

## **PRIMER ON FEDERALISM**

### **Nature of Federalism**

**Q: What is the federal principle?**

A: The federal principle refers to an organization of government where powers and responsibilities are both divided and shared between the federal (national) government and the “constituent unit” (state, province, regional and local) governments. Each government is sovereign in its own sphere but in many cases the different *orders* of government share a number of powers with one or other government often having *primacy* in certain fields.

The federal principle is closely associated with democracy. All orders of government in a federal system derive their authority from a constitution that cannot be arbitrarily changed. And all, normally, derive their legitimacy from the willing consent of the people, through free and fair elections. As well, the federal principle assumes that all orders of government respect and uphold the law and the constitution.

**Q: How is the federal principle realized?**

A: The federal principle is realized through a constitution, which defines functions and powers of the federal and constituent unit governments. In the Malaysian constitution, for example, government functions and powers are contained in a provision consisting of the Federal list (Functions and Powers of the Federal Government) State list (Functions and Powers of State Government) and the concurrent list (Functions and Powers of both Federal / State Government).

Most contemporary federations have similar lists of powers and place constitutional limits on governments. In Canada, for instance there are lists for both federal and provincial government. In addition, the federal government has what is known as residual power. That means any matter not named in the constitution becomes a federal responsibility. The federal government also has the right to spend in provincial areas of jurisdiction.

In Germany, powers are intertwined, with the federal government legislating in many areas, while the “länder” (state) governments administer those programs. This intertwined system is quite different from many other federal systems where the roles of the various orders of government are quite distinct and separate.

**Q: How did federalism develop?**

A: Federalism sometimes developed as a response to the need to bring separate political communities together in order to pursue objectives that each could not obtain on its own. This was the case with Switzerland and the United States. In some cases, a previously *unitary state* has chosen to federalize. Often this is a response to the fact of ethnic, religious and linguistic diversity. That was the case with Belgium and Spain, for example.

### **Q: What is a federal system?**

Most experts agree that there are five features that capture the essence of the federal model as it is practiced in virtually all cases. These are:

1. At least *two orders of government*, each acting directly on their citizens; a formal distribution of legislative and executive authority and allocation of resources between the orders of government, including some areas of autonomy for each order;
2. Provision for the *representation and respect of regional and group views* within the federal (central) policy making institutions;
3. A written supreme *constitution not unilaterally amendable* and requiring the consent of all or a majority of the constituent units;
4. A *referee* to rule on disputes between the various orders of governments;
5. Mechanisms and processes to facilitate *intergovernmental relations* for those areas where responsibilities are shared or overlap.

### **Federal System vs. Unitary System**

#### **Q: What distinguishes a federal system from a unitary system of government?**

A: In a unitary system, sovereign power rests in only one place - the central government. In the federal system there is divided sovereignty -- both self rule for the constituent units of the country and shared rule for the entire country. In a unitary system the levels of government “below” the national or central government derive their authority from the central government. In the federal system the central government shares power with the other order(s) of government and all orders are subject to the same set of rules ( a constitution and body of constitutional law) that none can change unilaterally.

A great many federal systems consist of a federal or national government and constituent unit governments that go by a variety of names, including:

- ❑ states (USA, Mexico, Nigeria, India, etc.);
- ❑ cantons (Switzerland);
- ❑ provinces (Canada, South Africa);
- ❑ länder (Germany, Austria);
- ❑ regions (Belgium);
- ❑ autonomous communities ( Spain); and,
- ❑ republics, oblasts, okrugs ( Russia).

In some, but not all federal countries, local government constitutes another order of government. In Belgium, there are both territorial constituent unit governments and French, Flemish and German language “community” governments whose authority can extend beyond a single region.

Many countries have adopted federalism because it is more flexible, because it respects pluralism and individual freedom and because it allows for the accommodation of diverse national, ethnic or religious groups.

Countries with unitary systems can also achieve those objectives in different ways, such as human rights legislation or constitutionally protected minority rights. In fact, even where federalism, as a political system, addresses the question of diverse identities it is often accompanied by other cultural and human rights provisions.

### **Q: How does federalism differ from “devolution”?**

Devolution is the transfer of authority for decision-making, finance, and management to quasi-autonomous units of local government with corporate status. Devolution usually transfers responsibilities for services to municipalities that elect their own mayors and councils, raise their own revenues, and have independent authority to make investment decisions. In this system, local governments have clear and legally recognized geographical boundaries over which they exercise authority and within which they perform public functions

Some countries have chosen to allow a great measure of self-government to territorial entities that are the historic homelands of distinct peoples. The British government did this in the 1990s for Scotland and Wales. Westminster “devolved” a great number of powers to Welsh and Scottish assemblies, giving Wales and Scotland status that resembles that of “constituent units” in federal countries.

A policy of devolution differs from federalism in that the devolved entities derive their autonomy from central government legislation, which the central government can choose, unilaterally, to reverse. In a federal country, the constituent units are normally guaranteed by a constitution, and their status cannot be altered by the central government. This distinction is important, especially for those examining governance options in countries where there has been some history of conflict and mistrust between and among ethnic communities. All groups might seek the assurance that only constitutional arrangements, upheld and adjudicated by a disinterested judiciary, can provide. In devolution arrangements, such assurances are lacking.

### **Types of Federal Systems**

#### **Q: What are the types of federal systems?**

A: Federal systems may be categorized according to:

- a) Process of adoption of federalism; and

- b) Distribution of powers and functions between the federal government and state/local governments.

**Q: What are the types of federal systems according to process of adoption of federalism?**

A: According to the process of adoption of federalism, there may be:

- a) “Born” federations- a federal structure and distinct entities at the foundation of the country played a major role in the development of the political and fiscal structure of the country (e.g. Canada, India and Switzerland);
- b) Countries that “became” federations -federations was adopted in order to preserve distinct cultural groups and enhance peaceful coexistence among them (e.g. South Africa, Belgium, Spain, Ethiopia); and
- c) Countries where federalism was “thrust upon them” - federalism became a desperate attempt to keep a nation alive by weakening the central government (e.g. Bosnia Herzegovina).

**Q: What are the types of federal systems according to distribution of powers and functions between the federal government and state governments?**

A: Depending on how powers and functions between the federal government and state government are distributed, federal systems may be classified into:

- a) Cooperative federalism  
b) Competitive federalism  
c) Permissive federalism

In “cooperative federalism”, both the federal and state governments share responsibilities in certain areas / services to ensure the operation of national programs throughout the country; Examples of countries with this type of federalism are Ethiopia, Germany, South Africa, United States, Germany and Canada.

In “competitive federalism”, the federal government has a reduced role in state/local government. On the other hand, state / local governments have an increased role in managing their own affairs. Examples of countries with this type of federalism are Belgium, Australia, Brazil, and Switzerland.

In “permissive federalism”, the federal system is almost like a unitary system. The state / local governments have only those powers and authorities permitted to them by the federal government. The state / local governments derive their existence and authorities from the federal government. Examples of countries with this type of federalism are Austria, Malaysia, Mexico and the Russian Federation.

**Jurisdiction. Functions and Powers**

**Q: What exclusive powers and functions can a federal government retain?**

A: Generally, a federal government can retain exclusive powers and functions over the following areas, among others:

- a) National security and defence
- b) Foreign relations
- c) Currency/Monetary system
- d) External trade/commerce
- e) Citizenship
- f) Immigration, migration, extradition
- g) Protection of intellectual property; property rights, and copyrights

**Q: What may be the exclusive jurisdictions of a state government in a federal system?**

A: Generally, constituent unit governments (state, province, canton, etc.) can have jurisdiction over the following areas, among others:

- a) Regional trial courts/Metropolitan trial courts
- b) Health
- c) Education and culture
- d) Public Utilities
- e) Administration and enforcement of state laws and programs
- f) Grants-in-Aid to local governments
- g) Police, public safety; law and order
- h) State and local infrastructure
- i) Health
- j) Social Welfare
- k) Municipalities

**Q: What functions and powers may be the concurrent (shared) jurisdictions of the federal and state governments?**

A: Functions and powers in the following areas, among others, may be the concurrent jurisdiction of the federal and state governments:

- a) Cultural development
- b) Sports development
- c) Environmental protection
- d) Energy
- e) Tourism
- f) Immigration
- h) Health ( in some cases)
- i) Education ( in some cases)
- j) (As a result of increased globalization) International trade

**Q: What is the mechanism for resolving conflicts and doubts on jurisdiction in a federal system?**

A: Ongoing negotiations between the two orders of government are the normal way in which disputes are resolved. Recourse to the courts is a last resort. In most federal countries the

Supreme Court or Constitutional Court is the ultimate venue for resolving disputes between orders of government. Federal constitutions endeavour to establish means to protect the integrity and independence of the courts. One of these means is to require that more than one branch of the federal government or federal order of government must approve of appointments the highest courts.

### **Practical Aspects of Federalism**

**Q: Is federalism suitable only for large countries and, therefore, inappropriate for a relatively small country like Iraq?**

A: Federalism is feasible in both small and large countries. Political considerations are more important than size of the country. Switzerland is smaller both in size and population than Iraq and yet has a federal system.

**Q: What are examples of small and large countries that have adopted federalism?**

A: Large countries that have adopted the federal system include the United States, Australia, Canada, India Brazil, Argentina and the Russian Federation. Smaller countries include Belgium, Switzerland, and Austria.

**Q: Is federalism compatible with either a presidential or parliamentary form of government?**

A: Yes, federalism is compatible with both presidential and parliamentary forms of government. Examples of countries that have a presidential form of government and a federal system are the United States, Venezuela and Mexico. Examples of countries that have a parliamentary form of government and a federal system are Australia, Germany; India and Malaysia.

**Q: How can the shift to a federal system be effected?**

A: The shift from a unitary system to a federal system can be effected through major amendments of the Constitution or by the adoption of a new constitution proposed for example, by a constituent assembly or constitutional drafting group. In some countries, such as Spain or Belgium, this shift has been accomplished in a step-by-step fashion. In others, such as USA and India, federalism was part of the founding constitution and political arrangements.

**Q. Will a federal system cost more to run than a unitary system? Does federalism have a negative impact on the prosperity of those countries that have adopted it?**

A: There is little evidence that federal countries are more or less prosperous than similar non-federal countries. Government can be complex and multi-layered in federal countries. But that is true of some non-federal countries, which have many different kinds of local,

regional, and municipal governments. The difference is the measure of constitutional autonomy such multiple levels enjoy. Even “departments”, “counties”, “towns” etc in unitary countries can be costly to run.

There are some wealthy and highly developed federal countries such as Australia or Germany, and some that are less developed and poorer, such as Nigeria. There is no evidence that federalism has any negative impact on economic performance. In fact, many argue that strong, autonomous constituent unit governments contribute to prosperity, because they can manage economic policy on their territory more effectively, transparently and efficiently than a government far away in the national capital.

**Q: What type of federalism is suited for Iraq?**

A: The type of federalism suited for Iraq can be determined only through discussion, consultation and debate among our people. Iraq can develop its own unique model of federalism, learning from the various models that have been adopted by other countries.

**Q: Will federalism solve all our problems?**

A. No, federalism will not solve all our problems. However, in the face of all our problems, it will allow people to take greater control over their lives and satisfy their preferences – what they really want.