

Federalism and the Formation of States in India: An Analysis of Historical Basis

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ABSTRACT

The principle objectives of Indian federalism are unity in diversity, devolution in authority, and decentralization in administration. The Indian Constitution establishes a federal system with a strong Union. The paper focuses on the Indian federalism which is unique in nature and offered a possible solution to a number of problems. The paper highlights the historical background of Indian Federalism System and Federal Features of Indian Constitution. Indian federalism is a unique type of federalism that incorporates both federal and unitary elements. The paper represents the Constitution of India in which the Union of India is permanent and indestructible.

Keywords: Constitution, federalism, system, features, committee, British, government, state and India

INTRODUCTION

The nature of Indian Federalism has been a matter of debate among western as well as Indian scholars. Its reason is that the Indian Federation is based on the two sets of considerations, which bear a contradictory nature. The protection and expression of social and regional diversity of India and administrative contingencies arising due to its vast geographical area give rise to as well as strengthen a federal set-up. But the need for strengthening her unity and integrity, in the background of her historical experience, necessitates the provision for a strong Centre in India.

India has a federal type of government. We have 25 fully fledged states 7 union territories which are aspiring for full fledged statehood for set up as well as for the united unitary type of administration that India had for Independence the discredit or the credit goes to the Britishers. Indian Constitution makers have tried to balance these contradictory considerations and thereby imparting a unique feature to Indian Federalism. "Montesquieu (1689-1755) observed various examples of federalist governments: in corporate societies, in the polis bringing villages together, and in cities themselves forming confederations" (Grabill, Stephen J. 2013:xx)

It would be interesting to know that the Indian National Congress which the only powerful political party in India before independence opposed to send nail the proposal of Provincial Autonomy placed by the British government before Indian leaders in 1932 based on Simon Commission Report. It was opposed by Indian National Congress as it was thought to be a scheme to divide the country no many parts. There was a great opposition of Simon Commission and the effigies of Sir John Simon were burnt throughout the country.

But the British Government published a White Paper on March 15, 1933 which became Government of India Act 1935. It was a clear cut division of India into a number of states keeping the Princely states intact. The Federal structure according to it was on the anvil, Although Indian National Congress opposed it yet it fought elections based on it in 1937 and formed government in seven provinces (now known as states). In 1939 again rejected the whole system and resigned. But the fruits of power were tasted. It gave incentive the second line of leadership to press for a federal system later on.

A concerted effort was again made to have something like a unitary type of government by many leaders including Dr. Rajendra Prasad the first President and C. Rajgopalachari the last Governor General. Before the Constitution was tamed a committee was formed to suggest the administrative set-up in the country all the big guns as members. The Committee recommended almost a unitary type of set-up with five regional councils - the Western the Southern, the Eastern, the Northern and the Central.

Two factors did not allow the recommendation to take shape. The one was the understanding given to the people of different regions by Mahatma Gandhi that the country would have linguistic provinces. The other was the mounting pressure of second time of leadership to have more said in their own areas as they had experienced what power means for two years in 1937-39. What the British Government could not get accepted in 1932, 1933, 1935, 1937 and again through the approaches of Sir Stafford Cripps in 1942 was actually done by the allurements of power. Jawahar Lal Nehru conceded to the demand of the provinces. The country was divided first on somewhat cultural basis as the whole of South was known as Madras, whole of West as Bombay and whole of North Eastern region as Assam. The Eastern region was divided into West Bengal, Orissa and Bihar. The Hindi speaking belt being big had to be divided into four States. Finally the whole country was divided into linguistic States with the division of the South into four, Assam into seven, Punjab into three and the bifurcation of Bombay into two. The division of the new formed country into States after Pakistan had been already truncated was beyond even the expectations of the Britishers. They could secure more after their withdrawal than what they attempted when they ruled.

Now this federal structure has become a reality in the country. Leaving certain boundary disputes and regional chauvinism of certain linguistic groups in certain areas the set-up has been continuing quite satisfactorily. Due to certain groups of terrorists in Punjab formed on religious lines or a small group of people in Tamil Nadu who propagated secessionism long back it would be unwise to call all the people of these States anti-national. Tamil Nadu has almost erased the impression. The border areas, whether they are formed into States or not will always remain susceptible to the machinations of foreign agencies and alienated neighbours is not the masses of Punjab, Nagaland, Mizoram, Tripura, Assam or Jammu and Kashmir that are hostile. It is simply small groups working under the allurements of foreign missionaries and Pakistani and Bangladeshi Islamic governments that create problems. Lal Denga has already submitted to the national need.

Although, India has a cultural unity yet the different regions have different that of life, different climatic conditions, different geophysical terrains, different dress, different eating habits and different languages. All these factors go to produce different types of needs in different areas and regions. The socio-economic needs require different attention and demand a regional administration rather than a central one. Besides national consciousness people have regional affinities and aspirations these cannot be considered anti-national, It is rather a sub-national feeling similar to one a person has for his family. One feels at home when he is among those who speak one's language. A federal set-up suits such a populous country.

In a federal structure people make best of their efforts for the economic upliftment of their region. In a unitary set-up it is very difficult for the government to look after the interests of all the areas. The people have an affinity for their own area. Punjab develops agriculture; Bengal specializes in fisheries, Gujarat confederates on more industries. Smaller a region is more compact is the development. Haryana, Punjab and Gujarat are rather smaller states with better development; U.P. is the biggest with hardly any development in the industrial sector. The demand for smaller states is quite justified for the overall development of the country. In the beginning of 1967 a columnist of a leading newspaper asserted the need of 40 States.

The fear of secession has been rather created after the ruling party started losing her forts in certain States. The concept that there should be the same party in power in the States and the Centre clearly shows party chauvinism and has resulted in the politics of expediency. The efforts to destabilize non-Congress (1) governments in Sikkim, Andhra Pradesh and Jammu and Kashmir did not strengthen the cause of democracy. Establishment of Akali Dal government in Punjab and Asom Gana Parishad in Assam has not made the country weak, it is rather advisable for the progress and economic development of the country that keeping Defence, financial resources to some extent, big projects, national highways and foreign affairs with the centre more autonomy should be given to the States. That has made the USA a strong nation with an elite culture and an egalitarian society. The 51 States with one fourth of the population of India, enjoy full autonomy and contribute the most to the national solidarity and progress. It is off course desirable that national parties should have a sway in all the States. Regional affinity is all night but regionalism may lead to narrow feelings. Federal structure is a safety valve for democracy while a unitary government may turn into an authoritarian one but it is necessary to have an emotional unity to save the nation from fragmentation.

If we look at the unitary and federal features of the Indian Constitution, it becomes obvious that India has a Federal System which displays strong unitary tendencies. Different scholars hold different views about the Indian Federation. "In the modern era Federalism was first adopted by a union of the states of the Old Swiss Confederacy as of the mid-14th century" (Forsyth 1981: 18). Noted critic Prof. Wheare claims that the Indian Constitution provides, 'a system of government which is quasi-federala unitary state with subsidiary federal features rather than a Federal State with subsidiary unitary features.' He further comments that in the class of quasi-federal Constitutions, it is probably proper to include the Indian Constitution of 1950. Another author, Prof. Alexandrowicz disagrees with the observation that India is a quasi-federation

and claims that "India is a case sui generis". "And federalism also differs from the unitary state, where the regional level is subordinate to the central/federal government, even after a devolution of powers and is notable for regional-integration of governing powers" (Ware 1946 :31–22) Noted author, D.D. Basu comments, "The Constitution of India is neither purely federal nor purely unitary but it is a combination of both. It is a Union or composite state. It is a Union or composite state of a novel type. It enshrines the principles that in spite of federalism the national interest ought to be paramount."(Durga Das Basu 1984)

While Paul Appleby terms Indian Federation as "extremely federal", another writer Jennings terms it as 'a federation with strong centralizing tendencies.'(Durga Das Basu 1984)

While the debate about the federal and unitary features of the Constitution goes on, there is another parameter-the level of cooperation between the Union and the States-to analyze the nature of federalism. "It has been argued that federalism and other forms of territorial autonomy are a useful way to structure political systems in order to prevent violence among different groups within countries because it allows certain groups to legislate at the sub-national level" (Lijphart, Arend 1977)

Accordingly, Granville Austin terms Indian Federalism as, "Cooperative Federalism, which produces a strong central government, yet it does not necessarily result in weak provincial governments that are largely administrative agencies for central policy. "Federalism is at the midpoint of variations on the pathway (or spectrum) of regional-integration or regional-separation. It is bordered on the increasing-separation side by confederalism, and on the increasing-integration side by devolution within a unitary state" (Diamond, Martin 1961: 21)

The American scholar Birch defines Cooperative Federalism as practice of administrative cooperation between general and regional governments, the partial dependence of the regional governments upon payments from the general government, and the fact that the general government, by the use of conditional grants, frequently promotes development in matters which are constitutionally assigned to the regions.

If we look at the nature of Indian Federalism, some features of cooperative federalism may be identified. The National Development Council, established in 1952 ensures coordination between the Union and the States in the formulation and implementation of Five Year Plans. Article 263 pro-vides for the establishment of Inter-State Council to resolve the disputes among the units of federation and to make the recommendations regarding the common issues of concern. "Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 mention situations in which the Parliament can legislate" (Fadia, Babulal 1984: 92) The Inter-State Council was constituted for the first time in 1990. The State-Reorganization Act, 1956, provided for the establishment of Five Zonal Councils to consider the issues of development policy common to the member states of Zonal Council. Each Council is headed by the Union Minister of Home Affairs and all the Chief Ministers of that Zone are the members of that Zonal Council.

The Central Council for Local Bodies Reorganization Act, 1956, provided for the establishment of Five Zonal Councils to consider the issues of development policy common to the member states of Zonal Council. Each Council is headed by the Union Minister of Home Affairs and all the Chief Ministers of that Zone are the members of that Zonal Council. The Central Council for Local Bodies coordinates and reviews the programmes implemented by local bodies with Central assistance. Similarly Article 280 of the Constitution provides for the establishment of Finance Commission after every five year to make recommendations with respect to the distribution of tax revenue between the Union and the States and Grants-in Aid to states. Besides, the Union Government organizes conferences and meetings of Governors, Chief Ministers, other Ministers and senior officials of States from time to time to coordinate the policies and programmes at national level. In view of the above facts, it can be concluded that the Indian Federation provides an example of Cooperative Federalism, though it displays centralizing tendencies also.

Contemporary Issues and Tensions in Indian Federalism-Our experience of working of federal systems throughout the world demonstrates that there is growing centralizing tendencies in all federal systems due to various reasons. "Federalism is sometimes viewed in the context of international negotiation as "the best system for integrating diverse nations, ethnic groups, or combatant parties, all of whom may have cause to fear control by an overly powerful center"(Meyer-Resende, Michael 2016)

In India, the Constitution is initially biased in favour of a strong centre, yet the operation of certain non-constitutional factors such as wars, national crises, terrorism, need to pursue a uniform policy of socio-economic development, natural calamities etc. has further strengthened the position of the Union Government. "Concurrent List consists of 52 (earlier 47) items. Uniformity is desirable but not essential on items in this list. The list mentions: marriage and divorce, transfer of

property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press NS stamp duties” (Fadia, Babulal 1984: 122) When the same political party rules at both the Centre and the States, the factor of party discipline enforces the position of the Centre as the senior leaders of the party are active at the central level. Again, the increasing importance of a non-Constitutional body like Planning Commission, headed by the Prime Minister, has strengthened the position of the Control.

The position of the Union Government, when the same political party rules at both the Centre and the States, the factor of party discipline enforces the position of the Centre as the senior leaders of the party are active at the central level. Again, the increasing importance of a non-constitutional body like Planning Commission, headed by the Prime Minister, has strengthened the position of the Central Government in formulating development policy and allocation of development grants to States. In fact, the Planning Commission has diminished the role of constitutional body the Finance Commission as far as the amount of the disbursed Grants from Centre to States is concerned. Whatever may be the case, the fact remains that the States continue to be dependent on the Centre for their financial needs. Thus, the demand for financial autonomy by States is the major issue Faced by Indian Federalism today.

Besides, there are other issues such as the appointment of Governor in the States, arbitrary impositions of - President Rule under Article 356 and deployment of Central forces in States without their consent have occupied the central place in the protest raised by the States. The increasing feelings of regionalism and growth of strong regional parties have further encouraged tensions in the Centre-State relations. Way back in 1971, the Government of Tamil Nadu appointed Rajmanner Committee, which suggested many drastic changes in the Constitution that were not acceptable to the Central Government. In 1983,

Tamil Nadu and other non-Congress ruled States formed 'Opposition Conclave' to demand greater autonomy for States in all aspects. “Article 356 allows a state of emergency that dissolves the state government and establishes Presidential rule. No emergency at the centre can dissolve the Union government. Misuse of Article 356 was rampant in the decades following its adoption, during the Indira Gandhi era” (Hegde, Sanjay 2017)

In response, the Central Government appointed Sarkaria Commission to review the Centre-State relations in 1983. The Commission submitted its Report in 1988, in which it recommended, inter alia, the consultation with the Chief Minister in the appointment of Governor, reasonable use of Article 356, testing the majority of State government on the floor of Legislative Assembly and deployment of Central forces with the consent of concerned state. “In 1996, the Commerce & Industry Minister of West Bengal complained that "the removal of the freight equalisation and licensing policies cannot compensate for the ill that has already been done"(Sinha, Aseema 2005:114)

Though, the government has agreed to the recommendations of the Commission, political factors obstruct their faithful implementation. Meanwhile, the Central Government has appointed the second Centre-State Commission on April 27, 2007, headed by M. M. Punchhi to review and suggest measures for the improvement of Indian Federation is an example of centre-state relations. To sum up, the provision for a strong centre in the interest 'Cooperative Federalism' with provision recommendations of the Commission, political factors obstruct their faithful implementation. Meanwhile, the Central Government has appointed mission on April 27, 2007, headed by the second Centre-State Com-M. M. Punchhi to review and suggest measures for the improvement of centre-state relations.

CONCLUSION

To sum up, the Indian Federation is an example of 'Cooperative Federalism' with provision for a strong centre in the interest of unity and integrity of the nation. However, the real grievances of the states should be resolved to ensure the constitutional autonomy of states. Federalism lies at the heart of India's constitutional architecture. The Indian Federalism is one of a kind in nature and is custom fitted as per the particular needs of the nation. It envisages a federal system with a strong unitary bias, designed to accommodate the country's vast diversity.

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