

## CANADIAN GOVERNMENT

Q. 1. Describe the salient features of the Canadian federal system.

Or

Discuss the nature of the Canadian federation.

### FEDERAL STRUCTURE

It is a controversial question whether Canada has a unitary or a federal type of government. Professor K. C. Wheare states : "yet if we confine ourselves to the strict law of the Constitution, it is hard to know whether we should call it a federal constitution with considerable unitary modifications, or a unitary constitution with considerable federal modifications. It would be straining the federal principle too far. I think, to describe it as a federal constitution without adding a qualifying phrase. For this reason I prefer to say that Canada has a quasi-federal constitution." Let us examine the question in the light of the above.

#### Federal Feature of the Constitution

(1) **Ten Units and Two Territories.** Canada is made up of ten constituent units, called Provinces : Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, Alberta, and British Columbia. Besides, there are two territories, Yukon Territory and North-west Territories which are not included in any Province.

(2) **Division of Power.** The Constitution divides the powers between the Federal Government on the one hand and the province on the other. The Provincial governments have exclusive control over a list of subjects enumerated in the Constitution. The subjects under the exclusive control of the Federal Government have also been enumerated.

(3) **Distinct Personnels.** The Federal Government and Provincial Governments are distinct in personnel from each other. Each has a separate executive, legislative and administrative machinery.

(4) **Amending Procedure.** Neither the Federal Parliament nor the Provincial legislatures have the exclusive power to amend the Constitution. The Constitution Act, 1981 lays down a detailed procedure for amending the Constitution. The amending procedure has considerably strengthened the federal element of the Constitution and enhanced the power of Provinces. The following provisions of the amending procedure are noteworthy :

(i) **Initiation.** The procedure for amendment of most of the provisions of the Constitution can be initiated by Parliament or by the legislative assembly of a Province.

(ii) **Resolution.** An amendment to the Constitution of Canada in relation to certain specified matters requires resolution of both Houses of Parliament and resolution of the legislative assemblies of at least two-third of the Provinces that have in the aggregate, at least fifty per cent of the population of all the Provinces.

(iii) **Consent of Majority.** An amendment made under the above rule that derogates from legislative powers, proprietary rights or any other rights or privileges of the legislature or government of a Province requires a resolution supported by a majority of each of the Senate and the House of Commons and the legislative assemblies required under the above rule.

(iv) **Resolution of Dissent.** An amendment made under the above rule cannot have effect in a Province the legislative assembly of which expresses its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation by the Governor-General in relation to the proposed amendment. The resolution of dissent may, however, be revoked by the assembly concerned at any time before or after the proclamation to which it relates.

(v) **Special Amendments.** There are certain matters, an amendment in relation to which, requires resolutions of each House of Parliament and of the legislative assembly of each Province.

An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all Provinces including any alteration to boundaries between Provinces and any amendment to any provision that relates to the use of the English or the French language within a Province, requires resolutions of both Houses of Parliament and the legislative assembly of each Province to which the amendment applies.

(5) **Exclusive Laws.** Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada and the Senate and the House of Commons. Similarly the legislature of each Province may exclusively make laws amending the constitution of the Province.

(6) **Exclusive Provincial Authority.** An interesting provision of the Constitution Act, 1981 is the one that confirms the exclusive provincial authority over natural resources and gives the Provinces new powers respecting the inter-provincial sale of resources and the indirect taxation of non-renewable resources.

(7) **Supremacy of the Constitution.** The supremacy of the Constitution is another important federal feature of the Constitution of Canada. Section 51 of the Constitution Act, 1981 lays down, "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect."

(8) **May Declare Law Void.** Finally, the Canadian Courts can declare Federal or Provincial laws void on the ground that they transgress the jurisdiction assigned to the respective governments by the Constitution.

### Provisions of the Constitution that Strengthen the Centre

(1) **List of Powers.** The Constitution has given to the Central Legislature all the great subjects of legislation. The powers given to the Province constitute a moderate list containing subjects essentially of a local nature.

(2) **BNA Act.** Residuary powers vest in the Federal Parliament. Section 91 of the Constitution Act, 1867 (BNA Act) empowers the national Parliament to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the Provinces. This is an all-embracing clause that enables the national Parliament to make laws even on subjects which are within the competence of the Provinces on the plea that they affect peace, order and good government of Canada.

(3) **Power to Disallow Law.** The Parliament of Canada has the power to disallow any law passed by a Provincial legislature within a year of its enactment.

(4) **Appointment of L.G.** The Lieutenant-Governor of every Province is appointed by the Governor-General on the recommendation of the Federal Prime Minister.

(5) **Withholding Assent.** The Federal Government can instruct the Lieutenant-Governor to withhold his assent from Provincial Bills and reserve them for the consideration of the Governor-General. The Governor-General can refuse assent to such Bill if he thinks fit.

(6) **Judicial Appointment.** All important judicial appointments are made by the Federal Government.

(7) **Representation.** The members of the Senate are appointed by the Governor-General on the recommendation of the Prime Minister. All Provinces do not have equal representation in the Senate. This is violative of the principle of equality of the federal units.

### Conclusion

1. **Not Unitary.** The above analysis shows that though the Centre is more powerful in Canada, yet it cannot be said that the Canadian Constitution is unitary in nature. The Provinces enjoy real autonomy. They are not a creation of the Federal Parliament. The Federal Parliament cannot put an end to their autonomous existence.

2. **Division of Powers.** The division of powers between the Centre and the Provinces was made by the Constitution. The powers of the Provinces are not a delegation from the Centre. The Centre cannot deprive the Provinces of the powers vested in them by the Constitution.

3. **Role of Provinces.** The Provinces have an important role in amending the Constitution. A Province can amend its own Constitution.

4. **Right Over Resources.** The Constitution Act, 1981 confirms the exclusive provincial authority over natural resources and gives the

provinces the new powers respecting the inter-provincial sale of the resources.

**5. L. G. As Nominal Head.** Although the Lieutenant-Governor of a Province is appointed by the Governor-General he does not act as an agent of the Central Government. In conformity with the principles and traditions of parliamentary system of Government he acts as nominal head of the Province. He appoints the leader of the majority party in the Provincial assembly as the first minister.

**6. Rare Use of Power.** The Federal Government rarely uses its power of disallowing a law passed by a Provincial legislature.

**7. Constitution Supreme.** Finally, it is to be remembered that the Constitution is the supreme law in Canada.

**8. Federal Constitution.** To conclude, it can be said that the Canadian Constitution is federal in nature, though the Centre is more powerful.

### **POINTS TO REMEMBER**

#### **Federal Features**

1. Canada is made up of ten constituent units called Provinces.
2. The powers between the Federal Government and the Provinces have been divided by the Constitution.
3. The Federal Government and the Provincial Governments are distinct in personnel from each other.
4. Both Parliament and the Provincial legislative assemblies take part in amending the Constitution,
5. The powers of a Provincial government cannot be reduced without its consent.
6. The legislature of each Province may exclusively make laws amending the Constitution of the Province.
7. The Provinces have exclusive authority over their natural resources.
8. The Constitution is sovereign.
9. There is a Supreme Court which can declare Federal or Provincial laws unconstitutional if it deems them to be in conflict with the Constitution.

#### **Unitary Features**

1. Residuary powers are vested in Parliament.
2. Lieutenant-Governors of the Provinces are appointed by the Governor-General.
3. The members of the Senate are appointed by the Governor-General.
4. The Federal Government can disallow a law passed by a Provincial legislature.