Chapter I

FEDERALISM IN INDIA: A COORDINATE DIVISION OF POWERS?

In the chequered story of constitutionalism in post-independence India, little effort was spared in preparing a document to contain at least a leaf from every other principle Constitution of the world. The product was a Constitution which could refer to the U.S., Swiss, Canadian and Australian models. What makes a study of it particularly interesting today is the charge that Indian federalism flies against the accepted canons of the theory itself.1

This charge against the nature of federalism in India today has some substance in it. The models on which the Constitution was framed did not advocate the variety of centralization which has now become the norm. As the Provisional Chairman of the Constituent Assembly pointed out2: "The only other State in Europe to the Constitution of which we could turn with some advantage is that of France, the first Constituent Assembly of which (called the French National Assembly) was convoked in 1789 .... As a matter of fact, the French Constitution makers, who met in 1789 at the first Constituent Assembly of their country were themselves largely influenced by the work done a couple of years earlier in 1787 by the historic Constitutional convention held at Philadelphia by the American Constitution-makers for their country. Having
thrown off their allegiance to the British king in Parliament they met and drew up what had been regarded, and justly so, as the soundest and most practical and workable Republican Constitution in existence. It is this great Constitution which had been naturally taken as the model for all subsequent Constitutions, not only of France, but also of the self-governing Dominions of the British Commonwealth, like Canada, Australia and South Africa; and I have no doubt that you will also, in the nature of things, pay in the course of your work greater attention to the American Constitution than any other”.

The noted constitutional expert, K.C.Wheare, does in fact agree with this point of view. But the revealing element in his definition of federalism, particularly as that seen in the American experiment, only helps to emphasize the discrepancy in the Indian definition as well as in its working. He points out that "the modern idea of what federal Government is has been determined by the United States of America. Not that the Constitution of 1787, which established and regulates this association described it as a federal Government. Indeed, the words 'federal' or 'federation' occur nowhere in the American Constitution. None the less, it has always been called the 'federal Constitution' and nowadays everybody regards the United States as an example of federal government. Any definition of a federal government which failed to include the
United States would thereby be condemned as unreal.

It is fair to mention that this point that not all Americans in 1787 would have accepted this view of the nature of their Constitution. Indeed, when the Constitution first came into operation and for many decades thereafter, a strong body of opinion asserted the view that the general government established by the Constitution was intended to be not the equal and co-ordinate partner of the State Governments but their agent and to this extent their subordinate. It was not until after the American Civil War of 1861-65 that this view was finally discredited. Moreover, there existed in the original Constitution of 1787 one provision at least which lent colour to the view that the general Government was subordinate. This was the provision that one part of the general legislature, the Senate, was to some degree dependent upon the government of the states.

"To these considerations my answer is that the view I have taken of the Constitution seems to me the correct view, because, in spite of this one admitted exception in the case of the Senate, the predominant principle of the original Constitution was that of a co-ordinate division of powers. The difference between the present Constitution of the USA and the Articles of Confederation lies in the fact that the present Constitution replaces the principle of the general government being subordinate to the
regional governments and dependent upon them, by the principle of the general and regional governments being co-ordinate and independent in their respective spheres. The characteristics which we have discovered in the present American association of States is quite clearly a characteristic which distinguishes it from its predecessor. It can therefore be concluded with some justification that the definition of federalism is based on the democratic rights of its constituent units which even in the ideal illustration i.e. the USA, are co-ordinate and independent in their respective spheres. However, in the Indian experiment, the constituents have been reduced to ineffectual partners in a federation. The Constituent Assembly's representatives were voted to office by a meagre 11.50% of the population, which was the percentage of enfranchised voters at the time. Also, the units have been deprived of their legitimate powers promised in the Congress manifesto on the basis of which candidates were elected to the Constituent Assembly to frame the Constitution which has since been in practice.

The Congress manifesto had pointed out that the "Central Assembly" was "completely out of date and is based on a very restricted franchise". The highlights of the document indicated that the Congress stood "for full opportunities for the people as a whole to grow and develop according to their own wishes and genius, the freedom of each group and territorial area to develop its own
life and culture within the larger framework, the re-grouping of provinces on a linguistic and cultural basis and a federal Constitution with a great deal of autonomy for its Constituent units."

As Austin had prophetically written: "Reliance on Central power by the British profoundly affected India's future. Because of it, Indians had neither experienced nor participated in the working of a more traditional federal system like that of the United States or Australia. Their immediate experience with government, therefore, almost inevitably led them towards centralization."
References

1. This (Indian federal) system is against all principles of a federal structure; The West Bengal Finance Minister, Mr. Ashoke Mitra, quoted from The Statesman, June 29, 1977.


5. Ibid, p. 150.

