter independently. So, holding together model is an attempt to draw a balance between national unity and acknowledging and respecting the diverse society amongst the provinces amongst the constituent units. India and Spain are two examples for you to present on this model of holding together. India is also an example and that is why when you read Article 1 and when you interpret it that States do not have a right to succeed, they cannot declare their sovereignty.

It is all connected with this idea of holding together because the States are not sovereign they have come together they have come together for the purpose of larger interest. So, States can be restructured, boundary can be altered, but then because it is a holding together model they cannot declare their independence. The Supreme Court has also acknowledged that ours is a holding together model in a prominent case on Kuldeep Nyarar versus Union of India. This 2006 judgment relates with amending the criteria to elect members of the upper house Rajya Sabha and while examining the constitutionality of such amendment, the Court has said that the Indian Union has been described as holding together. And holding together of different areas by the constituent framers unlike coming together of constituent units as in the case of USA and the confrontation of Canada.

So, this model has been up acknowledged by the Supreme Court. We have said that this is something which has come from there and that is the idea underlying that why we say very assertively in India or in the Indian context that States do not have any sovereignty. In fact, in a very recent judgment in a reference of Article 370 Court has categorically said that there is no idea of internal sovereignty in reference to the Indian Constitution, Court has made it very clear. Another model is model of coming together where it refers to a model where federal system is

created in which separate States they have come together and united to form a single and unified entity. So, here there was a sovereignty which was surrendered, surrendered in favor of making the federation and different States they give consensus.

So, it is like entering into a kind of agreement where they enter into an agreement with a clear understanding of share of equal power. So, the constituent units they through that agreement or through that contract or through that consensus they forfeit their rights for that central authority what gets created out of that agreement. Look at it sovereignty is something which is coming from forfeiting the rights of the constituent units. Two examples which we find is USA and Australia where we find that coming together model has been followed. So, formation of folding together you find it is a constituent units dividing the powers for governance coming together independent States coming together.

Distribution of power you find different States have different power like our Schedule 5 or Schedule 6. Then centralized tendency is there in holding together which you find under the Indian Constitution. And one example of centralized tendency what we see under the Indian Constitution is conferring the residuary power with the Centre which goes against the classical model of federalism. In coming together you find you have all States who are similar power like what you see in the United States and then federal and States share equal power except on few occasions. There what you find that residuary power lies with the State.

Obviously when I give example of residuary power here belonging to the Centre I am referring only to India not to Spain because in Spain residuary power belongs to the State. So, residuary power in India residuary power here which is there with the Centre is only in relation to India. So, this is what is the concept of coming together and when you look at the prevalent of federal model 25 countries they are governed under this model and that 25 countries has accommodated 40 percent of the entire population of the world. So, you can very well visualize that how this federal system is working and one for India will be studying in due course of time that how it has originated, how it has developed and what are the newer challenges and how the same can be addressed that is what we will be discussing in this course in coming sessions. These are the advantages of federalism why you go for a federal system? It says that better understanding of local issues, decentralization of power and better participation of citizens in decision making.

What happens that local issues taken care by the State and because there are two independent governments there is a better participation of people in decision making. So, I as a citizen of the country I believe that I have a role I am playing a role both in governance in the province, governance in the State as well as governance in at the Centre. So, this is the benefit of decentralization of power. It adapts to diverse regional needs and preferences that is another important you know benefit and it accommodates cultural and regional diversity along with fostering a sense of unity without imposing. uniformity So, it accommodates diversity and

through the federal structure that diversity becomes the strength instead of weakness and the division of power between the Centre and the Union that in a way becomes check and balance.

That is how we will see when we will discuss administrative relations in due course of our lecture. Administrative relations where Centre is dependent upon the bureaucracy of the State for getting its laws implemented for getting its policies implemented. So, there is a check and balance also which is part of federal system. Now you have a disadvantage of federalism as well. What are the disadvantages? It is regionalism versus nationalism that emotions may play a determining role and then one may become more closely connected with the idea of idea of regionalism over nationalism.

So, this is something which we need to look at. Decentralized nature of federalism can also result in different States or region adopting different divergent policies. For example, so the States bringing a law to reserve 75 percent of employment opportunity for the local population. What it can do? It can also exaggerate regional tensions, aggravate that tension or create competition among the States for resources and influence. That States trying to States trying to compete with each other and that competition may not remain healthy.

If it is healthy then it is good because with that competition quality of life of people of both the States will get better. But if it is competition in a negative sense then it becomes very difficult. For example, we had seen during corona that government of one State is not extending cooperation to government of another State. Inequalities among the different States forming the federation. That inequalities could be of varied kind, it could be an inequality in terms of socio economic development, inequality in terms of financial resources, inequality in terms of natural resources.

So, that may also create a sort of division. These are the references for this slide. Thank you very much. .