

Special Features of the Indian Federation

- ▶ It cannot change its form and shape.
- ▶ Draft Constitution is both unitary and federal.
- ▶ In normal times it is to work as a federal system and in times of emergency, like war, it is unitary.
- ▶ President can issue Proclamations that can claim the following powers:
 - The power to legislate upon any subject even though it may be in the state list.
 - The power to direct the state as to how to function.
 - The power to vest authority in any officer.
 - Power to suspend financial provisions to state.

Two weaknesses from which a federation might suffer

- Rigidity
- Legalism
- A written constitution is likely to be rigid.
- Any invasion by the federal government in the field assigned to the state and vice versa is a breach of constitution.
- Such breach can be resolved by the judiciary.

What do countries do to reduce the disadvantages of rigidity and legalism?

- ▶ Australian Constitution adopted the following means to make its federation less rigid:
 - ▶ Conferring on parliament larger powers
 - ▶ Making some articles of a temporary duration
- ▶ In Australia, the constitution is more powerful than its US counterpart.
- ▶ Indian parliament is less rigid than its Australian counterpart.
- ▶ When the exclusive authority of Australian Parliament extends only to three matters, it is ninety one matters in Indian parliament.
- ▶ Thus Indian parliament is said to have greater elasticity.
- ▶ Indian Constitution has adopted new ways to overcome the rigidity and legalism.

How Indian Constitution manages the rigidity?:

- ▶ By the power given to parliament to legislate on exclusive provincial subjects in normal times. (Articles 226,227 and 229 give the states such powers)
- ▶ But no state has any right to frame its own constitution. The Constitutions of the state and the Union are a single frame from which neither can get out.

Other means to avoid rigidity in Indian Constitution

The provision for facility with which the Constitution can be amended.

▶ The divisions of the articles for constitutional amendment into 2 groups:

1. Articles relating to:

(a) the distribution of legislative powers between the Centre and the States.

(b) The representation of the state in Parliament

(c) The powers of the courts

2. All other articles are placed in another group.

▶ This group cover a large part of the constitution that can be amended by the parliament.

▶ The amendment of these articles do not require ratification by the states. (where as, for those articles in group one ratification by the state is required.)

Flexibility of Indian Federal system: Special features

- ▶ The inherent problem of dual polity is its double authority and the issue of having separate legislative, judiciary and executive.
- ▶ Up to a point this diversity is unproblematic, as it accommodates or as it could consider local needs and circumstances. But beyond a certain point, this autonomy of the state can spell chaos by having different laws in different states for issues on marriage, divorce, inheritance etc.
- ▶ The draft Constitution has managed to forge means and modes by which India will have a federation (and dual polity), and at the same time, will have uniformity in all basic matters which is essential for the unity and integrity of the nation.

Means by which Indian Federation manages the chaos resulting from Dual Polity

- ▶ 1. A single judiciary
- ▶ 2. Uniformity in fundamental laws, civil and criminal
- ▶ 3. A common All-India Civil Service to man important posts

US and Indian models of Judiciary; major difference

- ▶ In the USA the Federal Judiciary and the State Judiciary are separate and independent of each other.
- ▶ The Indian Federation, though a Dual Polity, has no dual judiciary at all.
- ▶ The High Court and the Supreme Court in India form one single integrated judiciary having jurisdiction and providing remedies in all cases-civil or criminal.
- ▶ This is done to eliminate all diversity in all remedial procedures.
- ▶ Canada is the only country which furnishes a close parallel.

Indian Dual polity- special features

- ▶ Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life.
- ▶ The great codes of Civil and Criminal Laws, such as the Civil Procedure Code, Penal Code, Criminal procedure Code, the Evidence Act, the Transfer of Property Act, the laws of divorce, marriage and inheritance are placed in the Concurrent List so that the necessary uniformity can be preserved without impairing the federal system.

Conclusion- The Strategic Post of Civil Servants

- ▶ The Dual Polity, which is inherent in a federal system, is followed in all federations
- ▶ In all federations there is federal service and a state Civil Service.
- ▶ In every country there are certain **strategic posts** for maintaining the standard of administration.
- ▶ The standard of administration depends upon the caliber of the civil servants who are appointed to these strategic posts.
- ▶ The Constitution of India assures that without depriving the states of their rights to form their own civil services, there shall be an All India Service recruited on an All-India basis with common qualifications and pay scales and the members of which alone can get appointed to these strategic posts anywhere in the Union.