

Origin and Development of Indian Federalism

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INTRODUCTION

The British East India Company started the process of centralization in India for fulfilling its imperial interests. The Home Government in England exercised control over it by means of various laws passed in 1773, 1784, 1793, 1813, 1833, 1853, and by appointment and removal of top personnel of the Government of India and of the Provinces. After the Crown assumed power directly in 1858, there was only a facade of apparent association of Indians in the law-making process as indicated by passing of various Acts in 1862, 1892 and 1909.¹

The enactment of the Government of India Act, 1919 introduced the responsible government in the provinces under 'diarchy' which clearly demarcated the sphere of Provincial Governments from that of the Centre. The provincial governments were also allowed to exercise administrative, legislative and financial powers. The Nehru Committee (1928) also stated in its report that India, like the Commonwealth of Australia, should be called 'the Commonwealth of India. It also referred to two schedules enumerating such subjects over which the legislative power of Parliament and of every provincial council would extend. A Supreme Court was also to be established with original jurisdiction in such cases in which the Commonwealth and the Provinces were a party. However, the idea of a federal set-up for the whole of India was suggested explicitly for the first time by the Simon Commission (1927-29) and then later on by the Butler Committee (1930). Hence the federation of India consisting of both the Princely States and the British India, was proclaimed for the first time by the Government of India Act, 1935. It proposed division of powers between the Union and the Provinces. Schedule VII consists of three lists (i) Federal List consists of 59 items, e.g., defense, external affairs, currency, railway, etc.; (ii) Provincial List consists of 54 items, e.g., public peace and order, jail, local government, public health and education, etc, and (iii) Concurrent List consists of 36 items, e.g., civil and criminal procedure, marriage and divorce, newspapers, etc., while residuary powers are provided to the Governor-General. The Federal Court has jurisdiction to decide the constitutional conflicts between the Union and the Provinces. It proposed a strong Centre with wide discretionary powers to the Governor-General and the State Governors which greatly restricted the autonomy of the provinces. However, the federal scheme of the Act of 1935 could never be implemented owing to lack of consent of the ruler of the Princely States. It was also opposed by the major political parties-the Indian National Congress and the Muslim League. The Second World War in September, 1939, paralyzed the process of federalism in India. In its war-time proposals for constitutional reform, the British Government adhered to the federal structure but with the difference that in order to conciliate the Communal elements as well as the Princely States, it favored a federation with a weak Centre having maximum autonomy for the units. The Cabinet Mission Plan of May 16, 1946, proposed a federal Constitution for the whole of India in which the jurisdiction of the Central Government would be limited to defence, external affairs and communications and relatively strong units having considerable degree of autonomy, with all residuary powers. Thus, under the Cabinet Mission Plan the members of the Constituent Assembly of India were elected and began its work. The Constituent Assembly set up a Union Powers Committee to define the respective jurisdiction of the Centre and the States in the proposed federation; The Union Powers Committee in its report submitted on August 20, 1947, said, 'The soundest framework for Indian Constitution is a federation with a strong Centre.'²

Was the Constitution of India to establish a federal or unitary system? In this regard, the members of the Constituent Assembly had two schools of thought. The first school of thought favored that the proposed Indian federation is a federal system. Among them, T.T. Krishnamachari observed, "The concept of this Constitution is undoubtedly Federal. But, how far Federalism is going to prove to be of benefit to this country in practice will only be determined by the passage of time and it would depend on how far the various forces inter-act conceding thereby to the provinces greater or lesser autonomy than what we now envisage.,"³ K.Santhanam (Madras: General) also observed, "We have got a Constitution which is federal in character and the federalism

of it is so well protected by the Judiciary that it cannot be broken except by a change of the Constitution. Therefore, I do not think that Provincial Autonomy as such has suffered materially.”⁴

The second school of thought pointed out that the proposed federation of India was a Unitary system. The second school of thought included P.T. Chacko, P.S. Deshmukh, B.M. Gupte and Sitaram S. Jajoo. These members made their observations as follows. P.T. Chacko (United State of Travancore and Cochin) observed, “I am of opinion that in substance it is unitary Constitution. Take for example the legislative powers of the Centre. Specified powers are given to the States and the residuary powers are given to the Centre unlike the Constitution of the USA or the Commonwealth of Australia.”⁵ P.S. Deshmukh (C.P. & Berar: General) also observed, “We should have a unitary form of government, but I have the satisfaction that although we have not incorporated a full-fledged and full-blooded unitary form of government, our Constitution is more unitary than federal and from that point of view I think it is a much greater Improvement from the time we set about this task.”⁶ B.M. Gupte also observed “Our Staté was not a Federal State but a decentralised Unitary State. Subsequent provisions, namely article 365 and article 371 have vindicated my description ... The units are kept completely dependent in financial matters on the good graces of the Centre and it is this kind of semblance of independence with complete dependence upon the Centre for finances that is in my opinion the most objectionable feature”.⁷

At the end of debates, B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution, assured the members that the Constitution of India is basically a federal Constitution as it fulfills all the requirements of a federal system. He observed, “The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary ... these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only.”⁸ He also clarified that the Draft Constitution can be unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system.”⁹

The Constituent Assembly accepted most of the federal provisions from the Government Of Indian Act, 1935. Also, the Constituent Assembly adopted the federal system in the Draft Constitution of India on the model of federal system of Canada.

The Indian federal system is of unique type in its origin and development. Several factors contributed to the particular pattern of federalism that emerged in India after 1947. First, the British colonial pattern of centralization had a substantial impact on the thinking of the Indian political leadership, and their immediate colonial experience tended to influence their decision. Second, issues of States’ rights were primarily subordinate to the larger issue of communal rights and communal status between Hindus and Muslims. The partition of the country itself seemed to have demonstrated the inherent dangers of separatism. Third, the Indian provinces carved out by the British were primarily administrative units rather than linguistic, cultural, or ethnic units. Therefore, they lacked the natural basis of identity that emerged later with the creation of unilingual states. Fourth, the chaos of partition, communal frenzy, the India-Pakistan war, and the problem of integrating the princely states into the Indian Union all combined to create an atmosphere that favored a centralized form of federalism. Fifth, the goals of economic development and modernization seemed to require a strong central authority capable of directing the economy. Sixth, the existence of a highly centralised, dominant, mass party (Congress) and the absence of strong state and regional parties supported a centralised formula.¹⁰

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