Chapter One
CHAPTER- 1

INTRODUCTION

FEDERALISM: THE CONCEPT

The words federation, federal, federalism, have their origin from the latin term “foedus”, which means alliance association, compact, contract, league, treaty trust union. A federalism is device of sharing power in situation of territorially based pluralism. As a political system, it can be a meaningful performer only for a society faced with territorially identifiable ethnic or other diversities. It is an arrangement between separate territorial entities to share power through free democratic will.¹ A federal state is one in which governmental powers are divided so that the general and regional governments are each, within a sphere, coordinates and independent.²

The federal idea is flourishing in this world from ancient times. It is claimed that the ancient Israelites, around 13th century BC applied some sort of a federal principle to maintain unity of their several tribes. These are records of ancient times in the 6th century BC; who worked out a federal arrangement toward off foreign invasions. Accounts are available of the ancient Indian Vajjian confederacy and the Vaisali federal arrangement of the Licchavi tribes with a republican constitution.

The medieval Union of western and northern Europe evolved varied patterns of federal arrangements. Switzerland is the classical experience of federalism which has been the oldest continuing federal system in the world. Origin can be traced to 1219, when the three cantons in the Alps, formed a defensive alliance, and the land for the first time came to be known as Switzerland. It then evolved into a Swiss League in 1315, subsequently expanding with the inclusion of Lucerne in 1332, Zurich in 1315, and of Friburg

¹. Subhash C. Kashyap; Blue Print of Political Reforms, Shipra Publication, Delhi, 2003, p. 241.
and Soleure after the war with Burgundy in 1740. The treaty of Basle, 1499 provided a practical recognition to Swiss independence and the Swiss League further increased its territory by the addition of Basle and Schaffhausen in 1501, and of the north-eastern canton of Appenzel in 1513. The Helvetic Republic was established in 1798. Then the federal pact was entered into by all the 22 cantons, and the present Swiss constitution was adopted in 1849.

The end of British colonial rule in its North American colonies, in the last quarter of the 18th century gave rise to the first modern federal democratic state. United States of America, after the Declaration of American independence in 1776, and the adopted of the constitution in 1787, the federal ideal gained worldwide recognition.

The vigorous demand for autonomy within the British Commonwealth resulted in the establishment of federal system in Canada and Australia. The withdrawal of the Spanish Portuguese overlordship in Latin America brought into being four large federal states. The collapse of Czasist Russian Empire in the first quarter of the 20th century led to the formation of the multinational federation of the USSR.

The American federal system of Government was not invented by the framers of the Constitution at the Philadelphia Convention of 1787. It was the result of long experience, ideas from many sources, and the urgencies of the time.3 The federations are the product of certain geographical and historical factors and also a will to unite. In the United states, all the three factors were present. The thirteen states which originally formed the federal union covered a vast area which has since grown into continental proportion. The thirteen former colonies of the USA had passed through a period of sovereign statehood before decide to merge themselves in a federal union.4

It is necessary to remember that none of the thirteen states was prepared to make a complete abdication of its sovereignty and that each was determined to maintain its political entity. Union was desired, so was state autonomy. The principal task before the constitution makers was to create a national government, powerful enough for steering to clear dangers which beset the old confederation (1781-87) but not so powerful as to be able to crush the states. The result was that they gave the national government large but not unlimited powers. Thus, they tried to provide the central government adequate revenues but not unlimited power to tax. They authorized it to regulate foreign and inter-state commerce, but they forbade it to interfere with commerce within each state. They empowered it to maintain armed force and at the same time left each state free to have its own militia. Thus the national government was given specified and delegated powers. The constitution was framed on the principle that the central government would exercise only such powers as were enumerate in it, or as the enumerated power.

Australia must be counted as one of world’s most successful federations. It has changed its character in many ways since its foundation in 1901, but the changes have been accomplished by negotiation and willingness to compromise so that no violent measures were required. By the time the federation was established all six had attained a measure of democratic self government. New South Wales and Victoria had their own constitution from 1855. Tasmania and South Australia followed in 1856, and Queensland in 1859. But West Australia, was remote and poor even after the gold adventure. It did not acquire self-government until 1890. From the beginning New South Wales and Victoria were the most developed the most thickly populated and so they have remained, till today.

The first step in the direction of federation was a National convention held in Sydney in 1891. At this meeting federal principle was approved.5

Australia was to be a Dominion like Canada with a Governor General representing the British sovereign having duty to report to the Privy Council and drastic change or difficulty.

The second important aspect of the Australian federation is that it has adopted the British model of cabinet government. Ministers being members of Parliament and responsible to it, thus fundamentally different from the America system where the cabinet is appointed by the President and is responsible to him.6

Thirdly the Australian has borrowed from the Swiss the use of the referendum. Finally the residual powers in the federation belong to the states. Australia is essentially a federation by aggregation and the different colonies becoming states had launched a variety of activities even before federation was discussed. Initially, thus the federal government was relatively weak. The states were givers, not receivers. The Constitution conformed in a manner to the classic image of federation with each level of government supreme and independent within its own sphere. This was clearly demarcated in the constitution. The course of Australian Constitutional arrangement can be considered as gradual transition from the predominant power raising in the states to central authority. Sir Robert Gassans define – a form of government in which sovereignty or political power is divided between the central and local governments, to that each of them within its own sphere in independent of other.7

The first definite step towards federation was adopted of the Quebee Resolutions in 1864 by a conference of delegates from Canada, Mova Scotia and New Brunswick. This resolution recorded the resolve to build the new federal attractive upon a model of British Constitution. The following year this determination was confirmed by the French speaking Canadians of lower Canada who declared that the proposed federation should remain a “British

6. Ibid., p. 145.
colony” in which they had secured equal rights and parliamentary democracy. The Quebee Resolutions were adopted in province of Canada but rejected by Mova Scotia and New Brunswick, so much so that in 1865 Tilley lost election in New Brunswick as a supporter of federation.

The New Constitution was framed at the Westminster conference in 1866. The American device of residual powers to the states was rejected because it had helped bring in the American civil war. The federal government had the same parliamentary form and the same degree of responsible government as the colonies that composed it, and it was based on the Durham Report.

The original federation consisted of Ontario and Quebec (as the two parts of the former United province were now called, Mova Scotia and New Brunswick. Monitaba was constituted a province in 1870 and British Columbia (still without railway contact with the east) in 1871; province Edward Island in 1873, Saskatchewan and Alberta in 1905. New Foundland become the tenth province in 1959. The background of Canadian federation was different from the other, the federation of USA or Australia. The urge was more internal than external, but there was both an internal and external reason for the features Canadian federation assumed.

The principle of the distribution of powers under the Canadian system is the antithesis of the United States. In Canada the powers of the provinces are enumerated, the “resense of power” being left with the federation. Though a list of powers of the states is given in the origina Act of 1867, this is only for the sake of greater clarity and not to diminish the federal powers. The grant of powers to the provinces in considerable, including such matters, as the amendment of their own constitution (except that it may not abolish the office of Leuinent Governor), direct taxation within the province, the administration of justice, and the control of municipal government within the province.

A key factor in the formulation of federation is the growth of national consciousness among the people crossing over their own small politics. Nationalism, throughout relent history, can be observed as the prime mover of
federations. But such nationalism can not be close, monolith or static. It reflects a psyche involving both unity and diversity. There are many other factors to support and uphold it. At the highest level, it culminates into a new sovereign state which by its nature allows its pre-existing diversities and primordialities to grow further.\(^8\)

The classical statement of pre-requisites of federalism is found in Dicey who held that they are ‘contiguity’ referred to as federal sentiments. K.C. Wheare has outline some of the conditions of federalism as\(^9\)

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\begin{itemize}
  \item A desire to be independent of foreign power, for which the union is necessary.
  \item A sense of military insecurity and the need of common defence.
  \item A hope of economic advantage.
  \item Some previous political association.
  \item Geographical neighborhoods.
  \item Similarity of political institutions.
\end{itemize}
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Federal Governments are the product of economic and social pressures. Federalism as a form of political organisaton has nowhere been adopted on theoretical grounds of its real or hypothetical virtues. On the contrary, it has always emerged as a product of compromised and expediency. The USSR, where the communists have a monolithic state system in which power was concentrated at the top in accordance with principle of democratic centralization, the constitution has sought to make a compromise with the diversified, polyglot Russian empire by putting up a façade of voluntary federalism. It gave on paper a remarkable measure of autonomy to the constituent units.

The theories of federation came into existence after the formation of the Swiss American federation. The federations were not based on these theories. It was the structured and functional aspects of these federations which become the basis of almost all these theories. Take for example, the requisite of the

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federation like contiguous area, common history, common enemies, common experience, and common culture are listed as the requisite by federal theorist which existed much earlier in Switzerland then the theory of requisite itself.

Ever since the Royal proclamation of 1858 Indian politicians had little thought of the definite form of the future and the ultimate Constitution of India. The various Act of 1861, 1892, 1909 had not clearly indicated it. Infact, the problem had been shelved. When the Indian National Congress was formed in 1885 its programme was vague and consisted of piecemeal reforms like the separation of executive and judicial functions, appointment more Indians to higher services and such other generalizations as the introduction of representatives, institutions and so forth. It was for the first time in 1986 that the late Mr. Dadabhoy Nooraji as President of the Calcutta Congress, in his presidential address defined the goal of India as self-government, even then the term was not clearly explained. Not even the anarchist parties could clearly define their aim beyond that of driving the British out of India. The Government too defined their ultimate goal in the announcement of August 20, 1917, as full responsible Government. At the Round Table Conference in London and subsequently in the British parliament, all the three British Political Parties accepted India’s future status to be the same as that of other self governing dominions.

The Madras Congress of December 1927 passed the famous independence resolution which fixed complete Independence out of the British Empire as India’s goal, but it did not throw any light on the precise, nature of the future Constitution as it was though inexpedient to open the question before the independence was achieved. The British policy after 1919 shifted in favour of the creation of the federation. Under the Act of 1919, while the system of government remained basically unitary, outward paraphernalia of federal organisation were created; and India was placed on the road of the federalism.

The British Government pursued decentralization “to turn the attention of the people from the highest fortress to the less important provincial post and
to divert popular energy in capturing them”, the Indian leaders welcomed it as a way of securing political reforms. From the British point of view, the process of decentralization by installments enabled the Britishers to establish some sort of federal structure in India. In grained in this policy of reforms by installments and through decentralization was the concept of a federation. That in case of India, the creation of semi-autonomous constituent unit to forge a federation was primarily motivated by colonial considerations. It might also be an offshoot of Tory policy of divide and rule. In the light of British colonial policy in India, it can be inferred that the British colonial tradition has some traits which were especially conclusive to the federal form. The policy of linking democratization to federalism encouraged dissension and confrontation by inspiring forces of regionalism and complicated the entire question of Constitutional reforms by compounding it with the problems of princely States and minorities. Federalism is by its very essence a compromised and a pact. It is compromise in the sense that when national consensus on all things is not desirable or cannot readily obtained, the area of consensus is reduced in order that consensus on something be reached. It is a fact or quasi-treaty in the sense that terms of that compromise cannot be changed unilaterally. That is not to say that the terms are fixed forever, but only that in changing them, every effort must be made not to destroy the consensus on which the federated nation rests.

A federal Government is one which divides powers between the States and national government. Each level is guaranteed certain rights, including the right to exist, so that the states can not conspire to destroy the national government or another state government, and the national government may not dissolve the states. Thus the union is one and inseparable.

It is not easy to define federalism. There is a classical version and there are other versions. In the classical sense, federalism was fairly closely defined. It meant that particular type of government practiced with slight variations by the Americans, Australians, Canadians, and the Swiss. The federal structure is the outcome of the merger of a number of separate states into a single sovereign state, with legislative and executive powers coordinately divided between Federal and State Governments, each of which acts directly on the people.\(^{13}\)

While there were hardly any ideas who had given serious thought to federalism began to crystallise soon after the principle was accepted soon after the principle was accepted on a limited scale under the Government of India Act 1919. According to Professor N.C. Roy, there were only three outstanding men namely Mr. Vijaya Raghavachariar, Mr. K. Natrajan and Sir P.S. Sivaswamy Aiyer, who came out with their pronounced opposition to the federal principle for India. Through, cognitive affective and evaluative orientation process federalism was fast becoming a part of Indian’s political culture and thus ac certainty for the future from an India’s Constitution.\(^{14}\)

In attempting to accommodate the concept of responsible Government in ten provinces within the specifications of their federal design wherein the Centre was to remain in real control and authority over the provinces – the British created a federal pattern which combined the parliamentary system and was therefore, quite different to classic federal form of the USA. The Indian version of federalism providing for a strong Centre and combining with the Parliamentary pattern initiated by the Act of 1919\(^{15}\) became a part of Indian political consensus in the Nehru Report and a Constitutional reality under the Act of 1935. The federal structure of 1935 profoundly influenced India’s choice of Constitution after freedom, and led to the adoption by Constituent Assembly


of a cooperative federation\textsuperscript{16} with a strong Central Government. In effect therefore, the 1935 Scheme of division of power between the Centre and the States came to be generally adopted by Constitution of India, except for such of its Colonial provisions as were inconsistent with India’s sovereignty.\textsuperscript{17} Obviously except for Muslim league which favoured fullest provincial autonomy the Indian objection to the Act of 1935 was not with regard to its strong Centre but to the placement of overriding and ultimate powers in the hands of imperial chief executives and top bureaucrats having no accountability to representative governmental institution in India. With the Muslim league, out of picture after position the Indian constituent Assembly had hardly any serious opposition to face in creating a strong centralized and cooperative federation.

\textbf{INDIAN FEDERALISM: HISTORICAL BACKGROUND}

The evolution of federalism within the many kingdoms existed in India. In Ancient India a village was the primary unit of the administration. It enjoys local freedom under an elected \textit{sarpanch} who was elected by all adults. The \textit{panchayat} exercised great influence on the social and political life of the villages. The headman was responsible for security of the villagers. The headman was responsible for security of the villagers against outsiders attacks for this he was at liberty to enter into alliance with neighboring villagers. A number of villagers joined together to maintain works of common utility such as inter-village bridges and roads etc. But the Villages, when they freely to combined for common purposes remain absolutely independent of each other. For such purpose usually there were combinations of ten villages, and ten such combinations formed bigger alliances of hundred villages.\textsuperscript{18}

\textsuperscript{18} Beni Prasad, \textit{Theory of the state in Ancient India}, Indian Press, Allahabad, 1927, p. 133.
In spite of these alliances, the Village headman was directly under the authority of the kingdom.\textsuperscript{19} When alliances were thus formed, the head of the union was a selected person. His native village usually had the position among other the village of the union. The whole of India was, however, divided into many kingdoms big and small. Sometimes an ambitious king of powerful kingdom was subjugation of other kingdoms.

There is another point to be remembered about the status of the smaller kingdoms. All of them had not equal status within the Empire. There were some treated by the Emperor on a footing of equality, while others were mere subordinate alliance to their over lord. These kingdoms had the different forms of government, some were democratic others were either oligarchies of monarchies. These status made alliances with each other to achieve common goals. Sometimes a weaker king formed an alliance with a stronger one to protect his kingdom and became the latter’s subordinate ally, as the king of Kamrup did under Harshle.\textsuperscript{20} The smaller states themselves used to became integral parts of a bigger empire to reap “the fruits of the resulting union”. Thus Chandragupta had no difficulty in annexing the states of North India within his Empire of Magadha and established centralized imperial system. But this centralization did not bring about the loss of independence of weaker states as it did not result into as unitary state. Now there was a federal system with clear cut division of government power between the Centre and state Governments.

**Under the Mughals:** Babar’s victory at Panipat in 1526 began Mughal rule in India which lasted upon 1857. The first six Mughal Emperors succeed each other and ruled over the country from Delhi. The chief cause of their success was the principal of hereditary succession. Unlike Afghans who preceded them. It was when Aurangzeb tried to scuttle this principal by defeating Dara and Shuja, weakness in the empire set in and the Mughals lose power over the provincial governments.


Akbar who had built up an all India empire. By his policy of conciliation, matrimonial alliances, and by religious tolerance he realized his ambition at least in Northern India, by winning the allegiance of the Rajputs. He evolved a highly centralized system of administration which unified India. It was a great achievement. The Emperor became the focal point of the entire administration. The Provincial Governors looked for his guidance in day to day administration. It is true that the Governors enjoyed great influence in the provinces but the Emperor’s Farman’s had to be obeyed. The Emperor, by appointed the Provincial Subedars or Governors and assigned them the provincial military quotas and frequently transferred the subedars and forces from one Suba to another established, a kind of centralized etespotsar. Inspite of all this the central authority left the villages untouched and there was local autonomy.  

The Mughal Empire was centralized and divided into provinces under Nazims or Subedars appointed directly from Delhi. The Subedar had to enforce the royal decrees and regulations sent to him could not issue contrary regulations. There was one more difference, between the ancient and Mughal period and that was the village headman in ancient India was directly responsible to the central authority. But in the time of the Moghals this has entirely changed.

The British Raj and the first Breach of Federalism: In the seventh century came the East India Company not for building an Empire but for trade. With this country war in Europe in the 18th century, however, impelled Europeans in India to seek allies among Indian princes and to interference in Indian politics. The decay of Moghal power brought with it the independence of subedars. With the defeat of Nawab Sirajuddola of Bengal at the Battle of Plassey (1757) by Clive, the East India Company became one of the leading power in India. The conferment of Diwany rights of the provinces of Bengal

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Bihar and Orissa by the Mughal Emperor in 1765, put the company on a path to power. The cases of misappropriation, cruelty and oppression by the company attracted the attention of the British Parliament. The enquiries which followed led to the passing of the Regulating Act of 1773. It was the first attempt of the British Parliament to control the Company and its employees in India. A Supreme Court was established in Calcutta to administer justice and formed a strong and solid security for Indians.

The Regulating Act created a Governor General, who was powerless before his own Council, and Executive that was powerless before a Supreme Court, itself immune from all responsibility for the peace of the Country. Pitts Act of 1784 established the Supreme executive authority of six Parliamentary Commissioners for Indian affairs. It was known as the Board of Control, and thus created the dual system of government one by the company and the other by a Parliamentary Board which continued after the Mutiny. The Act of 1786 strengthened the position of the Governor-General by empowering him to override Council. The Act of 1773 further extended the power of the Governor General over the several Governments and Presidencies.

The Act of 1833 was passed to end the monopoly of the Company and open the trade for free operation of British Capital enterprise. The Act vested in the Governor General in council the powers of superintendence, direction and control of the entire Civil and military government of all the territories and to make laws for all persons and court of justice. The Presidency Governments’ powers of legislation were drastically cut and they were left only with the right of proposing legislation to the Governor the central council. Previous sanction of the Governor General was now required for the creation of a new post, or grant of salary gratuity or allowance. This highly centralized system of government was produced frictions between the local and the central government. To remedy

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this situation the Act of 1853 provided for inclusion of representative members from the sister presidencies, on the Governor General Council.

The Act of 1853 also consolidated the Government of India’s control over income and expenditure. The office of a separate Lieutenent Governor to administer Bengal, was also created, on the first occasion, free trade was introduced under this Act. In 1854 the Governor General in council was empowered with the consent of the Board of Directors and the Board of Control to take under his control any territory under the Government of the East India Company. The first great rebellion against the British broke out in India in 1857. It symbolized the contemporary summation of the people’s discontents, in the army and elsewhere.

The ability of European officers to comprehend the reaction of the Indians was no more to be taken for granted. The reforms with a view to conciliating the masses and to obligate distinction between the conquerors and the conquered in India were considered necessary. It was realized that the stability of the British rule could best be ensured by providing for greater association of Indians with in the Administration. An Act for Better Government of India, passed on 2nd August 1857, abolished the dual system of administration and transferred all territories and powers of the East India Company to the Queen. A Secretary of State with a Council was appointed to manage Indian affairs. The structure of government in India and the overriding powers of the Governor General of supervision and control however remained intact.

After the rebellion of 1857, decentralization came to be discussed as a basis for administrative changes in India. Decentralization had become inevitable due to the conflicts between the central and the local governments, apathy of local governments towards the economy and the growing burden of government work. Political expediency of associating the Indian’s with
government for enabling the latter to know the public feeling before discontent flared up its open revolt.24

Several proposals for decentralization were discussed but it was only in 1870 that a real step was taken by the Governor General Lord Mayowhen certain financial powers were given to the provinces. The scheme was adopted through a resolution dated 14th December 1870 and came into force in April 1871. It transferred for the first time certain services to be designated as ‘Provincial Services’ to the Provinces. A fixed annual grant less by a million than the budget provision for these heads in 1870-71, was assigned to the local Governments which were free to distribute the grant between these heads at their discretion. The provinces were to get the departmental receipts, and were allowed to meet the expenses from local sources also.

It must be noted that 1870 measures were only concerned with public expenditure. Revenue heads were transferred in 1877 during the term of Lord Lytton as Governor-General. Responsibility of land Revenue, Excise, Stamps General Administration and law the justice was given to the provinces and they were entitled to income from certain heads, i.e. excise, stamps, licence, income tax, law and justice, in addition to an adjusting imperial Grant in case of deficit. But the problem of exactly adjusting resources to needs remained since the revenue receipts from the transferred heads were insufficient and had to be raised by a subvention from centre.

In 1882 the principle of divided head of revenue, was extended from Assam to other provinces also. Under this head revenue receipts were divided between the centre, and the provinces in proportions fixed at quinquennial settlements until 1904, when the arrangement was made permanent. Land revenue, excise income tax stamps, registration and forest were put under this head.25

24. Dispatch from the Secretary of State for India No. 14, August 9, 1861.
The Indian Council Act of 1892 regarded first step on the road to federalism. The idea was to establish local councils all over the country. This Act brought about some decentralization in the legislative sphere also. The Act provided for large non-official contingent in the Indian legislatures through indirect elections. These legislatures had right of discussing the budget without voting. In actual practice, the provincial legislature could pass laws relating to local subjects.

In 1904, Lord Curzon introduced a system of quasi-permanent settlements. Under this new system the revenue assigned to provincial Government were definitely fixed and were not subject to change by the Government of India except in the case of emergency. Under the newly devised famine Insurance scheme, the Government of India placed to the credit of each famine-prone province, a fixed amount calculated roughly, on the basis its estimated famine liabilities. When this fund was exhausted, further expenditure was to be shared equally by the central and provincial Governments. In 1917 this arrangement was changed and made famine relief expenditure are divided head.

The cast iron bureaucracy which had always insisted that what India really needed was a strong despotic administration to the inclusion of all institutions of representative, Lord Minto and Lord Morley hastened to ensure that the initiative in considering further constitutional reform emanated at governmental level and that its hands did not appear to have been forced by agitation in this country or by pressure from home. An equally weighty reason for Morley Minto Reforms lay in the official desire to strengthen the moderate elements in Congress by conceding concession to them, while extremist activities were being forcibly stamped out.26

Under Lord Curzon department after department, service after service had been overhauled. Principles were enunciated and standards set. New departments or new authorities were created. All this resulted into concentration

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of authority in the central government against which a natural reaction in due occurred. In addition, provincial governments were beginning, to function under financial and administrative constraints. The high degree of centralization under Lord Curzon resulted into enormous increase in work at the central secretariat. In the Home department, correspondence had doubled between 1891 and 1902. Hence the necessity was felt of relieving the centre of the burden of administration.

In view of factors cited above, Lord Minto, with the full knowledge and approval of the Secretary of state followed Lord Dufferin’s example in appointing Sir Arundel, Sir Denzil Ibbetson, Mr. Erle Richardson’s and Mr. Baker in 1906 to consider the increases of representative elements in the Indian and provincial legislative council. The committee’s report by the Secretary of state the tentative reform outlined in the Home department letter No. 2310-7, dated 24 August 1907, was sent to the Provinces for comments and also invited Public opinion on the subject. In its dispatch to the secretary of state, dated 1st October 1908, the government of India communicated an exhaustive account of the proposed reforms. The Secretary of State sent his decision to the Government of India in November 1908.

While the discussion for further reforms was going on a Commission was appointed under the chairmanship of Sir Henry William Primrose by British Government to enquire into the problem of decentralization. The decentralization commission submitted its report in February 1909. Lord Morley, the Secretary of State, justified his proposal for reforms amounting to admission of the Indians to a larger and more direct share in the government of their Country. Without for a moment taking from Central Government, its authority, on grounds of their indispensability “to fortify the foundations” of British rule in India. He declared unequivocally that parliamentary system in India is not at all the goal to which I would for one moment aspire. The decentralization commission held the view “that the provincial governments

27. Lord Minto’s Minute of August 1906 and Mont Ford Report, para 72.
should be subject in all respects to the general control of government of India, though the future policy should be directed to the enlargement of the spheres of detailed administration entrusted to the provinces.\(^{28}\)

In early 1909 Lord Morley introduced the Indian Council Bill which was passed on May 25, 1909 came into operation on 15\(^{th}\) November 1909. The Act abandoned official majority in the Provincial Councils and enlarged the Indian legislative council with a provision of nomination and reservation of seats for minorities and special interests. The Act empowered the Councils to discuss the budget at length and to propose resolutions and to divide upon the budget and all matters of general public importance.\(^{29}\) However, the resolutions had little efficiency as they were meant to operate as recommendations to executive Government.

The reforms of 1909 failed to meet the demands of the Indian nationalist. The conception of the responsible executive, fully or partially unable to the elected councils, was not conceded. Power remained with the government and councils had no functions but to criticize. The Morley-Minto Reforms’ did not uses any new policy, they were a just an extension of the existing system. The executive government retained the power of final decision on all questions.

The Indian Council Act1909 further enlarged size and functions of the council. It introduces the element of popular representation and allowed members greater freedom to discuss the annual financial statement and the budget more fully and freely. Thus the size and functions of the councils were enlarged through it could not exercise any real control over the executive. It reflected a trend against centralization which was initiated by Charter Act of 1833. However in keeping with British political tradition devolution or delegation of Authority, rather than division of powers was considered sufficient to meet the Provincial requirements.

\(^{28}\) Decentralization commission Report, Para 46 and 49.
\(^{29}\) The Indian council Act 1909, Section 5 and Mont Ford Report, paras 76-78.
Another conscious advance in the direction of responsible government were the reforms of 1919, which introduced diarchy in the provinces a unique and seemingly federal future of the Montague Chelmsford Reforms of 1919, was the formal division of the functions of the Central and Provincial Government.

The Government of India Act 1935 introduced federalism for the first time in India. The federal polity envisaged under the act was a distorted one because it unduly faro used the princely states by giving them greater representation than to the British provinces in the federal parliament and also allowed the India states to remain autocratic in their internal structure. The Jawaharlal Nehru condemned it because, “the proposed federation petrified British rule and vested interested in India.”\(^{30}\) The congress criticized the act in the following words: “federalism as it is now contemplated, will instead of building up India unity, encourage separate tendencies and involve the states in internal and external conflicts.”\(^{31}\)

Provincial Autonomy and responsible Government in Provinces were the foundation on which was enacted the Government of India Act of 1935. This Act made a bold departure from the earlier enactments in as much as in place of the unity structure of the Indian Polity, in prescribed a federation treating the provinces and the princely states as constituent unit of the federation. The handle in the way of the federal structure coming into existence was the option of the princely states to join the federation \(^{32}\) which never came forth yet the port relating to provincial autonomy was put into operation from April 1, 1937.\(^{33}\) An important feature of the act was the division of powers between the centre and the provinces.

The most important changed envisaged by the Government of India Act 1935 were the introduction the provinces were invested of their own. They were not longer simply the agent of the government of India. They were clothed with

\(^{30}\) Jawaharlal Nehru, *Discovery of India*, Delhi, 1937, p.367.
\(^{33}\) Ibid, p.9.
a statutory authority or states vis-à-vis the Union Government, however the federation never come into operation. As for Provincial Autonomy, the Congress leaders were at first inclines to belief that Governor would enjoy over –riding power over their ministers and were their fore unwilling to accept ministers in provinces where they were in majority.\textsuperscript{34} An authoritative pronouncement on the subject was however made by them, then British Prime Minister Chamberlain on June 17, 1937, where in he observed that with the introduction of Provincial Autonomy, the British Parliament’s control over the Provincial Governments would come to an end, except in the rare circumstances in which a provincial governor felt obliged to exercise his statutory powers in disregard to the advice of his ministers. This was followed by an assurance given by viceroy Linlithgow on June 1937 that the governors would exercise their special powers with extreme circumspection.\textsuperscript{35} While reviewing the work of the Congress Governments from 1937 to 1939, Coupland has testified. “The Congress ministers, proved themselves capable and hard working men with a high sense of public duty and responsibility the legislature were well conduct.”\textsuperscript{36}

Such promises however mollified when on the eve of the war the British parliament hurriedly passed the Government of India Act of 1935 which empowered the Central Government not only to give directors to a provinces as to the manner in which its executive authority should be exercised but also to make laws conferring executive authority in respect to Provincial subject on the Central Government and its officials.

Hence, one factor constantly observed the history of British rule in India is that they had always seen to centralize authority at one place. To this end in view of Central –State relation British were not interested. They vested power in the central authority. In the present context by the term state autonomy, we understand the powers of the states under seventh schedule of the constitution.

\textsuperscript{34} D.D. Basu, p. 9-11.
The dichotomy meaning of the term is “quality of states of being automatic or autonomous the power or right of self-government or political independence of a city or a state.”

An eminent constitutional jurist K.V. Rao had defined autonomy as that irreducible minimum of political power which has to be granted to the States in order to give them enough facility to develop their own resources according to their own means and needs and their own way.

In realistic term Provincial Autonomy means the right and capacity of political party to put that programme into execution and make it a success unhampered either directly or indirectly by the centre.

The Constitution has however placed the following limitation on the exercise of the Provincial Autonomy:

- State can legislate only on subjects listed in the State or Concurrent list.
- In case of concurrent subject state law must not clash with the corresponding union legislation.
- State law must not clash with the domination of central subjects.
- State action must conform to such directions as the given by the Union.
- It must also conform to central policy of representation of bills for the consideration of the President.
- It should conform to provision of the Constitution itself.

More important than constitutional limitations and the direct encroachment by the centre are the indirect ways in which the Centre interferes with the day to day working of the State Governments.

Political complexion of a unit can be influenced by the Centre through the governor whose pivoted position in the state as an agent of the Centre is a significant factor negating the Autonomy of States. For instance his role in nominating Chief Minister, discretion in giving grants and loans to the States

and the Concurrent subject of economic and social planning are covers under which almost anything could be said to be included. These situations lead states demand for greater autonomy may for analysis be split into three parts:

- Enlargement of the powers of the States through Constitutional Amendment.
- Evolution of convention to make the centre refrain from infringing with State Autonomy and to make Governor’s role objective.
- State’s dissatisfaction with the existing financial relations with the union and the centralized planning.

The Constitutional Assembly of India first met on 9 December 1946 with Dr. Sachidanand Sinha as Temporary Chairman. Dr. Rajendra Prasad assumed office as the permanent Chairman on 11 December 1946. The Constituent assembly continued its deliberations till 24 January 1950 and the Constitution came into force from 26th January 1950. On 14 August 1947 Pandit Nehru move a motion relating to the pledge to taken by the Constituent Assembly members: “After the last stroke of midnight, all members of the Constituent Assembly members of the Constituent Assembly present on this occasion do take the following pledge:’ At this solemn moment when the people of India, through suffering and sacrifice, have secured freedom, I….., a member of the Constituent Assembly of India, do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful place in the world and make her full and willing contribution to the promotion of world peace and welfare of mankind.”

The Constituent Assembly thought it is necessary for the strength and effectiveness of administration of India, to form a Parliamentary Government. Using Ayyanger’s and Aiyar’s joint memorandum and Rau’s proposal as guidelines, the Union Constitution as President, without conferring any discretionary powers on him. However, Dr. K.M. Munshi thought the

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39 B. P. R., Vithal Fiscal Federalism in India, Oxford University Press, New Delhi, 2000, pp.11-12.
40 The Union Constitution Committee during the June Meetings of 1947 decided that India should have Parliament System of government.
deliberations of the Constituent Assembly, was anxious to guard against unrestricted Parliamentary supremacy in the Country and appealed to provide and strength the power and functions of the President, so that in a crisis, he could interfere and arrest a constitutional breakdown at the centre. Dr. K. M. Munshi laid a scheme in joint meeting, of the Union Constitution Committee and the Provision Constitution Committee, in which there was a heated discussion on the position and status of President of India. The Advocates of the above scheme urged that; “The President should have powers of safeguarding the Constitution as also those necessary effectively to maintain the machinery of the Government in a crisis which might be created by absence of a single majority party in power at the centre, or by that party acting unconstitutionally or by the Country being exposed to external dangers”. 

The Drafting Committee constituted of Alladi Krishnaswamy, N. Gopalswamy Ayyenger, B. R. Ambedker, K. M. Munshi and three other. The Drafting Committee was charged with the duty of preparing the Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various committees appointed by it; but in certain matters, the provisions contained in the Government of India Act, 1935 were to be followed. The Draft Constitution, as emerged from the Drafting Committee, was taken up for discussion, article by article, by the Assembly on 4 November 1948 and was finally approved on the 26, November 1949. The bulk of the Constitution came into force on 26 January 1950; that day is referred to in the Constitution by the expression ‘the commencement of the Constitution’.

**INDIAN CONSTITUTION AND UNION STATE RELATIONS**

The essence of federalism lies in a federal written Constitution, distribution of powers between Central Government and state Governments and

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42 Patnayak, Raghunath, *Powers Of President and Governors in India*, Deep and Deep, New Delhi, 1996, p40
a federal judiciary, to adjudicate on inter-state or Centre-State disputes, if any. Judging by this criterion, India is a federal state. Unlike the Indian States, the federating units in America were not politically connected with each other; the urge for a common central Government drove them towards establishing federal Government in USA. In cases of India, the States constituting the federation were never independent States in any period of History and they had never been endowed with any specific powers of governance. Above discussed, the present size and their relation with the central Government have been evolved through numerous methods of trial and error and these have ranged between formulae of centralism and decentralization.\textsuperscript{43}

There was difficult task before the Constituent Assembly in regard to the future set-up of the Constitution. Opinions varied from one extreme to another some favoring a strong centre while other pleading for strong States and weak centre. After prolong discussions, the pendulum finally suring in favour of federal government with strong Centre. The Constituent Assembly opted for adoption of federal framework as the federal principle provides an ideal compromise between centrifugal forces”.\textsuperscript{44} Nehru also pleaded for a strong Centre. He observed in the Assembly :

“We are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which could be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must be solely with the units and that to frame a constitution on the basis of a unitary state would be a retrograde step, both politically and administratively.”\textsuperscript{45}

Article 249 of the Constitution of India provides –If the Council of States has declared resolution by not less than two thirds of the members present


\textsuperscript{44} . S.A.H. Haqqi (ed.) \textit{Introduction, Union State Relations in India}, Meenakshi Publication, 1967, p. 3.

and voting that it is necessary in the national interest that Parliament should make laws with respect to any matter enumerated in the state list specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

A resolution passed under Article 249(1) shall remain in force for such period not exceeding one year or may be specified therein provided that, if and so often as resolution approving the continuance in force of any such resolution passed in the manner provided in clause (1), such as resolution shall be continued in force for further period of one year from the date on which it would otherwise have ceased to be in force; A law made by the Parliament, which Parliament would not but for the passing of a resolution under clause (i) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

Article 250 states: (i) notwithstanding anything in this Article Parliament shall, while a proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the state list (ii) a law made by Parliament which Parliament would into but for the issue of a proclamation of Emergency have been competent to make shall, to extent of the incompetency, cease to have effect on the expiration of a period of six month after the proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period.

Article 251 provides notwithstanding in Article 249 and 250 shall restricted the power of the legislature of a state to make any law which under this constitution it has power to make, but if any provision of law made by the legislature of a state is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power make, the law made
by parliament where passed before or after the law made by the legislature of the state, shall prevail and the law made by the legislature of the state shall to the extent of the repugnancy, but so long as the law made by parliament continues to have effect, be imperative.

Article 254 lay down (i) if any provision of a law made by the legislature of a state is repugnant to any provision of a law made by Parliament which parliament is competent to enact or to any provision of any existing law with respect to one of the matters enumerated in the concurrent list, then subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the legislature of the state or as the case may be the existing law, shall prevail and the law made by the legislature of the state, shall to the extent of the repugnancy, be void; (ii) where a law made by the legislature of a state with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of the earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the legislature of such state shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that state provided that nothing in this clause shall prevent parliament from enacting at any time any law with respect to the same matter including a law adding to amending, varying or repeating the law so made by the legislature of the State.

Article 256 States the executive power of every State shall be so exercised as to ensure compliance with the law made by Parliament and any existence laws which apply in that state, and the executive power of the Union, and the executive power of the Union shall extended to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.

Article 257 lays down (i) the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the union shall extended to the giving of
such directions to a state as may appear to the Government of India to be necessary for the purpose.

Article 262 provides (i) Parliament may be law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the water of, or in, any inter-state river or river valley; (ii) notwithstanding anything in this Constitution, Parliament may be law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as it is referred to in clause (i) Article 263 provides: If at any time it appears to the President that the public interests would be served by establishment of a council charged with the duty of (a) enquiring into and advising upon disputes which may have arisen between states; (b) investigating and discussing subjects in which some or all of the States or the Union and one or more of the States have a common interest, or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for president by order to establish such a Council and to define the nature of the duties to be performed by it and its organization and procedure.

**Emergency provision and Union States:** Besides the above provisions, to be applied in peace time, the Constitution also provides for emergency provisions. These provisions have been the focus of heated discussion in the constituent Assembly for fear of its possible misuse by the executive authority. There are some constitutional of India provisions to governing Union-State relations in Emergencies.

Article 352 provides: (i) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance, he may be proclamation, make a declaration to that effect. Clause (2) of the Article provides: “a proclamation issued under clause (i) may be revoked by subsequent proclamation; (b) shall be laid before ach house of
parliament. (c) shall cease to operate at the expiration of two months unless before the expiration of that period if has been approved by resolution by both House of Parliament; provided that any such resolution is issued at a time when the House of the People has been dissolved or the dissolution of the House takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the proclamation has been passed by the council of states before the expiration of that period, the proclamation shall cease to operate at the expiration of thirty days from the date on which the house of the people first sits after its reconstitution unless before the expiration of the said period of thirty days, or resolution approving the proclamation has been also passed by the House of the people; (3) a proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may be made before the actual occurrence of war or of any such aggression or disturbance if the president is satisfied that there is imminent danger thereof.

Article 355 lays down it shall be the duty of the union to protect every State against external aggression or internal disturbance and to ensure that the Government of every state is carried on in accordance with the provisions of this Constitution.

Article 356 of the Constitution provides (i) if the President, on receipt of a report from the Governor of a state or otherwise is satisfied that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution, the President may be proclamation (a) assume to himself all or any of the functions of the Government of the state and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the state other than the legislature of the state; (b) declare that the powers of the Legislature of the state shall be exercisable by or under the authority of Parliament; (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the proclamation, including provisions of this constitution relating to
anybody or authority in the state for suspending in whole or in part the operation of any provisions; provided that nothing in this clause shall authorize the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this constitution relating to High Court; (ii) any such proclamation may be revoked by a subsequent proclamation.

Article 357 lays down whereby a proclamation issued under clause (i) of Article 356, it has been declared that the powers of the legislature of the state shall be exercised by or under the authority of parliament, it shall be competent (a) for parliament to confer on the president the power of the legislature of the state to make laws and to authorize the president to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf of parliament or for the President or other authority in whom such power to make laws is vested under sub-clause (a) to make laws conferring powers and imposing duties, upon the union or officers and authorities thereof; (c) for the President to authorize when the house of the people is not in session expenditure from the consolidated fund of the state pending the sanction of such expenditure by Parliament.

Article 365 provides: where any state has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the union under any of the provisions of this constitution, it shall be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of this Constitution.

The federal principle receives a jolt from Article 3 which provides: “Parliament may be law (a) from a new state by separation of territory from any state, or by uniting two or more states or part of state or by uniting any territory to a part of any state; (b) increase the area of any state; (c) diminish the area of any state, (d) alter the boundaries of any state, (e) alter the name of any state”.46 In taking action in this regard, parliament may act by simple majority as

46. K. Sansthanam, Union State Relations in India, Asia Publishing House, New Delhi, 1960, p. 6.
legislation in this regard is not regarded as an Amendment to the Constitution for purposes of Article 368. The States Reorganization Act 1956, bears testimony to this commenting on the Article K. Santhanam very cogently observes that the fundamental principle that a federation depends upon the integrity of states seem to have been lost right off. However sound the reason might have been for the incorporation of the said Article, now it is time to consider whether this provision should continue to be there as it is whether for once the Parliament should not seek an amendment of the constitution to restrict its own powers, rather than extend it as it has been done in all the amendments of the Constitution which have taken place during the last two decades.

Any study of the Union-State relations is incomplete without examining the role of the Planning Commission and Finance Commission. Undoubtedly matters concerning Planning Commission are mostly financial which fall under the overall jurisdictions of the Finance ministry. The Planning Commission is neither a statutory body nor created by the Constitution. The States are not bound by its decisions; but in practice no state can dare go against its decisions mainly for two reasons. Politically the association of the Prime Minister with the Planning Commission is great factor in lining up the states with centre; secondly, the control of the financial strings also rests with the Planning Commission.

The State Governments are awarded two types of grants viz. statutory grant and discretionary grant. The discretionary grants are made available to states on the recommendation of the Planning Commission for fulfillment of national priorities determined by the Commission. State can only go against the commission at the risk of losing these grants, which are far ahead of the statutory grants.

The Union is the elastic sources of income, and States passes comparatively inadequate and static resources. The states are further handicapped by the passing of the industries act, by which matters relating to industries were brought under the central administration. And it gave the authority of deciding as to what industries should be included in the schedule of
industries. The handicaps surrounding foreign inchange made the confusion worse confounded for the states. Thus in all fields, legislative, administrative and financial the centre has been given sweeping powers and the autonomy of states had been seriously endangered. As a result the states, through various means, violent and non-violent, have joined the chorus of clamoring for location of some industry or plant or refinery. A hectic race among states in demanding of industries from the centre has become the order of the day. The Union can intervene if State fails to comply with or give effects to any of the directions given in the exercise of the Executive power of the union under any of the provisions of the constitution (Article 356). Santhanam correctly visualized:

Let us conceive of a situation in which the central Government can not be carried on in the normal manner; there may be no stable Ministry; there will be change of ministry everyday. No remedy has been provided in the constitution. The President, both according to the written provisions and much more according to unwritten conventions can not interfere. He can only choose the Prime Minister. He is to go on choosing the prime ministers and let them manage or dissolve the house of the people. If a general election does not result in the mergence, of a stable Government, he is helpless. So far as the central government is concerned, if any serious emergency occurs there is no constitutional remedy and the remedy has to be extra-constitutional. But, in the case of a state, it may be suspended even if there is some difficulty about the formation of ministries.47

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