CHAPTER-I
CHAPTER I

FEDERAL SYSTEM DEVELOPMENT IN INDIA

A HISTORICAL PERSPECTIVE

1.1 INTRODUCTION

The Constitution of any country, more often is the outcome of the political climate in the country. It is one type of instrument devised to fit the government of people in the given historical, political, geographical, economic and social surroundings. Federalism is an attempt to solve a certain kind of problem of political organisation (William I.S. 1956, p.2). Here it may be noted that the federation is concerned with constitutional provisions, courts, the division of powers, the existence of State governments with all the power. The Americans have federal approach towards government problems, that ensures solutions to those problems which shall be within a particular pattern. The attitude is the product of historical, geographical, social and economical factors, which framed the various aspects of federal nature (Vile, M.J.C 1961, p.39). The federal character of any country has been controversial in terms of financial and administrative power distribution, which is applicable to America and India both (Holcombe, A.N 1950, p.20).

FEDERAL SYSTEM AND MOURYANG

Federation is not new to India. Its roots are very deep in her history. India has been divided into various regions having different natural and cultural homogeneity, where races and religions are different. It has been observed that the characteristics of federation in
India was adopted in the past regulating the relationship between the central power and the provinces. This also shows that the States enjoyed considerable independence under the Kingdom. Under the Mauryans, the political organisation was such that the various constituent regions were respected (Hatton J.H. 1961, p.6). The characteristics of federal society was founded in the Indian Hindu society which characterised as the ancient Indian society (Menon V.P. 1951, p.1).

1.3 FEDERAL SYSTEM AND MUGHAL

The federal system during Mughal Empire was in ruin as they had the interest of having the centralised rule. The Mughal concentrated all the powers in their own hands and the provincial heads were at their mercy both for appointment and their removal. The provincial authorities though felt bias as the centre had an autonomy in the territory under them (Dicey, 1950, p.106).

1.4 FEDERAL SYSTEM AND BRITISH RULE

The first step that the East India company took was to strengthen its footing and to pass the Regulation Act by the parliament of England, (Wisely B. 1937, p.24). This act gave the powers to the Governor General of India to make and issue rules, ordinances and regulations for running civil government of the company’s entire territories. The Charter act of 1835 had neutralised the situation in India for the administration. The Governor General was vested with the powers, directions and control of the civil and then military, government and the revenues of all the territories under his charge (Bennerji A.C. 1945, p.202).

The company had just completed the work of centralisation and it
become a hue and cry from the influential people. They started suggesting for decentralisation, and to give the upper hand to the provinces regarding the administration and finance. John Bright has rightly said (John Strachey 1963, p.62) that "The Government of India can successfully organise the proposed divisions by making the provinces autonomous governments, each controlled by the secretary of the state, without any intervention of the government of India."

1.4 FEDERAL SYSTEM AND PRE-INDEPENDENCE

Bright's proposal was accepted by the British Government. There were many diversities in the country and the separate provincial governments with minimum interferences from any side. It was necessary for better administration that certain powers should be given to the provincial government. There was a doubt that the country like India where there were so many diversities, adopting the uniform system would fail. "The government of India realized that it had to undertake heavy burden and responsibilities without which there could not be efficient administration" (John Strachey 1909, p.116-17). The revolt of 1857 also gave some lessons. To run the government smoothly, the administration and the economic front shall move together and it was only possible when unity prevails. (Patwardhan & Mehta A.K. 1946, p.41). In 1870, the provinces were entrusted with the responsibility of the administration, police, education, medical services, roads etc, (Lord Mayo's scheme, 1870). The system would work well for some period, but at the beginning of the 20th century, social, political and economic situation undergone a change. The development of the Communication and Transport had linked the whole country. The educa-
towards westernisation changed the attitude and thinking of the local literates. They started asking for their rights and politics gaining ground through the local educated and rich families. Political awareness and unity had been growing with the Indian Congress aiming at the national aspirations of the general masses. The total scene of India had changed by the turn of the 20th century. It was the period of determining the relationship of the provinces with the government of India. The awareness among the educated persons, the view of decentralisation of the provincial governments pushed the factors reinforcing the dynamics of federalism.

The royal commission was appointed in 1907 to look in the matter of decentralisation. Its report, did not have far reaching results, but for financial devolution. Some effective suggestions were made. These suggestions were accepted by the government of India. (Financial resolution 1912).

The far reaching results were the extension based on the principle of the representative government in provinces as well as at the centre. Punniah had rightly said that "The trend of political development in British India had been towards provincial autonomy and the idea of federation, which has recently come into prominence, is only the extension of the development. Federalism came in Indian Constitutional system from the backdoor. The federation shall be the practicable and the desirable way for independence to democracy and national unity. The other factor for federal policy was the native states in the political system of India. These constituted at least one third of the country's provincial territories and they were interpreted with Brit-
By the treaties between different states, the government of India had become supreme, particularly in the matters of defence and external affairs. The rulers were sovereign, that is they could dictate their own views in the internal matters. The power of the government of India was extended to Post and Telegraph, Railways, transportations and for Military purpose. The aim of the British government was to see that the joint action was discouraged. The policy was to keep dispersed states and to treat each state as an isolated unit apart from the other states. The National Congress assured the people of the state to support in their legitimate and peaceful struggle for attainment of government in their state, when it became sure that British India shall have to budget to the sentiments of the people for the introduction of the parliament form of the government in British India. The study was made on the relationship of states and the British rule India. It was this ground that the states accepted the federation view. The committee, thus made a historical nature of relationship between the paramount power of the princes boosting the bargaining capacity of the states in the negotiations, which were to advance for framing federal constitution. The days have come when people themselves started organising and putting forward the demand for responsible and legitimate government through peaceful struggle, creating in the minds the favour of the federation. The state rulers started shifting their stands, having given a better bargaining capacity by the Butler committe. The conference of different princes (1929) the Maharaja of Bikaner expressed his view that, he felt that there should be a united India.
one day, enjoying the dominion status creating equality for the different federal federations in India which is only the solution of India's problem. (Indian statutory Commission Report, 1938). The Hindus as well as the Muslims on the basis of having their own masters were for federation of princes felt that they shall have, the voice in the administration and the economic matters. The nationalists were optimistic for federation. This was a desirable and practical move for independence. This approach will bring unity and democracy in the whole country. The whole country was unanimous on the federation matter. The first conference (Round table conference) was held at London which was not represented by the Congress Federation issue dominated the conference proceedings and it recommended to establish federation where complete responsibility would be of the states and partial responsibility at the centre. The first round conference was a failure in finding out any solution of the problem. The discussion at the conferences was on federal structure committee, and by which minority was not happy in siding on separate electorate.

The British Government was very generous to the minorities and more particularly to the muslims of India. Divide and rule policy became the core corner of the Indian people. There were divisions among Hindu upper caste and schedule caste. On the basis of Poona Pact, there had been certain modifications. The depressed castes got more reserved seats and gave up electorates. The third conference was held at London to review the left out programmes and scheme to finalise the matters which could not be taken up or assured results in the earlier two conferences. Three important things had come from this conference
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(a) accession of the federation of about 50 percent of the Indian states, in terms of population, would be regarded justifying the new all India federation, (b) 33.5 percent seats shall be given to Muslims in the Federal Legislature and (c) Singh & Orissa shall become separate states. White paper was issued by the British government in March, 1933. The three principles accepted in it (i) federation, (ii) provincial autonomy and (iii) special responsibilities vested in the executive both with the centre and the states which were accepted.

On April, 1933 meeting of Joint Selection Committee has declared that the All India Federation shall come into existence only if 50% of the princes joined it. There shall be a responsible government and the safe guards shall be provided in the constitution. These were the basis of the recommendations of the Government of India Bill of 12th Dec. 1934. The section of conservatives opposed it and severely went to the extent of oppositions and got the Royal assent on 4th August 1935 which became the Act of India 1935. This Act was the most complex federation ever known in the history of federalism.

1.6 INDIAN CONSTITUTION AND FEDERAL SYSTEM

The federal scheme forwarded by the government of India Act of 1935 was never accepted, but the provincial part of it was accepted and launched in 1937. Federalism became the fact and the Government of India Act 1935 became the definite milestone in the constitutional history of India. The centre-state relations were on federal basis making the provinces as independent statutory blocks. The centre was given more authority, Provincial relations and several other matters
were taken up with some changes in the constitution of the Independent India. The division of the powers between the centre and the states was clear in which the financial resources were provided. The distribution of the powers between the two layers of the government was the first step towards federal system. The exclusive jurisdictions of the provinces and the federation was fixed on the basis of the federalism.

Act of 1935 strengthened the independence of the provinces in the administrative matters, but certain restrictions were imposed on the provincial authority for execution of federal laws. There were certain legislative and financial powers which could be exercised by the governor which considered necessary to exercise. He had the authority to issue ordinances, place laws on the statute book and appropriate finance independently on the advice of ministers or approval of legislature. The autonomy of the provinces could be suspended during the emergency period by the governor-general, when the situation was grave and the security of the country was in danger, whether by war or by internal disturbance or by any other grave crisis. The pattern of the administrative relations of the two tier system of centre and the states, of the Act 1935 is accepted in the constitution of India. (Ahmed Khan 1937)

It was the first time that the distinction between the provincial and federal sources was fixed in this Act. The resources or taxes provided to the states were inelastic and inadequate, which lead to the deficits of the provincial budgets in general. Therefore, the depend-
ence of the provinces on the centre continued in the financial matters. In doing so, the national security was given the prime importance than the development prosperity of the states. All the elastic resources were with the centre. The financial authority of the provinces was complete in this period. The world over this defect is seen in all the federal system of constitutionalism. No financial system is still found out on the sound footing till date, but all lack adequacy and independence.

This drawback can also be found in the constitution of independent India. No doubt, the unitary form of government was changed to federation and pattern of union and state relations particularly in the financial matters, are accepted in the constitution as described by the words "Parliament of the Act" (Constitution of India, 1950). The main factors which led to federalism were Imperialism, Muslim communalism, and the demand for internal sovereign by the Princes. The government was allowed to raise finance for this purpose. The subjects may be with the Union and the residuary powers should be in the hands of the provinces. The states shall have all other powers other than those by the Union. The Assembly thereafter was busy in the federal system of government.

The assembly was working to create a federal system, and there was no need of absurd discussion on the objective resolution. When moved by Mr. Nehru, no one felt to have discussion on the territories of Indian Sovereign Republic. They were to possess the return to the status of autonomous units together with residuary power and exercise all powers
and functions of the government and administration except the powers and functions which vested or assigned to the union or resulting or inherent or implied to the Union (Ram Gopal, 1953). This was accepted by the members of the Assembly. The residuary powers vested in the provinces. Shri Krishan rightly said that "it was the need for India to have a strong centre" as he put it that "India should have a centralized Republic." Dr. Ambedkar's opinion was that the centre should be stronger, but it was necessitated to give powers to the provinces.

The federal scheme was reconsidered due to its disorders. The strong centre with federal structure was the main unanimous feeling of assembly. The weak central authority would not cope up with disturbed situation and factors (like international relationship) for it strong centre federation was the most welcome. The provincial constitution also took up the matter of unitary from or the federal form of the constitution. The Union Constitution meeting had already discussed about the federal setup and accepted the view that the centre should be very strong. The Union Powers Committee, (in its second report) suggested that the constitution should not be unitary. It was partition that led to federal trend. Gadgil has rightly remarked "In the last one hundred and fifty years, particularly in the last 50 years, that this state of the country should have been federal, where there would be no dis-satisfaction among any party. The historical developments over the past few decades reflect that for the British government the political, economic and other factors were designed which were favourable with the princely states". The Princes though were asked to be helpful to the Assembly. They ignored all matters and agreed only in three matters viz. defence, external affairs and commu-
nication. Many congress leaders who had tested the rule during the
1937-39, felt that the unitary could not share the power except the
federal form, if not established.

These leaders believed in the shared power. The autonomy of the
provinces did not allow this test. This was one of the factors that
lead to federalism. Though the federal system was supported by major-
ity of the members, there were some who strongly advocated for unitary
form of constitution. It was referred that the federation like Ameri-
ca was inclined towards unitary form of constitution. Some other
thinkers were of the opinion that the federalism was the traditional
approach which was not suited to the modern masses. The need of the
time was to protect it from the super powers. Shri Deshmukh was of
the opinion that the draft of the constitution was in favour of uni-
tary form. He also said that such a government would keep up the
uniform policies in financial and economic matters and shall create
stability in India, (Panikker Committee : 1947, P.533-38).

The Union Powers Committee, after the announcement of partition recom-
mended that the residuary powers should be with the states. The
Drafting Committee under the chairmanship of Dr. Ambedkar, enlarged
the central authority and divided the legislative powers between the
union and the states which was set in three lists in the draft consti-
tution (Seventh Schedule). The administrative powers were roughly
the same as the Act 1935. The central authority was strengthened by
giving powers to the President who on the recommendations of the
centre or by the advice of the centre could take the states to the
task, if they failed in their functioning. The Constituent Assembly
members had the faith in the centre. For the social and economic matters, the states were given independent finances revenue for their programmes.

There was no hay and cry from the states though the elastic tax source was with the centre. This view was hailed by many people as they felt that heavy expenditure would finally fall on the Centre, and not on the units. It was also felt that if the centre did not possess more power for taxing, it shall not be possible for it to transfer amount from the richer states to the poorer states. This was the formulation of the constituent assembly, hence some educated people felt that the Indian Constitution was more as subsidiary federal feature; (Austin Granville : 1961, P. 191). The centre should be strong for external and internal disruption from any side. It was not only the history of the country alone which led to the centre being strong but it was the prevailing situation at the time of partition which stressed the need for the centre being strong. The communal riots, the law and order situation, disruptive forces were at the helm famine, and economy was in the ruined condition, it was argued that only the strong centre can bring the matters right. The strong centre was also necessary for a growth through economic development for building a new society and provide social and welfare services.

This would help to command the resources and to make a programme by which the execution can be planned smoothly. The politicians and the members of the drafting committee looked over the developments in the world, and referred to the federations where the centre had been given
a great importance.

Krishna Swamy Ayar rightly said "The complexity of the industrial trade, financial conditions and large scale of defence programmes all these are necessary to strengthen the federal government. The draft commission had taken a note on this matter and did not leave it to the Supreme Court to decide on the matter." Therefore, everyone in the committee was for the strong centre. There were certain experts who were inclined for state autonomy but looking to the situation, they also favoured for strong centre as the circumstances demanded. Some were of the opinion that the centre should not be fitted with excessive powers and the powers of states should not lack in their development. They should not have to sacrifice for the centre. K. Santharm too was in favour of strong centre, but his understanding was different than that of others in Union Power Committee. He said that The centre should not be made responsible for everything. The well-being of the people in the provinces should remain with the provinces. It should be the all India matter where the centre should come. So the centre should deal in all India matters and the states should be left for their own field matters. Therefore, the centre with fewer powers shall be more powerful than with more powers. The political economic conditions were such that the committee, inspite of feeling to giving more powers to the states were pressed on the national solidarity and planned economic development. Shri Munshi had rightly said "The strength, and the power unity in public life we see is the hundred or more years gift that has developed due to centre administration, and one important thing was the glorious days were during the Maurayas and Mughal there was strong central authority in
Indian federalism has come into existence by the special conditions created by the circumstances has been centrally oriented. Units are free of operation in normal times though it has been noticed that the units do not work strictly as per constitution but it is the federal system that is functioning.

The federal structure of India has been versatile since its inception. In view of many constraints and expectations, it may be noted that the various outstanding issues emerge due to this mode. Though there have been heavy transfer of funds from the centre to the states over time, the regional economic disparities have widened.

The union loans given to the states have hampered the resource feasibility of the states. Particularly, the backward and low revenue receiving states. This has created a lot of dissatisfaction among many state governments. Over and above the demand for more autonomy by some states, specially for the financial matters has added fuel to the centre-state relation. The indifferent attitude and complexity with the regressive trends have forced the Union Government to appoint the Sakaria Commission to examine all the issues. The 9th Commission was asked to suggest on these issues. The need of the day is to restructure urgently the existing Centre-State relations of the federation.