

Making of India's Federation- Historical Perspective

India's federation constitutes to be a topic of great academic as well as historical interest. It is argued in several times that the federal denouement in contemporary India has evolved through a long process of development. A brief review of various monarchies or state administration of ancient India show how some features of these states had certain interesting characteristics that facilitated their transition into a federal polity. Interestingly, it can be seen that almost all significant periods in Indian history were marked by a three level structure, namely- central, regional and local. But, of course a mere demarcation of these three levels do not make them federal . It may be used for these levels the devolution of powers from the centre to the regions and which is based on contractually demarcated jurisdictions. However, it has been seen in India that the devolutionary decentralization may gradually develop into a federal decentralization.

Between 321 and 185 B.C. in Magadh the Mauryan for the first time integrated a number of kingdoms and republics which might be the first sub-continental state in Indian history. As Romila Thapar observed :

“The economic condition of the time and its own requirements gave to the Mauryan Government the form of a centralized bureaucracy. The nucleus of the Mauryan system was the king whose powers had by now increased tremendously.”⁽¹⁾ Again Romila Thapar has observed that “the geographical extent of the Mauryan state can be inferred from the fact that Asokan inscriptions have been found as far and wide as Kandhar and Shahbazgarhi in the north-west, Kalsi and Nigali Sagar in the north, Mahasthan and Kalinga in the east, Girnar and Sopara in the west and Jatinga-Rameshwar in the south. It, therefore, appears that the entire subcontinent, with the sole exception of the Southern Peninsular tip, was ruled by the Mauryan”⁽²⁾

Percival Spear and Wolseley Haig, two renowned British historians, have traced federal administrative elements in India as far back as the Mughals, beginning with Sher Shah’s land revenue system and taking shape with Akbar’s division of his empire into

12 Subahs or Provinces.⁽³⁾ Both of them held that Mughal rule moved between local assertiveness and strong central dominance, thus standing in the way of extremely centralized or decentralized administrative structure.

But V. R. Dikshitar suggested that the concept of federal structure of India was a creation of Mauryan. He viewed the Mauryan state as a federal state.⁽⁴⁾ On the basis of Arthashastra J. C. Heesterman argued that its author may have intended to prepare a blueprint for a centralized bureaucratic monarchy, but did not really succeed in this respect, as the accounting and audit system prescribed in it shows that the king and the mahamattas were co-shares in power.⁽⁵⁾

The post- Mauryan period witnessed the development of feudalism in India into a very complex system. Viewing Indian feudalism D.D.Kosambi suggested two related aspect- 1) feudalism from above which refers to a state in which the king collected a tribute from subordinates who independently ruled in their own territories, and 2) feudalism from below denotes the second stage where a class of land owners was interposed in the village between the state and the peasants. ⁽⁶⁾

A brief survey of state systems in Indian history suggests that the feudalism may be regarded as the historical predecessor of federalism. The basic difference between feudalism and federalism is that the former was essentially a traditional pattern of authority whereas the latter presupposes a democratic authority structure.⁽⁷⁾ The Mughal Empire was an example of such kind of system where we can see that the Mughal administration was essentially feudal rather than federal. John F. Richards added that “The division of functions established at the Centre was duplicated in the provinces. At each provincial capital a governor, responsible directly to the emperor, shared power with a fiscal officer or diwan reporting to a wazir; military pay master and intelligence officer or bakshi, reporting to the central inspector-general of the army; and a sadr, reporting to the minister for religious and charitable patronage. The governor was responsible for the overall peace, security, and tranquility of his province. In this capacity, he supervised the military intendants or faujdars and the commandos of military check points (thanas) who were deployed with contingents of heavy cavalry and musketeers throughout each province. The provincial diwan managed imperial revenues, expenditures, and the provincial treasuries. The separation of

powers between the governor and diwan was especially significant operating principle of imperial administration.”⁽⁸⁾

The last stage of the Mughal Empire has been characterized as the declining stage of a vast administrative system. During this period a process of disintegration started which saw the size of a number of small forces of Marathas , Sikhs and Afgans. But it is interesting to note that all these small state followed almost the Mughal pattern of administration, that is an administrative system which was more fental in nature rather than federal in character.

It was in fact a turning point in the evolutionary process of federalism in India. The advent of the British Colonial rule brought with it a number of changes with far reaching consequences .It may not be out of place here to mention that the coming of the East India company in 1600 marked the beginning of western domination in the Indian administrative system. In fact, from the administrative and political points of view the year 1857 appears to be most important because in that year the administration of India was taken over by the British Crown under the Proclamation by the British Queen. This was the beginning of the direct rule by the British Crown and the Indian states were brought under the

administrative authority of England. The British system had been able to establish a centralized system of bureaucratic administration with a control of the British cabinet as well as the British Parliament.

With a federal character the development of administrative institutions in India will start with the expansion of British rule after 1857, after the British Crown assented to take over the duties and treaty obligations of the East India Company and assumed direct responsibility for India's 'protected' states.⁽⁹⁾ In 1861 the British realized that Indian complexity required a federal arrangement of government. Since 1773 till Independence in 1947, India accumulated a strong unitary memory because of India was unitarily governed. Indeed, the whole body of Indian administrative folklore was unitary as thus strongly favourable to the central government.

Since 1857, the British government had taken a number of steps through successive Acts to consolidate its power over India. The culmination of this Process can be seen in the enactment of the Government of India Act, 1935 on the nature of the steps taken to strengthen the administrative structure which was ultimately

transform into a federal Polity, the following observation seems to be an accurate presentation :

Sovereignty in Indian history was crystallized in the main but was also partly diffused. Strong states were appreciably centralized but with some decentralizing features in parts. This pattern of Sovereignty not only allowed appreciable autonomies to groups and regions within the state but also visualized a complex inter-state alliance system in the subcontinent in which the allies were the constituents of the sub-continental state. This was true of even strong sub-continental states like the Mauryas , the Mughals and the British. Feudal autonomies of the past as well as the earlier tradition of ganasanghas may be seen as precursors of the autonomy of state governments under the Parliamentary Federal Constitutional System in India today.⁽¹⁰⁾

In this process of evaluation the most important step that the British Government took was the Passing of The Indian Councils Act 1861. What was important in this Act was that the British Government could realize that a vast country like India, the Policy of decentralization would be appropriate. In fact, the Act of 1861 laid emphasis on two important elements of any federal governance

: regional diversities and local specificities. Theoretically speaking, any legislative process seeks to satisfy local aspirations by maintaining regional demands as well as a sense of having national unity. It was realized that for better governance in India devolution of legislative powers was the only answer. Not only that the Act further created some positions for representation by Indians who were nominated by the administration for that purpose. Apparently the Principal of nomination does not fit into any elective process, but given the condition, this limited scope of association of the Indians with the administrative process became very crucial. It opened up a channel of communication between the administration and the Indian People. Although the system of nomination was not liked by the Indian people at large. Moreover, the Governor General was given the supreme power to create new provinces and also appoint Lieutenant Governors. From another perspectives the Act of 1861 was important . The Act was passed almost immediately after the Sepoy Mutiny of 1857. It had its profound impact on the process of passing this Act.

The next landmark event in this process was the enactment of the government of India Act, 1909, popularly known as Morley-Minto

Reforms. The Act made some advancement in expanding the nature of the Councils, both Central and the Provinces. It brought within it some of the representative elements but at the same time provisions were made for religion-based separate electorate for the Muslims. This particular provision evoked much criticism from the people. As this was seen as an attempt at creating a sentiment for division among the people on religious basis.

The Indian Councils Act, 1909 increased the strength of the legislative councils. The number of the additional members of the central Legislative Council was increased to a maximum of 60. The additional members consisted of two categories : official and non-officials. The officials comprised the ex-officio members of the councils and the nominated officials. The non-official members comprised the elected and nominated members. Thus the electorates created by the Act were divided into 3 main classes : general, class and special.

These regulations under the Act created for the first time the principle of communal electorates for Muslims. These was the first attempt which officially accorded to Muslim Community a position of separate identity. In fact that was the demand from the

Muslim Community. In other words the Act assured that for any system of representation either at the local bodies or legislative councils the Muslim Community would be represented as a community.

The 1909 Act did not make any changes in the functions of the councils but it expanded them. The expansion took place in three respect : (a) discussion of the Annual Financial Statement ; (b) discussion on any matter of general public interest ; and (c) the asking of questions. But this expansion did not in reality, enlarge the functions and powers of the councils. Moreover, the resolutions of the councils were not binding of the government. In a word , it did not create any constitutional obligation for the government.

What the Act of 1909 did was to divide the Indian community on communal basis . It was a deliberate attempt by the British Government to create a division within the Indian society. It was very correctly observed by Nehru when he said, “A political barrier was created round them (Muslims) , isolating them from the rest of India and amalgamating process which had been going on for centuries”.⁽¹¹⁾

The Morley Minto Reforms of 1909 has been looked upon as a process of concessions which, to some extent, were acceptable to the Moderates in the Congress who actually opposed to any kind of extremism. The principle of responsible government did not find any place in the scheme of these reforms. In fact every attempt was made to discourage the policy of devolution.

The limitations of the 1909 Act became visible very soon. A series of important development took place between 1909 to 1917 which included deep disappointment of the Indians, the policy of repression , the agitation of the Indian National Congress and the political conditions created during the first world war. The first world war generated some kind of hope in the winds of the Indian people because they thought that the British power would have to face serious challenges. It was also noticed that the British policy of divide and rule could not work well because of mounting pressures both from outside and within.

All these factors compelled the British Government to go for another reform which was passed through the government of India Act 1919. The government of India Act 1919 brought about some important reforms. The provincial subjects were divided

into two categories : Reserved and Transferred . This was commonly known as 'Dyarchy'. The transferred subjects included such matters which afforded the most opportunity for local knowledge and social service. Reserved subjects included among other things land revenue, finance and law and order. The most important transferred subjects were local government, public health, medical administration, education, public works, agriculture, development of industries and the like. This division of powers between Reserved and Transferred subjects was describe by Sir Friedrich Whyte as "Federation in embryo"⁽¹²⁾

The demand for further constitutional reforms by the Indians led the British Government to go for another very important constitutional reform which is known as the Government of India Act, 1935. It is generally said that the 1935 Act created a stage for federal governance of India. The Act made provisions for demarcation of jurisdictions between the centre and the units. In the words of M.V. Pylee, "The federal system which the Act of 1935 end to establish was perhaps the most complex ever known in the history of federalism."⁽¹³⁾

The most important features of the Act were :

- a) Its centralised nature which authorized the centre to take over the administration of the provinces under certain circumstances;
- b) The division of legislative powers in three lists : central, provincial and concurrent; and
- c) The assigning of demarcated sources of revenue to the centre and the provinces.

The 1935 Act sought to reconstitute the Indian polity by establishing a federal system with a highly centralizing tendency. The executive power and authority of the federation was vested in the Governor General who was the representative of the British Crown. The ministers were chosen by the Governor General from among the members of the federal legislature. They held their offices so long as they could enjoy the confidence of the Governor General. The Act also vested in the Governor General extra-ordinary powers of legislation. If at any time the Governor General was satisfied that a situation had arisen in which the government of the federation could not be carried on in accordance with the provisions of the Act, he was authorized to declare the breakdown of the

constitutional machinery. Dyarchy was abolished in the provincial autonomy was introduced in its place. The Governor was to act on the advice of the Council of Ministers. He had also certain discretionary powers.

Under the Government of India Act 1935, a federal court was established. It was to consist of a chief justice and not more than six other judges who remained in office till the age of 65.

Thus in essence the Act of 1935 can be considered a step towards federalizing process in India. But it failed to satisfy the general sentiment of the Indian people because in reality the Act of 1935 provided the British Government wider scope for central intervention. However, the subsequent developments such as Cripps Mission or the Quit India Movement created conditions for the transfer of power to the Indians through the Indian Independence Act 1947.

The next phase in this process is related with the making of India's constitution by the Constituent Assembly. It may be noted that the Objectives Resolution moved by Nehru on December 13, 1946 envisaged a confederation where in the confederating states "shall

possess and retain the status of autonomous units, together with residuary power and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom.”⁽¹⁴⁾

In a meeting of the Union Constitution Committee on June 6, 1947, headed by Nehru categorically declared that the Constitution should be a federal structure with a strong centre.⁽¹⁵⁾

In a separate note in May, 1947 to the Union Constitution Committee, Pannikker stated that “the Declaration of Union and Provincial Powers which federalism involves, is, to my mind a dead issue, and the idea which has gained prevalence that the Indian Constitution must be of a federal type is definitely dangerous, to the strength, prosperity and welfare of India. Federalism is a fair weather constitution and in the circumstances of India it is likely to be a dangerous experiment leaving the national government with but limited powers, weak and consequently incapable of dealing with national problems.”⁽¹⁶⁾

A study of the debates in the Constituent Assembly will established

the fact that on the issue of federal structure as well as governance, many members expressed their opinion in support of a greater degree of state autonomy with a view to accommodating the interests of various regions and communities in the process. Most of them highlighted that India, being a huge country with diverse interests demands greater accommodative spirit which can only be achieved through a federal arrangement. It is relevant to mention what one of the Prominent Muslim members, Ismail Sahib said :
“Ours is a vast country of a great distances and huge population. However much the Centre may be anxious to accord uniform treatment to the various parts of the country, still, in the very nature of things, there will be drawbacks and shortcomings. This will naturally lead to discontent and conflict.....a federal type of government is more suitable than anything else for such a country as ours.”⁽¹⁷⁾

Theoretically speaking, the drafting of a constitution of a country like India which, after a long struggle, attained independence, is conditioned by and dependent on a number of forces; historical, sociocultural, economic and political. The debates that took place in the Constituent Assembly reveal that the spirit of accommodation

and compromise worked at the centre of any discussion. The members also had the idea that the proposed constitution should have sufficient quality of adaptability and responsiveness to the outward challenges. Besides this, the makers of the constitution also paid attention to the disrupting forces which might undermine the very unity of the nation at that critical period of history. This sentiment has been expressed by Paul Brass when he observed:

“Indian’s Constitution makers^s thought that they had good reasons to be fearful of disorder, even chaos, in the subcontinent as a consequence of the actions of a multiplicity of dangerous forces arising out of political movements associated with Muslim Communalism, secessionism and revolutionary communism. Moreover, some of those forces were associated with acts of violence, revolutionary insurrection, extensive communal killings and war. The response of India’s Constitution makers to these threats and dangerous was to use them as a basis for framing a Constitution with numerous provisions designed to deal effectively with the threat of disorder through the creation of a strong centralized state.”⁽¹⁸⁾

The makers of the Constitution, right from the beginning, were

engaged in providing a clear direction for making a strong Indian Republic. Consequently they laid emphasis on two important tasks : state-building and nation-building. While admitting the necessity of having a federal arrangement, they could not neglect the issue of keeping India unified and strong India. That was the reason why in sharing of powers between the centre and the states, the centre has been made more powerful.

The prevailing social, economic and political conditions of India immediately after the attainment of independence can be referred to. The state was totally shattered, social relations underwent drastic changes and the political environment was full of distrust and despair. In such a situation, it was quite natural for the makers of modern India to create a condition of faith, belief and commitment of the people towards democratic principles and ethos. Infact, this had been the compulsions with all nations all over the world who could attained independence after a long process of struggle for freedom.

A reference to the federal arrangement in India will show that it has broadly drawn ideas from the Government of India Act, 1935. For that reason, in the sphere of legislative relations, the centre

has been made more powerful. Not only that, in the sphere of administrative relations the commanding position of the centre has been established. Excepting a small number of areas, the states have been made more dependent on the centre.

Since political dynamics undergo changes with the changes in the environment in which it works, the federal experience in India has also witnessed changes both in qualitative and quantitative terms. The developments that took place since the Fourth General Elections, 1967 can be cited as the beginning of a process of further decentralization of powers, going beyond the structural frame of the constitution of India. After all, a constitution like that of India's one, is to acquire the character of, what Austin has correctly said, "A vehicle for Social Revolution." If that is the aim, and rightly so, the constitution of India has to be not only flexible but also responsive to outwards changes.

The emergence of Coalition Politics in India has opened up new areas in federal governance where states are playing crucial roles and a restructuring of federal relations has become a necessity. With the decline of "One-dominant Party System" as Rajni Kothari has correctly described during "Congress System", a new power

configuration has emerged wherein the regional and local forces are at a greater position to demand share from the national resources.

The history of the evolution of India's federal system has passed through different phases. Needless to mention, the formative period after independence saw a process of centralization of powers. Although the system was modelled on a federal basis. This period of dominance by the centre lasted till 1966 when in the subsequent year there had been changes in the electoral verdict in some of the states. So a climate of 'Politics of Confrontation' emerged. But this was replaced by, what is known as, 'Politics of Bargaining' between the centre and the states. Interestingly, the era of coalition politics created a sense of cooperation between the Centre and the States which has led scholars to describe it as 'Cooperative federalism'. The current phase offers an example where the regional or state governments hold the driving force and a new idea of devolution of authority even at the grass-root level has emerged.

To conclude, the history of the evolutionary process in India offers some unique features of its own. Being essentially modeled on the Westminster Pattern, India did not accept the unitary system of

governance. Here the federal arrangement has been largely modeled on the Canadian and marginally on the American system. But it should not be forgotten that each country has its own contextual and historical compulsions. Given that conditions, it can be stated that the evolutionary process of India's federal system is essentially India-Pacific and hence any similarity with any other system is bound to be outwardly superficial and not inwardly central.

Notes and References

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