CHAPTER - I

THE EVOLUTION OF AUTONOMY IN THE INDIAN FEDERAL CONTEXT

1 INTRODUCTION

State autonomy has been a pivotal issue in the modern federations on account of two reasons. The first reason is the rise of terrorism, globalization and economic depression that have necessitated the modern federations to have strong and dominant Centre. Even in a federation like the USA, where the Centre has been given limited powers by the Constitution, with the passage of time the Centre has turned out to be strong in order to meet the serious challenges of wars, economic crisis and social service. The same is true to other federations like Switzerland, Australia etc. The second reason responsible for serious concern for state autonomy is the growth of multi-lingual, multi-ethnic and multi-cultural societies which in turn need a great degree of autonomy to maintain their unique identities. Gone are the days of Imperialism that suppressed the identities of the colonized and tried to impose a homogenous identity on them. Nowadays every community, whether big or small, asserts its identity and even travels back in time to resurrect its buried identity. Therefore, any attempt to tamper with its identity is considered intolerable. Thus, it can be said that in today’s world, federations are experiencing the pulls of the above mentioned two opposite forces that have made the issue of state autonomy a sensitive one. India is no exception to it. But it is noteworthy that in Indian federation state autonomy has always been a volatile issue. Ever since the Constitution of India came into existence, the issue of state autonomy has been more often than not the bone of contention in discussions on Indian federation. To answer why it is so, one has to understand the nature of Indian federation. The nature of Indian Federation cannot be understood in its correct perspective until one has the knowledge of evolution of State autonomy in India.
1.1 Objective of the Study

The main objective of the present study is to critically examine state autonomy in the most unique state of the Indian federation i.e., the State of Jammu and Kashmir. The specific objectives of the present study are:

1) To trace the evolution of state autonomy in the Indian federal context.
2) To examine distribution of power between Union and States so as to access the extent of autonomy enjoyed the States in the Indian federal setup.
3) To trace the history of Jammu and Kashmir from a constitutional point of view and to do a comparative study of autonomy enjoyed by the State of Jammu and Kashmir vis-a-vis other States of Indian Union.
4) To examine the nature and cause of demand for more autonomy in the State of Jammu and Kashmir.
5) To make pragmatic suggestions to fulfill the demand of state autonomy in Jammu and Kashmir.

1.2 Hypothesis of the Study

Indian federalism evades any specific definition or classification. Its nature keeps on changing to maintain the delicate and crucial balance between centripetal and centrifugal forces in the country. In Indian federation, state autonomy has multiple shades of meaning. The hypothesis of this study is that an inclusive approach is needed to understand state autonomy in the Indian federalism. The present study also presumes that a pluralistic approach is key to resolve the issue of state autonomy in the State of Jammu and Kashmir in particular and in Indian federalism in general. The pluralistic approach involves giving of autonomy at different levels at the same time. India’s democratic and federal setup, the autonomy which is constructed as synonymous with decentralization would be most suited.

1.3 Research Methodology

In the present study doctrinal research methodology has been used. The research is based on detailed study of those provisions of Constitution of India which are related
to power sharing between Center and States, the relevant provisions of Constitution of Jammu and Kashmir and the Constitution (Application to Jammu and Kashmir) Order, 1954 as amended from time-to-time. The researcher has done a detailed analysis of different reports of commissions and committees, various historical treaties and rare legal documents. The help of internet research websites has been taken. An analytical research methodology has also been used to analyze the primary and secondary sources. The study also includes historical approach as its traces the constitutional history of Jammu and Kashmir and the evolution of state autonomy in India. In addition to it, comparative research methodology has been used in comparing the extent of autonomy in Jammu and Kashmir vis-à-vis other States of the Indian Union.

2 EVOLUTION OF STATE AUTONOMY

The evolution of state autonomy in India has not been from bottom to top as in the case of the United States of America where the States were independent colonies which agreed to form first a confederation and then a federation. Rather it is from top to bottom i.e. the British provinces were created for administrative purposes and were given autonomy by the British government as per requirement. It was a case of decentralization rather than federalization. A detailed discussion of the evolution of state autonomy in India is done in the following pages.

2.1 Provincial Autonomy in India before 1935:

Generally the idea of provincial autonomy is associated with the provinces in British India. But the idea to have territorial units for administration is much older as proved by two significant historical documents namely the Puranas and the Ain-i-Akbari of Abul Fazl. The Puranas give an account of Janapads of Bharatvarsha. ¹ The Ain-i-Akbari of Abul Fazl and the Tuzk-i-Jehangiri (Memoirs of Emperor Jehangir) reveal the basis on which the Moghul Subhas (provinces) were constituted.² During the reign of Emperor Akbar, linguistic and socio-cultural homogeneity was taken into

²Ibid.
consideration in the delimitation of provinces. Decentralization had been adopted by the political creed in the Maurayan and Harsha Empires although centralization was the official policy of the Delhi Sultanates, the Mughal rule and the British rule till 1861. With the decline of the Mughal Empire, the process of fragmentation of Central authority had set in and the Marathas attempted to fill the vacuum created by the Mughal Empire on the death of Emperor Aurangzeb. The Sepoy mutiny in 1857 was a watershed in giving currency to the process of decentralization.

After 1857, the British rulers administered their territories in India through a separate administrative machinery for each province called the local government. The provinces in British India were formed on the basis of strategic and political consideration rather than on linguistic and cultural homogeneity. For early some years, the local governments were completely under the control of the Governor-General and his Council, i.e., the Central government. But with the passage of time they were given legislative, administrative and financial powers which was an important step in the direction of provincial autonomy.

2.2 The Indian Councils Act, 1861

The passing of the Indian Councils Act, 1861 marked the first step towards the development of the powers of the local governments. This Act restored the legislative powers of the Madras and Bombay governments which had been taken away by the Charter 5 Act of 1833. The Act authorized the Governor-General in Council to extend its provisions to the other provinces. Consequently, Bengal got a legislature in 1862, the North-Western Provinces in 1886 and Burma and the Punjab in 1897.

2.3 The financial Reforms of 1870, 1877 and 1882

The next step towards the growth of provincial government was taken in 1870 during the Governor-Generalship of Lords Mayo when certain financial powers were

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4 Id at XIV.
5 P.N. Masaldan, Evolution of Provincial Autonomy in India 1858 to 1950 4 (1953).
6 Ibid.
conceded to the provinces. The financial reforms gave financial powers to the provincial governments and made them more autonomous in the financial sphere. A further step was taken in 1877 during the Governor-Generalship of Lord Lytton. As a result of the financial reforms of 1877, twenty percent of the total revenues of India and the ordinary services, were transferred to the provinces. This reform resulted in an unprecedented elasticity in provincial finances. The financial reforms of 1882 abolished fixed Central grants and a share, generally half and half, in the revenue from certain sources was substituted for the grants. Besides the former two heads of revenue – the wholly Imperial and the wholly provincial – a third kind of revenue head, the Divided, entered the Indian budget. The provinces now had greater scope for the development of the services entrusted to them with a definitely freer hand.

2.4 The Indian Councils Act, 1892

The composition and powers of the legislative Councils established by the Act of 1861 were altered by the Indian Councils Act, 1892. This Act widened the legislative sphere of the provinces. The number of the additional members of the legislative councils of Madras and Bombay increased between 8 and 20. It introduced the principle of representation though not direct. For the first time the right of putting questions, under rules, was granted to the members. The members of the provincial legislature were also given the power, subject to the previous sanction of the Governor-General, to repeal or amend as to that province, any law made by any other authority. By the end of the 19th century, owing to these developments, there was greater scope for provincial initiative than in 1858.

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7 Id at 5.
9 *Supra* note 5 at 7.
10 Ibid.
11 The Indian Councils Act, 1892, Sec. 2.
2.5  Morley-Minto Reforms and the Indian Councils Act, 1909

Despite the introduction of the above mentioned financial reforms and Acts, the entire governmental system was in theory one and indivisible.\textsuperscript{12} The ultimate supremacy of the Central government was retained intact. The first sincere attempt to introduce a representative and popular element was made by the Morley Minto Reforms which were implemented by the Indian Councils Act, 1909. Though supremacy of Centre remained undisturbed under the Indian Councils Act, 1909 also yet it considerably enlarged the size of the Central and provincial legislative councils and added to their powers. The size of provincial legislative councils was enlarged by including elected non-official members which resulted in the extinction of official majority. For the first time the right to move resolutions and divide on the budget was also granted to the local legislatures.\textsuperscript{13} The 1909 Act, associated with the names of Lord Morley, the then Secretary of State for India and Lord Minto, the then Governor-General of India, failed to satisfy Indian hopes and aspirations. So, the necessity of some constitutional change soon became obvious.

2.6  Montagu-Chelmsford Report and the Government of India, Act, 1919

The idea of provincial autonomy was given a fuller expression in the Report on the Indian Constitutional Reforms, 1918, which is commonly known as the Montagu-Chelmsford Report. In this report, it was mentioned that the eventual future of India was to become “a sisterhood of States, self-governing in all matters of purely local or provincial interest”.\textsuperscript{14} On the basis of the Montagu-Chelmsford Report, an Act, known as the Government of India Act, 1919 was passed by British Parliament on December 23, 1919. The object of the Act was to increase participation of Indians in administration and to decentralize the authority without loosening the control of the Central government. Though theoretically the relation between the Central government and provincial governments, did not alter materially, the control of the Central

\textsuperscript{13} Supra note 5 at 11.
\textsuperscript{14} The Report on Indian Constitutional Reforms, 1918 Para 349.
government over the provinces was substantially relaxed. The main features of the Government of India Act, 1919 were as follow:

i. A Clear Division of Functions between the Central and Provincial Governments

Devolution Rules were made under this Act to separate the subjects of administration into two categories - Central and Provincial. The subjects of all India importance were brought under the category ‘Central’ while matters primarily relating to the administration of the provinces were classified as ‘Provincial’. Even the sources of revenue were divided into two categories. The provincial budgets were separated from the Government of India and the provincial legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue. The provinces were endowed with borrowing powers for the first time although previous sanction of the Governor-General was necessary.

ii. Dyarchy in the Provinces

The constitutional experiment that was made in the provincial sphere was known as ‘Dyarchy’. Under this system, the provincial administration was bifurcated into two halves. Certain provincial subjects termed as ‘Reserved subjects’ were kept under the charge of the Governor and his executive council. Other subjects, known as ‘Transferred subjects’ were placed under the control of Governor acting on the advice of his ministers. The ‘Transferred subjects’ provided autonomy though limited to the provincial governments.

iii. The Indian Legislature made more representative

No responsibility was introduced at the Centre and the Governor-General in Council continued to remain responsible only to the British Parliament through the Secretary of State for India. But the Indian legislature was made more representative and, for the first time, bi-cameral. It was to consist of an Upper House, named the Council of State and a Lower House, named the Legislative Assembly. Thus, it can be said that though the provinces were vested with a devolved and not an original authority yet they were provided with new
fields to work upon. The Act of 1919 was actually a ‘half way house’ in the transition from a unitary State to a federal one.

2.7 The Simon Commission

The shortcomings of the Act of 1919 as well as the Non-Cooperation movement by the Indian leaders led the British Government in 1927 to appoint a Indian Statutory Commission. The Commission, headed by Sir John Simon, prepared its report and it was published in 1930. The commission recommended a federation for the whole of India. The commission asserted:

The ultimate Constitution of India must be federal, for it is only in federal Constitution that units differing so widely in constitution as the Provinces and the State can be brought together while retaining internal autonomy.\(^\text{15}\)

The Report was considered by a Round Table Conference consisting of the delegates of the British Government and of British India as well as of the Rulers of the Indian States. On the basis of the results of this Conference, the Government of India Bill was drafted and passed as the Government of India Act, 1935.

2.8 The Provincial Autonomy under the Government of India Act, 1935

While under all the previous Government of India Acts, the Government of India was unitary, the Act of 1935 prescribed a scheme for an All-India federation taking the provinces and the Indian States as units. Though too many concessions were made in the Act for securing the acquiescence of Indian States for the proposed federation but they did not join it. So, the federation which came into existence consisted only of Central government and the provinces. Following were the main features of this Act:

i. **Federation and Provincial Autonomy**

The Act introduced the provincial autonomy by dividing legislative powers between the Central and provincial legislatures. The provinces were no longer delegates of the Central Government but were autonomous units of administration. The Governor of a Province exercised his executive authority on behalf of the Crown and not as a subordinate of the Governor-General.

ii. **Dyarchy at the Centre**

The Crown vested the executive authority in the Governor-General who performed two fold functions. In functions like defence, external affairs, ecclesiastical affairs and of tribal areas, the Governor-General was to take help of ‘counsellors’ appointed by him, who were not responsible to the legislature. In the reserved subjects, the Governor-General was to act on the advice of a ‘Council of Ministers’ who were responsible to the legislature.

iii. **Bi-Cameral Legislature**

The Act provided bi-cameral legislature at Centre consisting of Federal Assembly and the Council of States. In six of the provinces, the legislature was bi-cameral comprising a legislative assembly and a legislative council. In the rest of the provinces, the legislature was unicameral.

Though the Government of India Act, 1935 did a three-fold division of legislative powers, namely the Federal list, the Provincial list and the Concurrent list yet the Central Government retained control over the provinces in the following manner:

a) In some matters, the Governor was to act under the control and directions of the Governor-General and, through him, of the Secretary of State.

b) Neither of the Central and provincial legislatures possessed the features of a sovereign legislature. The Governor-General had independent powers of legislation concurrently with those of the Central legislature.
c) The allocation of residuary power of legislation in the Act was unique. It was not vested in either the Central or the provincial legislature but the Governor-General was free to empower either the federal legislature or the provincial legislature to enact a law with respect to any matter which was not enumerated in the legislative lists.

Thus, it can be said that the Government of India Act, 1935 started in India a federal system that became a guiding light of the Constitution makers of Independent India. It is interesting to note that the division of legislative powers in the present Constitution of India proceeds largely on the lines as given in the Act of 1935.

2.9  Cripps Mission

The Act of 1935 did not confer ‘Dominion status’ on India. Consequently, the Indian leaders demanded a Constitution made by the people of India without outside interference. This demand was resisted by the British Government until the outbreak of World War II when external circumstances forced them to realize the urgency of solving the Indian Constitutional problem. The result was Cripps Mission that proposed that the Constitution of India was to be framed by an elected Constituent Assembly of the Indian people. It also proposed that there should be one Indian Union comprising of all the provinces and the Indian States. But the two major political parties of India, i.e., Congress and Muslim League failed to come to an agreement to accept the proposals.

2.10  Cabinet Mission

The Cabinet Mission, consisted of three members of the British Government – Sir Stafford Cripps, Lord Pethick Lawrence and Mr. A.V. Alexander arrived in India on 23rd March, 1946 to explore the possibility of an immediate settlement of the Indian problem. In April 1946, they had a series of talks with the leaders of all political parties and groups. The Congress and the Muslim League both could not come to any mutual understanding and therefore, the Commission put forward its own proposals known as “Cabinet Mission Plan” on 16th May, 1946.
The important features of the plan proposed by the Mission were:

i. There would be a Union of India comprising both British India and the native States and the Union having jurisdiction over the subjects of foreign affairs, defence and communications. All residuary powers would belong to the provinces. In case of native States, they would retain all subjects and powers other than those ceded to Union by Instrument of Accession.

ii. The paramountcy of the Crown over the Indian States was to lapse and it could neither be retained by the British Crown nor transferred to the new government.

In accordance with the basis of the scheme of the Cabinet Mission of May 16, 1946 the elections to the Constituent Assembly took place in July, 1946 and the first session of the Constituent Assembly began on December 6, 1946. But Muslim League members did not attend the first sessions of the Assembly and reiterated its demand for Pakistan.

The British Government sent Lord Mountbatten to India as the Governor-General in order to expedite the preparations for the transfer of power for which it had fixed a rigid time. With a view to facilitating this transfer, and at the same time to accommodate the rival claims of the two leading communities, he devised the plan of partition of the country into India and Pakistan. The Plan was accepted by the two leading Indian political parties and the British Government. Accordingly, the Indian Independence Act, 1947 was passed providing for the setting up of a Dominion of India and a Dominion of Pakistan on August 15, 1947.

2.11 Autonomy enjoyed by the State of Jammu and Kashmir under British Rule

The State of Jammu and Kashmir is the only State in the Union of India which negotiated the terms of its membership with the Union. The State of Jammu and Kashmir came into being as a single political entity in 1846 under what is called the

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Treaty of Amritsar. By this Treaty, which was concluded between Raja Gulab Singh and the British Government on March 16, 1846, the British Government made over to Raja Gulab Singh the State of Jammu and Kashmir.

2.12 Special Status to the State of Jammu and Kashmir under the Treaty of Amritsar

Under the Treaty of Amritsar, there was absence of any provision for stationing British Resident in the State of Jammu and Kashmir which was at that time a general practice prevalent in other Princely States of the country. Unlike treaties concluded by the British Government with other Princely States of India, the Treaty of Amritsar did not contain any clause prohibiting independent diplomatic intercourse with foreign powers or other Indian States. Though Maharaja Gulab Singh acknowledged the supremacy of the British Government by the Treaty of Amritsar yet under the treaty the Maharaja had secured a large measure of independence, both in internal and external affairs of the State.

2.13 Erosion of State Autonomy under British Raj

On the pretext of the gradual extension of the Russian Empire almost upto the borders of the State of Jammu and Kashmir, British government succeeded in stationing a British Resident in the State. The Maharaja Pratap Singh, like his father and grandfather, resisted this encroachment on his power which was also the violation of the Treaty of Amritsar but gave way in the end. As the Maharaja Pratap Singh resisted further British attempts on the autonomy of the State, a plan was prepared to deprive him of power. At last he signed, or as is more correct, was made to sign an Irshad, which amounted to an edict of resignation, on 8 March 1889. For carrying out the administration of the State, a Council of Regency was established which was to exercise the powers of the State government under the guidance and control of Resident.

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21 Id at 5.
22 Supra note 19 at 24-25.
23 Ibid.
Maharaja Pratap Singh's whole powers were restored to him on 4th February, 1921 on the condition that he would accept the advice of the Resident in administrative matters, whenever it was offered and would also inform the Resident of any important changes in the existing rules and regulations and the frontier policy. Maharaja Pratap Singh, who had no son, was succeeded by his nephew Hari Singh, the only son of his brother Amar Singh Maharaja Hari Singh made efforts to restore the virtually reduced internal autonomy of the State of Jammu and Kashmir. But the Maharaja's urge for more autonomy for the State and special safeguards for its citizens lacked support of its Kashmiri Muslim intelligentsia. Maharaja Hari Singh wanted the return of administration of the Gilgit Agency which was taken over by the British Political Agent in 1889. Instead of returning the Gilgit Agency, British India Government took the Gilgit Wazarat, which was administered by the Kashmir Durbar, on 26 March, 1935 on a sixty year lease. Under British pressure, he also appointed in March, 1933 Lt. Col. E.J.D.Colvin as the first British Prime Minister of his State. Thus, the interference by the British India Government in the affairs of the State assumed alarming proportions and the State of Jammu and Kashmir was reduced to a status of an illusory autonomy, which retained the legal skeleton intact but robbed it of political flesh and blood.

2.14 The Indian Independence Act, 1947

The Indian Independence Act, 1947 itself did not contain detailed provisions as it was an enabling measure. As a result, the Act of 1935 continued to provide the basic scheme of the Dominion Constitution of India. So, the Government was to be carried on until any new Constitutional arrangement was prepared according to the Government of India Act, 1935 which might be amended by the Governor-General to suit the altered conditions. However, no important changes regarding the sphere of provincial government and the relations between the provinces and the Center were introduced and the division of powers continued as under the Act of 1935. When the Indian

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24 Supra note 19 at 27.
26 Supra note 19 at 30-31.
27 Id at 32.
28 Id at 27-28.
Independence Act, 1947 passed, it declared the lapse of paramountcy of the Crown which meant that the native States were free from the supremacy of the British Empire. They legally became independent but they soon realized that it was in their own interest to accede to either of the two Dominions of India and Pakistan. The native States acceded to India as per the scheme provided in the Act of 1935. In other words, they signed Instruments of Accession and initially acceded only on three subjects – Defence, Foreign Affairs and Communications. The accession of these States to the Indian Dominion set in motion a new movement for territorial readjustment. It was a two-fold operation, integration and merger. As a result, the number of native States in the Indian Union was brought to sixteen from about six hundred. Thus, the new India became a well knit Union providing for the formation of a federal Constitution with a strong Central Government.

2.15 The Constituent Assembly of India

The Constituent Assembly which had been elected for undivided India and held its first sitting on 9th December, 1946, reassembled on the 14th August, 1947 as the Sovereign Constituent Assembly for the Dominion of India.

The salient principles of the proposed Constitution had been outlined by various committees of the Assembly such as the Union Constitution Committee, the Union Powers Committee, Committee on Fundamental Rights etc. After a general discussion of the reports of these Committees, the Assembly appointed a Drafting Committee on 29th August, 1947. The Drafting Committee, under the Chairmanship of Dr. Ambedkar, embodied the decision of the Assembly with alternative and additional proposals in the form of a ‘Draft Constitution of India’ which was published in February, 1948. The Constituent Assembly considered the provisions of the Draft, clause by clause and on 26th November, 1949 the Constitution received the signature of the President of the Assembly and was declared as passed. The Constituent Assembly adopted federal principle with a strong Centre for India because the past history of India conclusively established the fact that in the absence of a strong Centre, India soon

29 Supra note 17 at 9.
disintegrated. Moreover, strong Central government was also needed for assuaging communal frenzy, for meeting the then existing challenge of food crisis and for initiating economic development by mobilizing national resources under a nation-wide plan. Thus, in India, evolution of State autonomy which began as an administrative necessity ultimately influenced the final shape of the Indian Constitution with the adoption of federal principal for Indian polity.

3 NATURE OF INDIAN FEDERATION

To understand the nature of Indian federalism, it is essential to have an idea of the concept of federalism. To define federalism is a Herculean task. According to S. Rufus, an Australian scholar of federalism, there are as many as 44 kinds of federalism. In fact, the original concept of federalism has undergone a sea-change and it has adapted itself to the changing social, political and economic conditions. The American scholar Livingstone rightly remarks that federation is more a ‘functional’ than an ‘institutional’ concept. In other words, federalism is the product of the economic, social, political and cultural forces of a country.

The Constituent Assembly of India adopted co-operative federalism for Indian polity with a bias towards the union which was necessitated due to historical reasons and political expediency. The adoption of co-operative federalism, in Indian federal context, was with a purpose to ensure harmony and co-operation between two levels of government working at the same time.

3.1 Views of Constitutional Experts on the Nature of Indian Federalism

Whether the Constitution of India is truly federal or quasi-federal or unitary is a debatable issue. There are some scholars such as K.C. Wheare, Sir Ivor Jennings, Munshi, K.P. Mukherji who do not consider Indian Constitution to be truly federal. According to Wheare:

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32 Livingstone, Federation and Constitutional Change 6-7 (1956).
India is a unitary State with subsidiary federal principles rather than a federal State with subsidiary unitary principles. The Constitution is quasi-federal.  

Sir Ivor Jennings views India “as a federation with a strong centralizing tendency.” There is other group of constitutional experts who adopt the liberal and dynamic concept of federalism and accept the Indian Constitution as federal. The most prominent among these experts are Alexandrowicz, Appleby and A.H. Birch. According to Alexandrowicz “India is undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and States.” A.H. Birch, W.H. Mooris-Jones, Granville Austin label Indian Federalism as “Co-operative Federalism”. What Dr. B.R. Ambedkar remarked about Indian Federalism is quite noteworthy. According to him:

Indian Constitution could be both federal and unitary. In normal times, it could work as a federal Constitution and in times of war or economic and political crisis, it would work as a unitary one. No other Constitution in the world possesses this flexibility.

It can be said that his idea of Indian federalism is more comprehensive accommodating the contradictory traits in the Indian Constitution.

The Constitutional expert V.N. Shukla has described India as distinctive federation whereas H.M. Seervai has described India’s Constitution as federal Constitution. Though scholars define federalism in different ways, they agree that a federal system possesses certain essential features which are distribution of powers between the Central government and the governments of the several units forming the federation, supremacy of the Constitution which should be in written form, rigidity of the Constitution and independence of judiciary.

36 A.H. Birch coined the term “Co-operative federalism”.
37 VII *Constituent Assembly Debates*, 34.
It is needless to state that India’s political system possesses all the aforesaid essentials of a federal polity. The Constitution which is both written and rigid is the supreme organic law of our land. Both the Centre and the State governments as well as their respective organs derive their mandate from the Constitution. It is not competent for the States in India to secede from the Union. There is a division of legislative and administrative powers between the Union and the State governments and the Supreme Court stands at the head of our Judiciary to jealously guard this distribution of powers and to invalidate any action which violates the limitations imposed by the Constitution.

3.2 Indian Judiciary on Indian Federalism

Any discussion on the nature of Indian federalism is incomplete without a reference to the different decisions given by the Supreme Court on the nature of Indian federalism. There is no unanimity among the various decisions of the Supreme Court. In cases such as Keshvananda Bharti v. State of Kerala\(^ {39} \) and S.R. Bommai v. Union of India\(^ {40} \), the Supreme Court has asserted that Constitution of India is federal. But in cases such as State of West Bengal v. Union of India\(^ {41} \), State of Karnataka v. Union of India\(^ {42} \) and State of Rajasthan v. Union of India\(^ {43} \), the Supreme Court has highlighted those features of our Constitution that put a question mark on its federal nature. In the landmark judgement of the nine judge bench of the Supreme Court given in the case of S.R. Bommai v. Union of India, the position of federalism under the Indian Constitution has been rightly described:

> The fact that under the scheme of our Constitution, greater power is conferred upon the Centre \textit{v"iz-a-v"iz} the States does not mean that States are mere appendages of the Centre. …federalism in the Indian Constitution is not a matter of administrative convenience,

\(^{38}\) \textit{Supra} note 16 at 53.
\(^{40}\) A.I.R. 1994 SC 1918.
\(^{41}\) A.I.R. 1963 SC 1241.
\(^{42}\) A.I.R. 1978 SC 68.
\(^{43}\) A.I.R. 1977 SC 1361.
but one of principle- the outcome of our own historical process and recognition of the ground realities.

4 TENSION AREAS IN INDIAN FEDERALISM

The tension areas in Indian federalism mean those provisions of the Constitution of India that undermine state autonomy and challenge the federal set up. The important ones are as follows:

i. Omission of the expression ‘federation’

The Constitution nowhere uses the term ‘federation’. Instead it uses the term ‘Union’. India is ‘an indestructible’ Union of destructible States. This is different both from the American and Soviet federations.

ii. Article 3 of the Indian Constitution

This Article authorizes the Parliament to create new State or States, to alter the boundaries of existing States and even to abolish a State by ordinary legislative procedure. This Article virtually reduces the States to the position of local bodies.

iii. The office of the Governor under the Constitution

The Governor plays dual role one as the head of the State and other as the representative of Centre which has made the governor’s task difficult and controversial. The provisions regarding his appointment are capable of misuse in the hands of the party in power at the Centre. Moreover, the Centre-State relationship bears its greatest strain when controversies arise regarding the appointment of a Chief Minister or dismissal of a Ministry by the Governor.44

iv. Legislative and Administrative Relations between Centre and States

Articles 249,250,252 and 253 in Part XI clearly underline that the Centre has upper hand in the legislative sphere. In addition to it, Articles 256, 257 and 258 place the Union in a distinctly advantageous position at the expense of the States.

v. **Fiscal Relation**

In fiscal relations also the Centre enjoys more financial autonomy as compared to States. The provisions contained in Articles 293, 354 and 360 clearly highlight that the Centre has more financial powers as compared to the States.

vi. **Emergency Provisions under Articles 352, 356 and 360**

The emergency provisions embodied in part XVIII of the Constitution seriously interfere with the autonomy enjoyed by the States. Whether it is emergency arising out of war, or external aggression or internal disturbance, or it is due to failure of constitutional machinery in a State or due to financial breakdown, the long arm of the Union pervades the entire area of State autonomy.\(^\text{45}\)

In addition, the other provisions of the Constitution that reveal the Centre-bias features of the Constitution are Single Citizenship, All India Services, Integrated Judiciary, Single Election Commission, Finance Commission and Planning Commission.

On account of the above-mentioned tension areas, state autonomy has been a very sensitive issue in India federation and therefore, there has been demand for more and more state autonomy by the different States from time to time.

5 **VARIOUS REPORTS ON STATE AUTONOMY**

In the past, the States like State of Tamil Nadu, Punjab, West Bengal and Jammu and Kashmir have strongly articulated their demand for more state autonomy through different reports on state autonomy.

i. **Rajamannar Committee Report**

In 1969, the Tamil Nadu government appointed Rajamannar Committee\(^\text{46}\) to enquire into the question of Centre-State relations and state

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\(^{46}\) This committee consisted of three members i.e. P.V. Rajamannar (Chairman), A.L. Mudaliar and P. Chandra Reddy.
autonomy. The committee submitted its report in 1971. The important recommendations of the committee included constitution of advisory body under Article 263, transfer of residuary powers to States, repeal of Articles 249, 356 and 357 and greater financial autonomy to the States.

ii. **The West Bengal Memorandum**

The government of West Bengal on December 1, 1977 adopted a memorandum on Centre-State relations suggesting a review of the existing scheme so as to restructure the same. Most of the recommendations of the memorandum seem to be modelled on the recommendations of the Rajamannar Committee. Some of the important recommendations were:

(a) Article 368 should be so amended as to ensure that no amendment of the Constitution is possible without the concurrence of two-thirds of the members present and voting in each House of the Parliament.

(b) Article 3 which gives power to the Parliament to change the area of a State unilaterally should be suitably amended so as to ensure that the name and area of a State cannot be changed by the Parliament without specific consent for that by the State Legislature concerned.

iii. **Anandpur Sahib Resolution**

In 1978, All-India Akali Conference adopted the Anandpur Sahib Resolution which demanded utmost autonomy. The resolution declared:

In this new Punjab, the authority of the Centre should be confirmed only to the defence of the country, foreign relations, communications, railways and currency. All the residuary subjects (departments) should be under the jurisdiction of Punjab which should have the right to frame its own constitution for these subjects.47

iv. **Sarkaria Commission Report**

The Government of India appointed a commission under the chairmanship of Justice R.S. Sarkaria in 1983 to review the Centre-State relations. The commission gave many recommendations on legislative,

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administrative and financial relations between the Centre and State
governments. The following are important ones:

(a) Inter State Council should be constituted under Article 263 of the Constitution to solve many of the tension areas in Centre-States relations.

(b) There should be an appropriate amendment of Article 155 to ensure the effective consultation with the State Chief Minister before the appointment of a Governor.

(c) In view of the divisive forces in India, commission recommended the continuance of Article 356 as a measure of last resort where all available means fail to prevent constitutional breakdown in a State. Though it recommended certain safeguards to avoid the misuse of Article 356.

(d) It recommended more financial autonomy for the States in India.

(e) It is neither advisable nor necessary to make any drastic changes in the basic character of the Constitution. The remedy lies not so much in amending the Constitution as in effecting a number of changes in the functional aspects of Union-State relations.


The then Chief Minister of Jammu and Kashmir Dr. Farooq Abdullah set up State Autonomy Committee (SAC) in 1996 to examine the question of restoration of autonomy to the State of Jammu and Kashmir. The report was released in 1999. The report was placed before the two houses of the Jammu and Kashmir Legislature on 13.4.1999. It was adopted by the State Legislative Assembly on 26.6.2000 and the State Legislative Council on 27th June, 2000. The State government submitted the autonomy report to the Central Government but the Central Government refused to consider the matter. The report recommended minimum interference of the Centre government in the affairs of the State of Jammu and Kashmir by demanding pre-1953 status. The report also recommended omission of Articles 248, 249, 250, 251, 262 and 263, non-application of Part III of the Constitution of India and permanent status for Article 370 in the Constitution of India.

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48 *Supra* note 18 at 471.
vi. **National Commission to Review the Working of the Constitution (NCRWC)**

NCRWC in its 2002 report has made important recommendations on Union-State relations. The Commission approved of many recommendations made by the Sarkaria Commission. According to NCRWC, there is no dichotomy between a strong Union and strong States. The relationship between the Union and the States is a relationship between the whole body and its parts. For the body being healthy, it is necessary that its parts are strong. The Commission recommended that important decisions should be taken by the Centre after consultation with the States through Inter-State Council. The Commission also suggested many measures to expand the financial power of the States. It stressed that the Governor of a State should be appointed by the President only after consultation with the Chief Minister of that State.

vii. **Punchi Commission**

This Commission on Centre-State relations was constituted in April, 2007. Justice (Retd) Madan Mohan Punchi was appointed as the Chairman of this Commission. The report of the Commission was submitted on April 19, 2010 to the Union Minister Shri P. Chidambaram in New Delhi. The Commission reviewed the working of the existing arrangements between the Union and the States as per the Constitution and against the backdrop of the social and economic developments over the last two decades. The major recommendations of the Commission were:

(a) Strengthening and mainstreaming of the Inter-State Council to make it vibrant forum for all tasks contemplated in clause (a) and (c) of Article 263.

(b) In the post reform period, the role of Planning Commission should be that of coordination to ensure that the sectoral plans drawn by different ministries are in conformity with the overall objectives of the plan.

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51 Justice M.N. Venkatachaliah, retired Chief Justice of the Supreme Court of India and a former Chairman of the National Human Rights Commission, was the Chairman of this Commission.
53 Ibid.
54 Available at: http://shodhganga.inflibnet.ac.in/bitstream/10603/
55 Ibid.
(c) The States should be given freedom to plan according to their own needs and priorities within the framework of nationally accepted priorities.

(d) There should be reduction in the number of centrally sponsored schemes and flexibility in guidelines governing the implementation of centrally sponsored schemes to suit State-specific situation.

(e) Since National Development council is too large a body, it should have a Standing Committee to pay attention to the details of the matters. Healthy conventions should be developed to the effect that the advice given and decisions taken at National Development Council meetings are be respected.

viii. Justice Saghir Ahmad’s Report, 2009

This report is based on the findings of the Working Group V under the chairmanship of Justice Saghir Ahmad. The Working Group V was set up in implementation of the decisions concerning the establishment of five Working Groups announced by the Prime Minister of India at the Round Table Conference held at Srinagar on 24th and 25th May, 2006.\(^{56}\) The issues under the purview of Working Group V were as follows:

(a) Matters relating to the special status of Jammu and Kashmir within the Indian Union;

(b) Methods of strengthening democracy, secularism and the rule of law in the State of Jammu and Kashmir;

(c) Effective devolution of powers among different regions of the State to meet regional, sub-regional and ethnic aspirations.

The Working Group held five meetings. The members of the group submitted written representations and the relevant points therein have been incorporated in the report. The Group discussed PDP’s concept of ‘Self-Rule’, the demand of ‘Autonomy’ of National Conference and the report prepared by Mr. D.D. Thakur as a member of Cabinet Sub-Committee, appointed by then State Cabinet, which was reconstituted in 1978 to review the Central laws including provisions of the Constitution of India applied to the State of Jammu and Kashmir after 1953 and to find out as to the operation of which of them is not beneficial in the interest of the

\(^{56}\) Supra note 18 at 459.
State. The Working Group in its report stated that the question of ‘Autonomy’ and its demand can be examined in the light of the ‘Kashmir Accord’ or in some other manner or on the basis of some other formula as the present Prime Minister may deem fit and appropriate so as to restore the ‘Autonomy’ to the extent possible. The Working Group recommended that the question of Article 370 should be settled once for all and it is for the people of Jammu and Kashmir to decide how long to continue Article 370 in its present form and when to make it permanent or abrogate.


On October 13, 2010, the Ministry of Home Affairs, Government of India appointed a group of interlocutors on Jammu and Kashmir. It consisted of noted journalist Dileep Padgaonkar, academician Radha Kumar and former Information Commissioner M.M. Ansari. The group submitted its report titled ‘A New Compact With the People of Jammu and Kashmir’ to then Union Home Minister P. Chidambaram on October 12, 2011 which was made public on May 24, 2012. The following are the key recommendations of the report:

(a) A Constitutional Committee be set up to review all Central Acts and Articles of the Constitution extended to the State of Jammu and Kashmir after the 1952 Delhi Agreement.

(b) There should be regional councils for Jammu, Kashmir and Ladakh.

(c) To replace the word “temporary” from the heading of Article 370 and from the title of Part XXI of the Constitution with the word “special”.

(d) There should be greater devolution of administrative and financial powers to the panchayati raj institutions.

(e) Parliament will make no laws applicable to the State unless it relates to the country’s internal and external security and its vital economic interest, especially in areas of energy and access to water resources.

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58 Ibid.
60 Ibid.
6 CONCLUSION

To sum up, it can be said that in India the evolution of state autonomy has been the evolution of federalism. In the ancient period, the kingdoms or empires that ruled over the Indian subcontinent practiced policy of non-intervention in local affairs because the people of the subcontinent had and still have a lot of natural and cultural diversities. The disintegration of the Mauryas and the Mughals is partly attributed to the fact that monarchs like Jehangir and Aurangzeb tried to impose common codes of behaviour that offended many of their subjects. Hence after the Revolt of 1857, when the British decided to leave the Indian Princes alone and withdrew their interventionist measures like Doctrine of Lapse, the British Government initiated the federal system in India. During the British era, state autonomy began as devolution of power from the Center and culminated in a federation under the Government of India Act, 1935. Under the British rule, the state autonomy enjoyed by the Indian provinces was limited in nature. But after independence, it has undergone a sea change. Same is true of Indian Federalism. In 1950s, federalism in India was marked by the creation of significant institutions of inter-governmental co-operation such as the National Development Council in 1952. The reorganization of States in India by the States Reorganisation Act, 1956 highlights the fact that in 1950s, the States asserted their linguistic identities. From 1960s to 1980s, the policies of centralization damaged the federal spirit of the country. The period witnessed the rise of many strong regional parties that voiced their demand for state autonomy through different committees and conferences as discussed already. In the late 1980s, multi party system began in India and federalism shifted from Centre-dominated federalism to a give and take federalism wherein the Centre and the States were more interdependent than independent. The establishment of Inter State Council in 1990 manifested the spirit of co-operative federalism. The creation of three new States in 2000 and inclusion of Bodo, Dogri, Maithili and Santhali in the Eighth Article 356 should continue with the proviso that the Governor would keep the State Legislature under suspended animation and hold fresh elections within three months.\footnote{Ibid.}
Schedule of the Constitution by the Constitution (Ninety-Second Amendment) Act, 2003 clearly reveal that the Indian federalism aims to satisfy the regional, ethnic and tribal identities.

In India, Federalism is a living faith to manage the diversities. Federalism is a continuous process and the more complex the nature of diversities, the more there would be the need for flexibility and experimentation. The fear that demands of autonomy by States and by regions within the States may lead to disintegration of the country need not be exaggerated. In order to restore a balance between the federating States and the Centre, it is important that we should move from large administratively unmanageable, politically troublesome and economically imbalanced though linguistically homogeneous States to a more rational re-organisation of States based on the tenents of techno-economic viability, socio-cultural homogeneity, political and administrative manageability. Thus one can say that the quantum of autonomy which a particular State or a region within a State needs is to be measured not in terms of theory but in terms of the imperatives of a State’s internal stability and nation-building process.

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