Basic Structures of Government have their source of origin and growth in the ‘basics’ of the society. One basic fact of the Indian society is the heterogeneity (which is more than saying ‘diversity’) of its social divisions and the identity and closeness that people natally feel with those divisions. India has been a very old society and an ancient civilization, the State in India was ‘alien’ to the people under years of slavery and subjugation. People obeyed the State out of fear or in expectation of favour, they never felt close to it. For centuries, they felt close to the castes, communities, geographical areas, linguistic groups and religious groupings. The customs and traditions owed to the way lived within those communities. The customs and traditions bound them, some of them like sati were attacked, yet, they remained a part of the social system. Laws thus became idealistic aspirations and did not evolve as a product of enlightened interest of people or as an expression of public morality. People had to meet two obligations, two laws and those still exist. The obligation to the social group more often comes into conflict with the law of the State; one feels more obliged to the former than the latter.\footnote{Shubh N. Singh, Centre-State Relations in India, Major Irritants & Post-Sarkaria Review Foreword (1990).}

The political organization in India is neither purely federal nor purely unitary. It is an amalgam of both. In certain respects it is a federation and in certain other respects, it is a unitary form of Government. This kind of a peculiar system is due to various factors. This can be gathered from an account of the origin and development of the various institutions which form part of the national administration to manage the affairs of the State.

Tracing the history of India, we find that whole of India of today had never
before been one nation. There have been integrations and fragmentations several times in the nation’s history. To begin with, Gupta dynasty rule over India had the largest span spread all over present India except some parts of the southern plateau which were mainly covered with forests. After their rule, fragmentation started leading to formation of many smaller states with ever-changing boundaries through mutual battles. This process brought Rajputs to rule most of the states within boundaries of India without any federalism. Again the boundaries of these states were changing every now and then through battles. Then came the Moghuls and started ruling Indian states and integrating them into an empire. In this process, Akbar’s empire was the largest. Later came British, French, Portuguese to rule over many states of India with some others ruled by erstwhile Moghul and Rajput descendants. In exchanges of ruled territories across the globe between British, French and Portuguese, most of India was brought under British Empire, but within British-ruled India, there were no states and hence there was no federalism.  

The history of federalism and Centre-State relations in India is marked by political mobilisation and intermittent struggle to fashion a more federal set-up. Even though such efforts have not yet resulted in any major Constitutional changes towards a more federal orientation, the struggle has not been entirely fruitless. The creation of a new structure of Constitutional Government for independent India deserves to be seen in historical context, particularly by taking into account the objective political situation existing then. In fact, political imperatives emerging out of independence movement historically as well as the immediate imperatives of partition of India influenced the design of Government incorporated in the Constitution of India. It will be useful to trace the tortuous course of the movement for federalism.

A. ORIGIN AND DEVELOPMENT OF CENTRE-STATE RELATIONS IN INDIA

India has geo-political and historical characteristics, which have few parallels. Its size and population, geographical, linguistic, religious, racial and other diversities give it the character of a sub-continent. But its natural boundaries marked by mountains and seas, serve, to identify it as a separate geographical entity. This insularity, over the years, let to the evolution of a composite cultural unity, a feeling of common heritage and a pervasive under-current of oneness. These gave the country the character of a general Indian personality.101

The formation of India’s federation has been a long process. Some kind of federation existed throughout her history in the form of sub-divisions.102

India’s history is replete with brief periods of political unity and stability followed by spells of dissension, chaos and fragmentation. The strongest kingdoms, from time to time, became empires, extending their sway, more or less, to the natural boundaries of the sub-continent, bringing under their suzerainty the local principalities and kingdoms. But, undue centralizations often proved counterproductive and triggered a chain reaction of divisive forces. Whenever, due to this or other causes, the Central authority became decadent and weak, the fissiparous forces became strong and led to its disintegration, sometimes tempting foreign invaders to conquer the country.103

In order to hold the sub-divisions together, the kings in ancient India accepted the autonomy of provincial areas and interfered as little as possible as long as the power status quo was not seriously threatened.104 Care was

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102 P.V. Kane, History of the Dharamshastra, 134-36 (1946).
103 Supra note 91.
taken to preserve local customs. Some ancient Indian thinkers, like Kautilya, devoted themselves to the task of evolving theories of holding the State together through wars and treaties. Spiritual movements also took place to emphasize the oneness of India through her rivers, mountains, flora and fauna and traditions. The contemporary debates about federalism in India are rooted in a long-standing contestation of sovereignty. The history of India over the past several centuries bears witness to the fact that India was at no time a single political unit. Even during the reign of the Mauryan dynasty, though a large part of the country was under the sovereignty of the Mauryan Kings, there were considerable portions of the territory which were under the rule of independent kingdoms. Some British historian, such as Percival Spear and Wolseley Haig, have traced federal administrative elements in India as far back as the Moghuls, beginning with Sher Shah’s land revenue system and taking shape with Akbar’s division of his empire into 12 subahs or provinces. The historians such as Percival Spear and Wolseley Haig, among others argued that during the Moghul rule which extended over large parts of the territory of India, there were independent rulers who enjoyed political sovereignty over the territories of their respective kingdoms. Thus the Moghul rule fluctuated between strong Central control and local initiative, thus preventing an extremely centralized or decentralized administrative structure. Municipal administration was in the hands of the kotwal or town Governor, who also combined the duties of magistrate and police officer.

Another significant fact that stands out in India’s history is that the provinces and the local Governments in the various empires, from the Maurayyas to the Mughals, enjoyed considerable degree of autonomy. As

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105 Supra note 80 at 40.
106 Supra note 80 at 21.
noted by the historian Sir Jadunath Sarkar, in ancient empires “each province led its own life, continued its old familiar system of Government (though under the agents of the Central power) and used its local language”. The ruler of the Maurya and Gupta periods and the Muslim rulers attempted to extend their frontiers to the whole of India. The Central authority has also seen the necessity of granting considerable measure of freedom of action to its component principalities. The Maurayan Empire included protectorates and autonomous principalities within its bounds. During the Muslim period, the dominant trend, of course, was towards centralization. But they received only partial success in doing so. Whenever an over-ambitious emperor has attempted centralization by steam-rolling the local autonomy, it evoked strong resentment and reaction. Such extreme centralization proves not only detrimental to administrative efficiency, but, in counter-effect, weakened the capacity of the Central power to maintain its hold over sub-national forces on a stable and enduring basis. The last of the great Mughals made a strong bid for complete centralization and abolition of traditional diversities and autonomy of the regions. Soon after his death, the regional forces discharged the mantle of the Central authority. Governors of the Provinces and local chieftains asserted their independence and the entire structure crumbled.

The history of India over the past several centuries bears witness to the fact that India was at no time a single political unit. Even during the reign of the Maurayan dynasty, though a large part of the country was under the sovereignty of the Maurayan Kings, there were considerable portions of the territory which were under the rule of independent Kingdoms. So also, during the Moghul Rule which extended over large parts of the territory of India there were independent rulers who enjoyed political sovereignty over the territories of their respective kingdoms. It is an interesting fact of


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history that India was formed into a nation neither on account of common language nor on account of continued existence of a single political regime over the territories but on account of a common culture evolved over the centuries. It is the cultural unity which has welded this country into a nation. But until the advent of the British rule it was not constituted into a single political unit.

The capture of power by the Britishers from the native rulers in one matter after the other, and the system of having a federal and a unitary form of Government was due to various historical, political and economic factors. During the British rule the system of administration at certain times was highly centralized and at others it was somewhat decentralized. At the commencement of their regime, Britishers tried to centralize all power. But they soon realized, especially after the traumatic consequences of Dalhousie’s policies, that it was not possible to administer so vast and diverse a country like India without progressive devolution or decentralization of powers to the Provinces and the local bodies.111 When the British came, they had the advantage of swifter means of communication by rail, road and telegraph. They were able to integrate India politically and administratively. They achieved some success in integrating India also by a common system of English education, a sophisticated army, a uniform civil administration, and even by encouraging the birth of the Indian National Congress.112

This Chapter examines the reasons why the system of Government under various Constitutional instruments, right from the time of formation of East India Company to the formation of Government of India, Constituent assembly debates and the emergence of the Republic, underwent changes after changes, giving more powers to the Centre and sometimes less and

111 Ibid.
112 Supra note 80 at 22. As admitted by President Sanjiva Reddy in his Republic Day Message on January 26, 1978.
then sometimes giving powers to the Provinces, and the local bodies to run
the administration of the State.

B. THE RISE AND GROWTH OF BRITISH POWER IN INDIA
The East India Company was an early joint-stock company (the Dutch East
India Company was the first to issue public stock). It was granted an
English Royal Charter by Elizabeth I on December 31, 1600, with the
intention of favouring trade privileges in India. The Royal Charter
effectively gave the newly created Honourable East India Company (HEIC),
a 21 year monopoly on all trade in the East Indies. The Company
transformed from a commercial trading venture to one that virtually ruled
India and other Asian colonies as it acquired auxiliary Governmental and
military functions, until the British Crown assumed direct rule in 1858
following the events of the Indian Rebellion of 1857. Elements of its
administration, the “Honourable East India Company Civil Service”
(HEICS), survive in the “Indian Administrative Service” (IAS), the
successor to the “Indian Civil Service” (ICS).

Though the Company was becoming increasingly bold and ambitious in
putting down resisting States, it was getting clearer day by day that the
Company was incapable of governing the vast expanse of the captured
territories. By East India Company Act 1773, the Parliament of Great
Britain imposed a series of administrative and economic reforms and by
doing so clearly established its sovereignty and ultimate control over the
Company. The Act recognized the Company's political functions and clearly
established that the "acquisition of sovereignty by the subjects of the Crown
is on behalf of the Crown and not in its own right."

Despite stiff resistance from the East India lobby in Parliament, and from
the Company's shareholders, the Act was passed. It introduced substantial
Governmental control, and allowed the land to be formally under the control
of the Crown, but leased to the Company at £40,000 for two years. Under
this provision, the Governor of Bengal Warren Hastings was promoted to the rank of Governor General, having administrative powers over all of British India. That British judicial personnel would also be sent to India to administer the British legal system. The Governor General and the council would have complete legislative powers. Thus, Warren Hastings became the first Governor-General of India. The company was allowed to maintain its virtual monopoly over trade, in exchange for the biennial sum and an obligation to export a minimum quantity of goods yearly to Britain. The costs of administration were also to be met by the company. These provisions, initially welcomed by the Company, backfired. The Company had an annual burden on its back, and its finances continued steadily to decline.113

Elaborating upon the Legislations, the East India Company Act (Pitt's India Act) 1784 India Act of 1784 had two key aspects in that the Bill clearly differentiated the political functions of the East India Company from its commercial activities. For its political transactions, the Act directly subordinated the East India Company to the British Government. To accomplish this, the Act created a Board of Commissioners for the Affairs of India usually referred to as the Board of Control. The members of the Board of Control were the Chancellor of the Exchequer, a Secretary of State, and four Privy Councillors, nominated by the King. The Act specified that the Secretary of State, "shall preside at, and be President of the said Board". The Bill laid the foundation of the British centralized bureaucratic administration of India which would reach its peak at the beginning of the twentieth century with the Governor-generalship of George Nathaniel Curzon, 1st Baron Curzon.

Pitt's Act was deemed a failure because it was immediately apparent that the boundaries between Governmental control and the Company's powers were

113 Frank Anthony, Britain's Betrayal in India: The Story of the Anglo Indian Community, 18-19, 42, 45 (2007).
obscure and highly subject to interpretation. The Government also felt obliged to answer humanitarian voices pleading for better treatment of natives in British occupied territories. Edmund Burke, a former East India Company shareholder and diplomat, felt compelled to relieve the situation and introduced before Parliament a new Regulating Bill in 1783. The Bill was defeated due to intense lobbying by Company loyalists and accusations of nepotism in the Bill's recommendations for the appointment of Councillors.

The Act of 1786 enacted the demand of Lord Cornwallis, that the powers of the Governor-General be enlarged to empower him, in special cases, to override the majority of his Council and act on his own special responsibility. The Act also enabled the offices of the Governor-General and the Commander-in-Chief to be jointly held by the same official.

This Act clearly demarcated borders between the Crown and the Company. After this point, the Company functioned as a regularized subsidiary of the Crown, with greater accountability for its actions and reached a stable stage of expansion and consolidation. By the middle of the 19th century, the Company's rule extended across most of India, Burma, Malaya, Singapore and Hong Kong, and a fifth of the world's population was under its trading influence.

The efforts of the company in administering India emerged as a model for the civil service system in Britain, especially during the 19th century. Deprived of its trade monopoly in 1813, the company wound up as a trading enterprise.

Following the 1857 insurrection, known to the British as the "Great Mutiny" but to Indians as the "First War of Independence", the Company was nationalised by the Government in London to which it lost all its
administrative functions and all of its Indian possessions - including its armed forces - were taken over by the Crown.

C. TRANSFER OF POWERS

The development of administrative institutions with a federal character in India start with the expansion of British rule after 1857, after the British Crown assented to take over the duties and treaty obligations of the East India Company and assumed direct responsibility for India’s ‘protected’ States. In 1858, Lord Canning was proclaimed the first Viceroy and Governor-General for the British Crown. It is during this period that the centralizing administrative aspects of British rule as set out by the Charter Act of 1833 were gradually reversed by the Indian Councils Act of 1861. The Charter Act of 1833, according to H.H. Dodwell, had centralized the administration of the country’s finances in the hands of the Government of India. However it negated the power of legislation from the Governors in council. The Indian Councils Act of 1861 provided for participation by non-officials in the Legislative Council of the Governor-General. Similar provisions were made for the Legislative Councils of the Provinces. The Indian Councils Act of 1861 also established a Viceroy’s executive council composed of five members. The decentralized federal administrative structure outlined by the Act of 1861 was protean. No line of demarcation was drawn between subjects reserved for the Central and those allocated to the local legislature. Nevertheless, while local legislation in certain cases could not be undertaken without sanction from the Governor-General, all acts of local legislature required his subsequent assent as well as that of the local Governor and were subject to disallowance by the Crown. The power of legislative councils was later solidified with the establishment of separate councils in Bengal, the North-western Provinces and the Punjab and Burma.

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114 Supra note 80 at 22.
as well as with the eventual creation of three separate district administrations of Bengal, Bombay and Madras. 115

It was during this time of institutional transformation that the Indian National Congress was founded in 1885. Although largely a forum for complacent Indian elites, the Indian National Congress eventually became the organizational vehicle for India’s mass nationalist movement. The Indian National Congress often issued resolutions to provide for a transformation of governance in British India. Though often ignored by the Viceroy and his Government, such resolutions later served as the platforms for debates in India’s Constituent Assembly. 116 The long-drawn out struggle for self-Government by the Indian National Congress, joined by the other political parties formed later, led to the growth of Indian Nationalism. Modulating their strategy step by step with the mounting demands and persistent pressures of the nationalist movement, the British started devolving more and more powers to the Provinces, involving increasing association of Indians on the one hand and promoting divisive forces on the other.

An important factor, which helped and sustained the evaluation of a ‘dispersed’ political system in India, was the decentralization of finances. The trend of federalism started emerging in India soon after 1858. The Constitutional developments in India in the evolution of ‘decentralization’ were heading towards federalism. This process started with the Mayo Scheme in 1871 and continued till it was formalized by the Government of India Act, 1919117. The Principle of indirect election to these Legislative Councils was established in 1892 and the functions were enlarged to include the right of discussion of the budget and interpellation in matters of public interest. By the Indian Councils Act, 1909 (Morley Minto Reforms) the

115 Supra note 80 at 22-23.
116 Supra note 80 at 23.
117 Supra note 80 at 21.
British further extended the association of Indians with the governance of the country but on the basis of separate electorates, narrow franchise and indirect election.

Mr. Henry Cotton, a distinguished Anglo-Indian official, while delivering Presidential Address to the 20th session of the Indian National Congress in 1904 said that “the ideal of an Indian Patriot is the establishment of a federation of free and separate States, the United States of India, placed on a fraternal footing with the self-governing colonies, each with its own local autonomy, cemented together under the aegis of Great Britain”.\(^{118}\) No doubt the unification was at the cost of the maintenance of a federal society which implies a “balance of power system”.\(^{119}\) But even the British allowed the princely States to exist with their powers and privileges and saw to it that each province be administrated by its own separate Government with a minimum of interference from outside.\(^{120}\) The Indian Constitutional Reforms of 1918 made a reference to “self-governing Indian provinces associated for certain purposes under a responsible Government of India, with possibly the native States of India finally embodied in the same whole”.\(^{121}\) The idea of federalism was taking place in the minds of British Government as well as the Indian National Congress. The Government of India Act of 1919 followed and it introduced ‘Dyarchy-federalism in embryo’.

The 1919 Montagu-Chelmsford Reforms eventually examined the working of the new legislative councils and attempted to accelerate the advent of a limited parliamentary system in India. From the Montagu-Chelmsford Reforms leading up to the Government of India Act of 1919, more powers

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\(^{119}\) Supra note 23 at 29.
\(^{120}\) K.R. Bombwall in *Imperatives of Federalism in India* in S.A.H. Haqqi, (ed.) *Union-State Relations in India*, 16 (1967).
were institutionalized to the provincial legislatures under a dyarchial system.

The Government of India Act, 1919\textsuperscript{122} ushered in the first phase of responsible Government in India. It was a significant step in the development of a two-tier polity. While conceding representative Government in a small measure in the Provinces under a ‘dyarchial’ system, it demarcated the sphere of Provincial Government from that of the Centre. By the Devolution Rules framed under the Act, powers were delegated to the Provinces not only in the administrative but also in the legislative and financial spheres. Under the provisions of Government of India Act of 1919, separate Central and Provincial Lists demarcated some administrative and legislative jurisdictions in this two-tier federal system. The last item in the Provincial List was allotted to the Provinces “any matter though falling within the Central subjects is declared by the Governor-General-in-council to be merely local or private nature within the province”. The subjects in the Provincial List were further sub-divided into ‘reserved’ and ‘transferred’ subjects. The Departments dealing with the ‘transferred’ subjects were placed in the charge of elected ministers responsible to the Provincial Legislature, while Departments in respect of “reserved” subjects were administered by the Governor with the assistance of an Executive Council nominated by him. Although with respect to transferred subjects, the Provinces derived substantial authority by devolution from the Central Government, yet the Governor-General-in-council remained in control at the apex of this centralized system, ultimately responsible to the Secretary of State for India in the U.K. There was also a third List regarding taxation powers of local bodies\textsuperscript{123}.

The reforms of 1919 failed to meet the aspirations of the people for full

\textsuperscript{122} The Montagu-Chemnford Report led to this enactment.
\textsuperscript{123} \textit{Supra} note 80 at 21.
responsible Government. In reality, the structure remained unitary with the Governor-General-in-council in effective ultimate control. Finance was a ‘reserved subject’ in charge of a member of the Executive Council and no progressive measures could be put through without his consent. The main instruments of administration, namely, the Indian Civil Service and Indian Police were under the control of the Secretary of State and were responsible to him and not to the ministers. The Governor could act in his discretion otherwise than on the advice of the Ministers. No Bill could be moved in a Provincial Legislature without the permission of the Governor-General. No Bill could become law without his assent.\(^{124}\)

The major part of history of struggle for swaraj (self-rule) and independence reflects efforts to find solutions to India’s gigantic diversity. Even mobilization for the national movement was based on federal and quasi-federal principles.\(^{125}\) The acceptance of language as the basis for redrawing provincial boundary, for example, was a result of such a mobilization. As the ideational construction of the Indian nation began, leaders like Dadabhai Naoroji, Bal Gangadhar Tilak and Sri Aurobindo emphasized the importance of the regional cultural heritage for this purpose. Gandhi understood the importance of the sub-national identities in the process. Therefore, his strategy for mass mobilization, soon after he arrived on the Indian political scene, took into account the importance of identities. Consequently, the Congress reorganised its units along linguistic lines in 1920.\(^{126}\)

The intense India-wide agitation carried on by the political parties for full responsible Government, evoked a partial response from the British

\(^{124}\) Ibid.


Government. In November 1927, they appointed a Statutory Commission under Sir John Simon for considering the grant of a further instalment of responsible Government. All the seven members of the Commission were British. The Indian National Congress and all other leading political parties boycotted the Commission. The Congress pressed the British Government to accede to the national demand for convening a Round Table Conference or Constituent Assembly to determine the future Constitution of India.127

The All Parties Conference in 1928, appointed Motilal Nehru as the Chairman of a Committee, to draft a Constitution for India. The Committee in its supplementary Report recognised the possibilities of introducing federation and observed that, “we have borne in mind the peculiar position of India and have provided for development of the fullest possible provincial life compatibly with national interests.....The limits we have provided for provincial activities and functions are very wide, and within these limits provincial Governments will be masters within their own houses, free from the control of the Central Government” 128

Simon Commission, in its report presented in 1930, supported the idea of ‘federalism’. The Round Table Conference of 1930-32 also suggested the Federal Structure for India. In Joint Memorandum submitted by the British Indian Delegation to the Joint Parliamentary Committee on Indian Constitutional Reform, the Committee referred to ‘inauguration of the federation’ in November, 1933.129 The partial devolution of political power to the Indian provinces and the continuing trend towards decentralization was later developed in the Government of India Act of 1935 preceded by publishing of a white paper in 1933, embodying the principles of

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127 Supra note 80.
129 Joint Memorandum submitted by the British Indian Delegation to the Joint Parliamentary Committee on Indian Constitutional Reform, November 1933, para 3. pg.3.
Constitutional reforms in India. This interalia, sought to extend the separate electorates future to Scheduled Castes and Tribes, which had to be withdrawn after a protest “fast unto death” by Mahatma Gandhi. The Joint Select Commission of the Select Commission Reports considered these proposals; and a bill was drafted and enacted in 1935 as the Government of India Act.

The Government of India Act of 1935 proposed a federal scheme which was never implemented in practice and thus the part of the Act, which provided for a federation of British India with Indian States, “proved to be a still-born child”. The Government of India Act, 1935 was divided into three parts that involved the structure of the Central Government, the extent of provincial autonomy, and the Provinces and the Paramount Power. The Act reorganized the legislative machinery at the Centre. The legislature was divided into an Upper and Lower House. The Viceroy’s Executive Council comprised of ministers appointed by the Governor-General from the members of the Lower House. The Federal subjects were classified into ‘reserved subjects’ and ‘transferred subjects’. The Governor General administered the ‘reserved subjects’ with the assistance of Councillors and the ‘transferred’ subjects with the aid of Council of Ministers responsible to the Central Legislature. Wide discretionary powers were given to the Governor-General to include, in his discretion, in his Council Of Ministers representatives of the minorities and the Indian States.

The Government of India Act of 1935 introduced an important federal element in that it established a twofold system of Government with the Centre and the States functioning separately. The administration of the States was autonomous, to a certain extent, and the financial resources separate from those of the Centre. Finally, the Act also outlined the

130 R.C. Majumdar (ed.), The History and Culture of the Indian People Struggle for Freedom, 574 (1988).
131 Supra note 80 at 24.
emergency provisions regarding emergency powers, stating that in the event of a collapse of administration in any State, the Governor would take tasks of administration. Overall, the Act established a twofold system of Government with the Centre and the States being assigned different (and overlapping) functions, under the ultimate control of the Governor-General-in-Council. The Act described the administrative machinery in terms of legislative and executive powers and the responsibilities of the Governor-General and other appointed and elected officials. It also provided a bicameral federal parliament that never came into being due to the reluctance of the princely States to join up.

The Government of India Act, 1935 is however a vital landmark in the history of Constitutional decentralization of power particularly from two standpoints. Firstly, it dispersed constitutionally powers between the Centre and Provinces. Secondly, subject to certain safeguards, it introduced representative Government at the Provincial level responsible to the Provincial Legislature. But this Act also failed to satiate India’s nationalist commitment. In the midst of World War II, the demand for the creation of Constituent Assembly and the reworking of its federal structure was reiterated in a number of Congress Party and All-India Muslim League resolutions. The Nehru Committee Report recommended a federal structure of Government. The leaders guiding the Indian National Movement kept oscillating between a ‘truly’ federal Government and a federation with a strong Central Government.

The Congress party itself was torn between various approaches to the organizations of federal institutions in India. Mahatma Gandhi had expressed a preference for a panchayat or village-based federation. His 1945 memorandum for a proposed decentralized federal system was handed over

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[85 Supra note 80 at 25.](#)
to the Constitution Committee of the Congress.\footnote{Supra note 80 at 27.} Gandhi’s plan for radical decentralization came to a head with what were perceived to be the imperatives for centralization following Partition. Dr. Ambedkar ridiculed the arguments for the creation of a new Constitution, raised upon village panchayats on a highly decentralized confederation of villages.\footnote{Supra note 80 at 28.}

Until 1946, several proposals failed including one by Sir Richard Stafford Cripps, when the British Prime Minister, on May 16, 1946 announced the British Cabinet Mission Plan by Mr. Atlee, which envisaged a Central Government with very limited powers and relatively strong Provinces having considerable degree of autonomy with all its residuary powers. The leaders of the Congress Party and the Muslim League hesitantly accepted the general provisions of the Cabinet Mission Plan while an interim Government was being formed. However, as relations between the Muslim League and the Congress deteriorated, they began to differ on the details of the composition and purpose of the assembly. The Congress and the Muslim League eventually rejected the tenets of the Cabinet Mission Plan but the failure of the Plan did not prevent the formation of the Constituent Assembly in December 1946.

Although the Cabinet Mission sent by the British Government in 1946 saw no virtue in partitioning undivided India into two different independent nations. It also recommended that the independent country should be governed by a federal Constitution with the Central Government dealing with only foreign affairs, defense and communications and remaining vested with two groups of provinces, one predominantly Hindu and the other predominantly Muslim. However, the insistence of the Muslim League to have a separate nation for the Muslims led to the formation of Pakistan comprising of Muslim majority regions of the Northwest part of the
subcontinent and eastern part of Bengal. In the event, it was no longer necessary to create a weak federal Government. Instead, the founding fathers of the Constitution decided to have a federation with a strong central Government to hold together the diverse economic, linguistic and cultural entities and to avoid fissiparous tendencies. Centralization was also found desirable to unify the country comprising of the regions directly ruled by the British and 216 princely States and territories.\footnote{Dr Harihar Bhattacharya, \textit{Indian Federalism, Minorities and Statehood: Accommodation of Diversity and Political Order} viewed at http://archive.ub.uni-heidelberg.de/volltextserver/volltexte/2005/5500/pdf/hpsacp27.pdf.}

It needs special mention here that India’s independence was not a peaceful affair. It was preceded by decades of mass nationalist mobilisations, and immediately by high levels of communal violence (1946-47), and the partition of the country between India and Pakistan in 1947.

The Constituent Assembly began its proceedings in 1946 with the “idea of setting up a minimal Federation with a weak Centre however suddenly went to the other extreme and tried to establish a maximal federation with a very strong Centre that was due to partition”.\footnote{K. Santhanam, \textit{Union-State Relations in India}, 60(1963).}

It would be pertinent and needful to recapitulate the remarks of certain Constituent members and the debates among them which process finally led to formation of the present Constitution. The Constituent Assembly started drafting the Constitution on November 9, 1946. The urgent need to chalk out a nationwide programme to improve the lot of the people also prompted some members to speak in favour of strong national Government which could bring out uniform policies. The more important factor, however, appears to be that the relative weakness of the votaries of State’s rights in the post-partition period and more particularly after the Muslim League ceased to be a factor in the Constituent Assembly. Even some of the
otherwise staunch provincialists favoured in enlarged jurisdiction of the Centre in matters related to language\textsuperscript{137} and religion\textsuperscript{138}. Most of such members belonged to minority community. They apprehended great trouble in religious matters from the States rather than from the Centre which comprise relatively heterogenous groups. The Centrifugal forces – linguistic, regional or religious – were present but in an unorganized form and this lack of organization among the Muslim and Sikh parties at that time kept them under check. Both the Muslim League and the Sikh Panthic Party were disbanded and most of its members joined the Congress Party\textsuperscript{139}.

At the first flash of independence and in the wake of an attack from Pakistan, the nationalist forces were getting a boost and an atmosphere came to be built up demanding more powers to the Centre. Some of the leaders also invoked chauvinism to plead for Central Power. K.M. Munshi, for instance, argued that the glorious days of India were when the Central authority was strong and the most tragic days when the provinces tried to resist the Centre\textsuperscript{140}.

K.M. Panikkar, a member of the Constituent Assembly, while referring to some general principles of the Union Constitution printed in May, 1947 observed, “Federation could be dangerous to the strength, prosperity and welfare of India”\textsuperscript{141}. But later on he realised that in “India where some of the Provinces are larger in area and population than the largest European powers outside the Soviet Union, no form other than federal would have been feasible”\textsuperscript{142}. For the solution of the Constitutional problem of a “multi-racial, multi-lingual and multi-communal country like India, with a

\textsuperscript{137} Speech of Maulana Hasrat Mohani, IX CAD 881 and 884.
\textsuperscript{138} Speech of Sardar Hukam Singh, IX CAD 914.
\textsuperscript{140} Supra note 80 at 36.
\textsuperscript{141} Dr. Rajendra Prasad Papers File 3-C/47.
\textsuperscript{142} K.M. Pannikar, The Foundations of New India 154(1963).
vast area and a huge population, federalism was only a natural choice”. India’s Constitution was drafted by representatives from all parts of India. K.M. Pannikar emphasized... “at no time in India’s history has a representative gathering of people who can speak on behalf of the whole of India met and taken counsel” to decide their future. Various committees were formed to take care of the different aspects of the Constitution. Dr. Rajendra Prasad, President of the Constituent Assembly received a letter from one Gauri Shankar Tripathi dated May 17, 1947 suggesting a detail scheme of federation with twenty units for free India, and suggested the formation of a Commission to decide the boundaries of the units on the basis of language, natural resources, climate, culture and Hindu-Muslim population.

When Indians were finally making their own Constitution during 1946-49 (through a Constituent Assembly), a host of competing models of governance were available: apart from the British parliamentary system which was already rooted, to some extent, in the Indian society, there were the American, the French, Irish, and of course the (Soviet) socialist models of governance. But what eventually came out was not the copy of any of the models above, but through modification, adjustment and adaptation of features from various models, a distinctive Indian model of governance. The nationalist elites were painfully aware of the many pitfalls of the British parliamentary model of governance, and its divisive impact on Indian society. But at the same time, the same was already a part of the country’s political culture, at least, to a significant extent. This then called for substantial modification and adaptation of the colonial model to suit the country’s specific needs.

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145 Supra note 137 at 48.
146 Supra note 129.
D. THE DEMAND FOR CENTRALIZATION IN THE CONSTITUENT ASSEMBLY AND VARIOUS OTHER REPORTS

The first report by the constituent assembly initially envisioned a relatively weak Centre as advocated by the Cripps and the Cabinet Mission Plans. However, it was done to integrate and accommodate the Muslim League. The constituent Assembly adopted a more unitary version of federalism after the passing of the India Independence Act and the eventual partition. The Constituent Assembly eventually embraced a more unitary version than that laid out by the British in the Government of India Act of 1935. The British had established a highly decentralized federal structure, partly to compensate for potential communal problems that could arise in a highly centralized system.¹⁴⁷

In the making of the Constitution, the framers on the one hand, found the federal scheme appropriate for India while on the other hand, partition created a fear of centrifugal elements in the nascent nation. The existence of a federal scheme with a strong Centre in the Government of India Act, 1935, the colonial Constitutional scheme that trained the Indian leaders in the art of governance immediately preceding and following independence, was a substantive temptation in the face of partition. The argument of ‘experience’, which eventually won the day for parliamentary system in the Constituent Assembly, was not a small one.¹⁴⁸

¹⁴⁷ Supra note 80 at 26.
¹⁴⁸ Supra note 41.
Notwithstanding the fact that the Indian National Movement was a great effort in federal management, the federal principle raised apprehensions among the key leaders of the national movement from time to time. These apprehensions, which played a crucial role in determining the nature of the Indian polity after independence, arose despite the fact that the prevailing or emerging linguistic sub-nationalisms while asserting the right to a homogenous geographical boundary, did not question the overarching Indian nationalism that was being assiduously shaped by the national leaders. The ambivalence arising out of these apprehensions are closely reflected in the shaping of the views on a Constitution for India.

For example, the (Motilal) Nehru Committee Report of 1928, following the All Parties Conference, in its effort to draft a model Constitution for India, argued in support of a strong central Government: ‘... there is a large field of State activity which in any system of stable administration, must be covered exclusively by the Central Government which alone can safeguard national interest and reconcile conflicting claims between provinces...’.\(^{149}\)

Obviously, despite organising the party federally, the Congress was apprehensive of the unity of the country in a federal structure. Or, a majority of the leaders were, perhaps, so enamoured of the centralized British colonial State’s success in bringing a diverse India under one politico-administrative umbrella that they could visualize its salvation only in a centralized State. Since the report followed the All-Party Conference, it seemingly reflected the political mood of the time. Three factors that may have influenced this decision are history, the visible experience of the strong colonial Government in gluing a disparate country together and apprehension of a federal structure to keep the country together.

The Objectives Resolution moved by Jawaharlal Nehru in the Constituent Assembly on 13 December 1946 envisaged a Republic of India ‘wherein the

149 N.N. Mitra (ed.), *The Indian Quarterly Register*, Jan-June 1928, I (I & II), pp. 71-72.
said territories (comprising the Independent Sovereign India) shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; ....

But the resolve gave way to apprehensions when the partition of India and Pakistan was announced by Viceroy Lord Mountbatten on 3 June 1947. The first report of the Union Powers Committee, which was presided over by Nehru, submitted in April 1947 had proposed almost a confederal polity. Of course, the first Resolution was drafted within the restricted terms of reference of the Cabinet Mission Plan, which envisaged a Centre with limited powers and units with residuary powers. The final report of the Committee submitted on 5 July 1947 said “Now that partition is a settled fact we are unanimously of the view that it would be injurious to the interest 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”.

These sentiments were shared by a large number of members of the Constituent Assembly, including its President Dr. Rajendra Prasad. Obviously, within three months, the attitude and perception of the leaders regarding integrity of India had undergone a metamorphosis due to partition of the country.

Various view points were presented in the Constituent Assembly Debates. To begin with, there was uncertainty over the form of Government. The Union and Provincial Constitution Committees met in a joint session to
decide whether India should be a “unitary State with provinces functioning as agents and delegates of central authority, or whether India should be a federation of autonomous units ceding certain specified powers to the Centre”. The Committees decided, “India should have federal structure with a strong Centre”.  

As Chairman of the Union Constitution Committee, Pt. Jawaharlal Nehru presented the Memorandum which embodied the recommendation of the Committee to the President of the Constituent Assembly, Dr. Rajendra Prasad. The Memorandum referred to, “Federal territory and jurisdiction-Name and territory of federation; the federation hereby established shall be Sovereign Independent Republic known as India”. The Memorandum gave constant reference to the term ‘federal territory, citizen of federation, federal executive, federal parliament, federal judicature, Auditor General of the Federation, Administrative Relations and distribution of legislative powers between the Federation and the units.

G.L.Mehta, a member of the Constituent Assembly, while speaking on the Report of Union Powers Committee made it clear that the federation which was being evolved “has no precedent in the world...In several other countries where federation has been built up, it has been built up through independent sovereign States coming together whereas here until 1935 the whole question was one of decentralization and devolution”.  

The Constitution-makers seemed quite conscious of the fact that a federation requires provincial autonomy as well as national unity. G.L.Mehta while discussing Union Powers Committee Report, quoted from the Report of the

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152 Dr. Rajendra Prasad Papers File No. 4-P/47, p. 4, Minutes of the Meetings, 7 June 1947.
154 V CAD August 1947, August 20, 1947, p. 56.
Royal Commission on Dominion and Provincial Relations in Canada, “national unity and provincial autonomy must not be thought of as competitors for the citizens’ allegiance, because they are two facets of the same thing, a same federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout the country. It was emphasized that for the successful working of federation, synthesis of provincial autonomy and national unity is very important. After the traumatic experience of partition most of the members of the Constituent Assembly set their eyes on strong central Government and federal set up in which merger and integration of the Indian princely States would become easy. In the atmosphere existing in India at that time “unity gained further significance.”

The Indian Constitution was enacted by the Constituent Assembly in the backdrop of the National Struggle for Independence. The country was facing unique problems. These problems had to be solved pragmatically and not by confining the country’s political structure within the known or established formula. “The Constituent Assembly pursued the policy of pick and choose to see what suited the nation best” and “produced a new kind of federalism to meet India’s peculiar needs.”

Dr. B. R. Ambedkar, one of the Chief architects of the Constitution of India, while introducing and moving Draft Constitution for consideration in the constituent Assembly said, “a federal Constitution is marked:

- by the existence of a central polity and subsidiary polities side by side; and

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155 Supra note 150 at 84.
158 Supra note 152 at 186.
by each being sovereign in the field assigned to it. Federation means the establishment of a dual polity....the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution"159. Quoting James Bryce, Dr. Ambedkar referred to the proposed Indian Constitution as a ‘dual polity’ with a single citizenship where “the central or national Government and the State Governments may be compared to a large buildings and a set of smaller buildings standing on the same ground yet distinct from each other".160

By adopting such means as a single judiciary, uniformity in fundamental laws, civil and criminal, and a common All India Civil Service to man important posts, Indian federation aimed at “uniformity in all basic matters which are essential to maintain the unity of the country”.161 The Constitution-makes wanted a Union and expected that “there should be enough scope for every Province to grow and expand and that there would be nothing to prevent any Province from reaching its ultimate goal consistent with the common obligation”.162

The debates in the Constituent Assembly on several provisions related to Centre-State relations reveal the extent to which partition had created the fear of disintegration. Not only a spectrum of senior national leaders such as Nehru, Dr. Rajendra Prasad, KM Munshi, Pattabhi Sitaramayya, Alladi Krishnaswamy Ayyar, but even representatives from the provinces expressed themselves in favour of a strong Centre. Ambedkar, who had expressed his centrist bias way back in 1939 and Ayyar came out with their own definitions of federalism. KM Munshi reminded the members of, ‘...

159 VII CAD 1948-49 November 1948-January 1949, p. 34.
160 Ibid.
161 Id. at 36-37.
162 O.P. Goyal, Indian Political System, 49(1985).
one supreme fact in Indian history that the glorious days of India were only
the days, whether under the Mauryas or the Moghals, when there was a
strong central authority in the country, and the most tragic days were those
when the central authority was dismembered by the provinces trying to
resist it.’163 This logic was repeated in evidence on crucial provisions such
as Article 356, the office of the Governor164 and so on. In fact, Ambedkar’s
personal experience of the fractiousness of caste-ridden local and village
communities had played significant role in shaping his centrist biases. The
debate on what eventually became Article 356 was heated. Though hated in
its previous version as Section 93 in the Government of India 1935, it was
accepted and retained due to the fear of centrifugal forces.165

The gradual shift between the early committee reports of the Constituent
Assembly and the eventual Constitution derived from the ever-changing
debates about sovereignty in the Constituent Assembly. These changes
proved frustrating to some members of the Constituent Assembly. Lakshmi
Kant Mishra Said that the Constituent Assembly had been seized by the
philosophy of Heraclitus—A policy of perpetual flux; and that he finds
constant change not only in the views of the Drafting Committee, but also in
the opinion of the members of the House.

Dr.B.R.Ambedkar, in fact was the skilful pilot of the Constitution through
its different stages. Shri B.N.Rau acted as a Constitutional Advisor to assist
the Constituent Assembly in drafting India’s Constitution. The Constitution
was not the result of an agreement between the Units of proposed
federation; the people of India, adopted and gave to themselves this
Constitution166.

163 VIII CAD 927.
164 VIII CAD 423-69.
The draft which was prepared by Shri B.N. Rau and introduced in the
Constituent Assembly for consideration, referred to India as the ‘union’.
Dr. Ambedkar explained clearly why the word ‘Union’ was used and
federation’ deleted. The Constitution makes wanted to make it clear that
though India was to be federation, the federation was not the result of an
agreement by the States to join in a federation and that the federation not
being the result of an agreement no State has the right to secede from it.
The federation is a Union because it is indestructible. There was no
reference to the indestructibility of the Units because the process of
‘merger’ and ‘integration’ was taking place. They were not in a position to
finalise the boundaries of the ‘units’ of the “Union” and thereby
indestructible State. The choice of “Union of States” was made to avoid,
“the recurrence of the American Civil War on Indian soil”.

Among the members in the constituent assembly who ardently supported
unitary form of Government, prominent are Brajeshwar Prasad, P.S.
Deshmukh and Frank Anthony. The Big four of the Congress party – Nehru,
Patel, Ambedkar and Rajendra Prasad did not look favorably at the grant of
too many powers to the States. They were eloquently supported in the
Constituent Assembly by B.M. Gupta, Thakur Das Bhargave and others.167

An Analytical Study of the Constituent Assembly debates corroborates that
protagonists of the provincial autonomy were neither absent nor silent in the
Constituent Assembly of India. Many members like Naziruddin Ahmad,
H.N. Kunzru, H.V. Kamath, Shibban lal Saxena, H.V. Pataskar, Rohini
Kumar Choudhary, V.S. Sarvate, Kaladhar Chaliha and B.Das, can easily be
described as the provincialists. Some of these leaders belonged properly to
the Congress party. Another fact of importance is that several muslim
members of the Constituent Assembly did have a certain fascination for

167 IV C.A.D. 152 and 170, cited in Shubh N. Singh, Centre-State Relations in India, Major
Irritants & Post-Sarkaria Review, 33 (1990)
State autonomy. On the basis of the points of view raised by Maulana Hasrat Mohani, B. Pokar Sahib, Mohammad Ismail Sahib Bahadur, Ahmad Ibrahim Bahadur and Syed Mohammad Saidulla, they can be termed as staunch supporter of State autonomy. The above-mentioned protagonists of State autonomy considered that if the Indian federation introduced provisions aimed at making the Centre Strong, it would not only be “dangerous” and “authoritarian” but “fascist” and “totalitarian”. They represented the attitude of the Congress leaders to create a Leviathan by strengthening the Centre at the cost of the unit.\textsuperscript{168}

H.V. Pataskar repeatedly argued that such provisions displayed a “distrust of the people in general and the common man in particular”. He was very critical of certain provisions leading to over centralization and excessive sacrifice of State autonomy. On that ground, he had pleaded for elected Governorship, residuary powers with States, no power to the Centre to legislate for the subjects falling within the State List, financial viability of the States and lamented that these provisions which had been made in the beginning were subsequently changed because of the post-partition complexes. Pataskar was vehement in his opinion that “the powers of the Centre must flow from the States which in the first place must be made strong and powerful. Unless the units are strong, how can you have a federation which is going to be strong.”\textsuperscript{169} Insipite of the presence of these two extremist views, the Constitution that was ultimately adopted took a middle position. They demarcated the areas in which State will have independence of initiative and action but at the same time provisions were inserted which would make the Centre strong enough to deal with emergent and extraordinary situations.\textsuperscript{170}


\textsuperscript{169} II CAD 672 cited in Shubh N. Singh, Centre-State Relations in India, Major Irritants & Post-Sarkaria Review 33 (1990).

The trauma of the partition, the bloody communal riots and the refugee problem all created a psychology in favour of a strong Centre and many members looked suspiciously at any move to make the States strong. Faced with the gigantic threats, they saw the necessity of having a strong Centre to quell what they called the “the forces of destruction”.\textsuperscript{171} They were not only against maladministration but also against the dangers of insurrection and chaos. The strong Centre proposed by them was a device designed to counter “anticipated disunity”.\textsuperscript{172} The new goals triggered off by the partition were stability and not autonomy, efficiency and not initiative and strength rather than decentralization. As one scholar puts it, it was “to lay the foundation of a Constitutional order, cohesive and strong enough to hold down the divisive forces inherent in the country” that the founding father agreed to have a Constitution with a Central bias.\textsuperscript{173}

T.Krishnamachari, member of the Constituent Assembly maintained that the concept of the Constitution is undoubtedly federal where, “people desire a close association between units, while maintaining their autonomy and identity. These two sentiments appear to be inconsistent but the federal principle works to reconcile and maintain balance between these two sentiments, as is the case in U.S.A.” While explaining the meaning of federation, T.Krishnamachari said, “it is not a concept, the definition of which has been changing from time to time”.

The character of the Indian National Congress was also responsible to a large extent for the decision to keep the Centre strong. At the time of the dawn of independent, the Congress party itself represented various groups, languages and religions, regions. The Congress in fact represented organized

\textsuperscript{172} W.H, Morris Jones, \textit{Parliament in India}, 7(1957).
\textsuperscript{173} \textit{Supra} note 80 at 35.
centripetal forces. Thus the existence of a party which possessed almost complete control over the political situation did not allow the establishment of a “contractual federation” and ultimately led to the victory of the centripetal forces.\textsuperscript{174}

The unorganized centrifugal forces could not put up a strong counter-pressure against the relatively organized centripetal forces in the assembly. Nationalist leaders like Jawaharlal Nehru, Patel, Azad, Prasad and Ambedkar, commanded great respect and even “awe” with in the Assembly the influence of this “oligarchy” was “irresistible”.\textsuperscript{175} The oligarchy shared, by and large, common views of making the country strong to combat the forces of vivi-section and fissiparous tendencies on the one hand and of enabling it to usher in a new era of socio-economic change and development on the other. Immediately after the passage of the Constitution, political development of the country took place mostly in the form of institutionalization in a manner that helped grow India as a nation State despite diversities. An institutional arrangement, however, needs refurbishment to meet the requirements of the social, economic and political change. Things remained in original shape with the Congress, Nehru and elections coinciding with each other but started getting de-shaped when the three did not coincide and systematic changes required institutional refurbishment. The changing fortunes of the political parties through time represent the changes and lacunae in these federal patterns.\textsuperscript{176}

L.K. Maitra, a member of the Constituent Assembly, objected to the use of the word “Union of States” by Dr. Ambedkar. He felt that “the impression may be caused in future that these States are independent sovereign States, joined to the Centre by some sort of a voluntary association”. But the point made by L.K. Maitra was obviously not given any importance. Shri

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\textsuperscript{174} Amal Roy, \textit{Inter-Governmental Relations in India}, 20 (1976).
\textsuperscript{175} \textit{Supra} note 152.
\textsuperscript{176} \textit{Supra} note 80 at 35.
Brajeshwar Prasad, a member of the Constituent Assembly while speaking on the Draft Constitution warned the members against opting for federalism. As, he said, “federalism is a conservative force in politics. It checks the rise and growth of radical economic movements. It perpetuates economic inequality between one province and another and this accentuates provincial rivalries and bitterness which lead to the demand for the formation of linguistic provinces”. However, Shri H.Kamath, a member of the Constituent Assembly wanted that the emphasis should be on the word “Union” rather than on the word “Federal”, because “tendency to disintegrate in our body politic has been rampant since the dawn of history and if this tendency is to be checked the word “federal’ should be omitted from this Article”.

Sardar Vallabhbhai Patel, who was busy in ‘merger’ and integration of States made it clear that, “unlike the scheme of 1935, our new Constitution is not an alliance between democracies and dynasties, but a real union of the Indian people, built on the basic concept of the sovereignty of the people. It removed all barriers between the people of the States and the people of the Provinces, achieves for the first time the objective of a strong democratic India built on the true foundation of a co-operative enterprise on the part of the people of the Provinces and States alike”. K. Santhanam, a member of the Constituent Assembly, while accepting the federal character of the Constitution appreciated that “it is so well protected by the judiciary that it cannot be broken except by a change of the Constitution.”

Federalism being a ‘dynamic’ concept adjusts comfortably to the existing circumstances in a particular country. A large new State such as India, faced with the problem of establishing a central authority, to govern a vast territory, inhabited by people with different backgrounds and interests needed some form of federal structure. James Bryce puts it rightly, “the true value of a political contrivance resides not in its ingenuity but in its
adaptation to the temper and circumstances of the people for whom it is designed, in its power of using, fostering, and giving a legal form to those forces of sentiment and interest which it finds in being”. Dr. Ambedkar emphasized that, “the basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the State not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The States in our Constitution are in no way dependent upon the Centre for their legislative authority. The Centre and the States are ‘co-equal’ in this matter”.

The history of federalism in India is indicative of the fact that democracy coincided with the federalizing process. The merger of the former autocratic princely States with Provinces was possible only by providing a federal framework for the country. Federalism brought about political equality between different political units in India, irrespective of the difference in their size and thus paved the way for modern social and economic forces to operate in free society.

Thus the Constitution Assembly labored hard to produce “what most of its members believed was a federation and what the rest believed would soon turn into a federation”.

The Constituent Assembly members arrived finally at a Constitutional system that had distinctive federal features but was heavily inclined towards centralization of authority. The framers of the Indian Constitution leaned heavily on the Government of India Act of 1935, which with certain revisions by the Indian (Provisional Constitution) Order of 1947, served as the provisional Constitution till the Constitution of India was enacted on 26 January 1950.

As such it can safely be said that Indian federalism did not spring into life
all of a sudden in 1950, like Minerva, fully formed in body and mind. No doubt, the tendency to increase central power was always there. But at the same time, the rulers in India have been conscious of the need to recognize and give due importance to the fundamental diversities of the country. It was over this twin foundations of “unity” and “diversity” that the Constituent Assembly raised a federal superstructure.\textsuperscript{177}

The Indian Constitution, therefore, tries to wedge a balance between the needs of unity and those federalization in a plural, diversified society. But much time passed, the Indian federal system has started facing crisis due to several centripetal and centrifugal forces at work. It is because the country’s Constitutional practices, far from moving towards consensus, are moving towards dissension. It must, however, be admitted at the very outset that no federalism works strictly in accordance with the Constitution on which it is based or as it has started to work in the beginning. Various political, economic and social forces emerge as a consequence of which its working becomes different from the originally written one. Although the form of the Constitution remains intact, the substance of it undergoes a change and it shows irritants in its working.\textsuperscript{178}

Granville Austin\textsuperscript{179} and M.M. Sankadher\textsuperscript{180} held that there was “relative absence of conflict between the centralizers and the provincialists” and that there was a “virtual unanimity” in favour of a strong overriding authority of the Centre. They have maintained that there was hardly any traditional defence of provincial autonomy. While making these remarks, these scholars perhaps have in their mind the picture of the situation obtaining in the USA during 1784-88 when an organised group of advocates in the United States were pleading for State Rights zealously and passionately at

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\textsuperscript{178} Supra note 80 at 22.
\textsuperscript{179} Supra note 152.
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the Philadelphia Convention. Had India not been partitioned and Muslim continued to stay in the Constituent assembly of India the League certainly would have mounted pressure to keep the States powerful. The provisions of State rights in that case would have favoured them to keep powers with themselves, particularly in those areas where they formed a majority that would also have helped them to maintain their cultural and political identity, or more correctly speaking, a distinct and separate entity.\textsuperscript{181} Come partition and the forces which could have still pleaded for States’ rights did not find it congenial to do so. Many among them joined the Congress party. The shock of partition dampened the centrifugal forces to place their point of view strongly or in an organised manner. But it would be an oversimplification to suggest that the forces which stood for State’s rights did not exist at all. The majority and the views of prominent leaders or the voting figure indeed present a picture which conceals the views of underlying forces even at that time.\textsuperscript{182}

\textbf{E. INDIAN UNION: IT’S NATURE}

The Constituent Assembly addressed itself to the task of devising a Union with a strong Centre. This task was beset with many difficulties. They had to bring into the Union not only the British Indian Provinces, but also the Princely States and the remote inaccessible Tribal Areas. They eventually settled for a Parliamentary or Cabinet form of Government at the Union as well as the constituent units. The President and the Governors were envisaged as de jure heads of the respective Governments acting on the advice of the Council of Ministers, which comprised the de facto executive. The Constituent Assembly adopted the Constitution of India Act on 16 November 1949. The Constitution of India was eventually inaugurated on 26 January 1950. The Indian Constitution established its federal principles.

\textsuperscript{181} Muhammad Iqbal, among others, pointed out that “The Muslims demanded federalism because it is pre-eminently a solution of India’s most difficult problem, i.e., the communal problem”. Mitra’s Indian Annual Register, 1931, Vol. II, p.342.

\textsuperscript{182} Supra note 80 at 32.
It allotted federal and State responsibilities that are incorporated in the Lists in the Seventh Schedule of the Constitution. These lists are separately known as the Union and the State Lists. They were in parts identical to the Provincial and Central Lists established by the Government of India Act of 1935. However, an innovation of the newly formed Constitution featured the presence of a Concurrent List in the Seventh Schedule that provided the Centre and the States with a buffer between likely aspects of overlapping jurisdiction, particularly on such issues as criminal, commercial and educational matters.

Doubts were created by a few about the ‘nature’ of Indian federalism. Indian federalism is described as a ‘quasi-federal’ system. “It is a unitary State with subsidiary federal principles rather than a federal State with subsidiary unitary principles”. Some of the Articles of the Constitution which give powers to the central Government give the impression that the Centre is very strong. For example:

- The unequal association of the central and regional Governments in the Constitution amending process (Article 368).

- Lack of a dual system of administrative agencies of Courts (Articles 257-258).

- The partial scheme of distribution of powers which gives more powers to the Centre (Part XI).

- Central Government can interfere in the sphere of regional Governments during normal times (Articles 249-253).
• In emergency the central Government becomes all in all and State Governments go to the background (Articles 352, Article 356 and Article 360).

• The appointments of Governors are made by the President-the Central Executive (Article 155).

• The Governor can reserve a bill for President’s assent and the President can exercise his discretion on such bills(Articles 200-201).

• Bicameral legislature exists but there is no equal representation to the unequal units as is the case in traditional federations.

• India is an indestructible union but not of ‘indestructible units’. Under Article 3 of the Central Parliament is authorised by a simple majority to form new State or alter the boundaries of any State without obtaining the consent of the State or alter the boundaries of any State without obtaining the consent of the State of States concerned.

Thus, India is not a federal State. In the final analysis it is a unitary State in concept and operation”. Ivor Jennings emphasized that, “India has a federation, with a strong centralizing tendency”.

All those who speak of Constitution as ‘quasi-federal’ are influenced by the traditional view of federalism. The traditional ‘dualism’ does not apply to any of the existing federal system. The federal systems have changed to a great extent. As Gopalaswami Ayyanger pointed out in the Constituent Assembly, not one of the existing federal unions “will be found to conform to the actual terms”, of traditional definitions. S.P. Aiyar, while supporting this viewpoint, said that “a new and more mature form of Governmental
organisation is evolving, which is certainly not federal but which can be described as quasi-federal.

It is difficult to assess a system with the help of various yardsticks. The ‘essentials’ are of unequal importance and of different relevance in different circumstances. “However finely chiseled a Constitutional text may be the federal needle seems always to have a sufficiently big eye for the unitary camel to go through”. The fact is that “many federal Constitutions deliberately, and sometimes unwittingly, tend to transmute the definitional boundary between unitary, federal, and confederal systems into a sieve that permits mutual interpenetration.

India is described as ‘Union of States by Article 1. The First Schedule to the Constitution specifies the States. Parliament may diminish the area of any State or change the boundaries, rename any State or admit any State. One of special aspects of the Indian Constitution is that the Union is indestructible but not so the States. The identity of the States can be changed or even obliterated. The Constituent Assembly rejected a motion in the concluding stages to designate India as a ‘Federation of States’. Dr. Ambedkar, Chairman of the Drafting Committee, while introducing the Draft Constitution, explained the position thus:-

“........that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the people of the country may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting
Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.\textsuperscript{183}

After the independence, at the formative stage, Indian federation was faced with some unique features of State formation. Although the Indian Constitution is not the result of an agreement among equally sovereign States, as in the USA and Switzerland, the States, once recognised as a federal unit, are protected as such by the Constitution. When the Indian federal republic was born in 1950, the most formidable task in territorial reorganisation of the polity involved some 552 princely State which were relatively independent and governed indirectly by the British. Those States, often known as Indian States or native States, also were not ethnically homogenous. The earlier colonial attempt through the famous Government of India Act, 1935 incidentally first used the expression “federation of India”, for a federal system in India along with the princely States failed.\textsuperscript{184}

To begin with, a three-fold process was followed in integrating these princely States. First, 216 States were merged with the geographically contiguous provinces, and included in Part B States (First Schedule of the Constitution). Second, 61 States were converted into Part C States (centrally ruled) (first Schedule of the Constitution). Third, groups of States were consolidated into new units called union of States, and thus five unions of States (including 275 States) emerged such as Madhya Bharat, Patiala and East Punjab States (PEPSU), Rajasthan, Saurashtra and Travancore-Cochin. (These were included into Part B category). Some special kinds of States such as Hyderabad, Mysore and Kashmir were also included into Part

\textsuperscript{183} VII CAD 43.
\textsuperscript{184} V.P. Menon, Integration of the Indian States (1956), and U. Phadnis, Towards The Integration of The Indian States (1968). These two books provide a wealth of data and events concerning the State-building processes in India in the formative stage of the republic.
B States. There were above all the nine former provinces of British rule (Part A).

The above account thus shows that reorganisation of States within Indian federation was undertaken, at the early stage, on pragmatic grounds which involved a lot of adjustments and readjustments. But the most distinctive feature of this early attempt was that the newly emerging units of the federation were not accorded the same status. Three types of States emerged initially:

- First, there were nine Part A States (former provinces);
- Second, there were eight Part B States (five unions of States and Hyderabad, Kashmir and Mysore), and
- Third, there were ten Part C States (under central administration).

This remained, more or less the case until the next major reorganisation of State in 1956 which abolished all the three categories of States and placed all the newly re-emerged States (numbering 15) on the same footing so far as their Constitutional status was concerned.\textsuperscript{185}

F. DISCUSSIONS IN CONSTITUENT ASSEMBLY REGARDING VARIOUS ASPECTS OF CENTRE-STATE RELATIONS

In the discussions of Constituent Assembly, as regards, the legislative relations between the Centre and the State, the first attempt in the direction of analyzing the precise content and scope of Union subjects, as well as the Union’s power to raise finances, was made by B.N. Rau, the Constitutional Adviser to the Constituent Assembly, in his notes on Constitutional

\textsuperscript{185}Supra note 80.
Precedents published early in September 1946. In these notes he explained generally the ambit of foreign affairs, defence and communications with reference to the position in regard to those subjects under various modern Constitutions of the world and the Government of India Act, 1935. On an important issue namely, the scope and implications of treaty-making powers, which the Union processed under the subject “foreign affairs”, B.N. Rau cited the Privy Council’s decision given in 1927 in *Attorney General for Canada v. Attorney General for Ontario and others*. In this case the Privy Council ruled as invalid certain Acts of the Canadian Parliament regulating conditions of labour in various ways, as the legislation related to a provincial subject, although it sought to be justified on the ground that it was required to give effect to certain international conventions which had been ratified by the Dominion of Canada.

The Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth…It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada incurs obligations, they must, so far as legislation is concerned, when they deal with provincial classes of subjects, be dealt with by cooperation between the Dominion and the Provinces.

As regards the ambit of defence power, B.N. Rau underlined its wide scope by referring to the position in Australia and the United States. Although in the Australian Constitution the relevant entry (Section 51(vi)) referred only to "naval and military defence" of the Commonwealth, in the well known Australian Bread case (in which the validity of a war-time Regulation fixing
the maximum price of bread was impugned) the Court had held "defence" to comprehend every thing in relation to national defence that the Commonwealth Parliament might deem advisable to enact. Likewise, in the United States "almost limitless activities", both as regards strictly military matters and the incidental civil control of the energy and resources of the nation could be undertaken in exercise of the war power of the Congress. No act of the Congress was held invalid by the Federal Supreme Court as outside the war-power.187

The Union Powers Committee received a number of notes on different aspects of Union powers from Alladi Krishnaswami Ayyar and K.M.Munshi. The former observed that in dealing with the subject of Union powers, one of the chief problems requiring consideration would be the relationship between the Union and the units. He emphasized in particular, the widely accepted principle of the paramountcy of the Union or federal law over provincial law. In view of the existing differences between the Constitutional status of the India States on the one hand and the British Indian Provinces on the other, it would be necessary to have a definite provision to the effect that the laws of the Union should have the same force within the territory of every unit. Special attention would also have to be paid to the question of the execution of federal laws and to the subject of provincial or State militia.188

As for the Union's powers under "communications", Alladi Krishnaswami Ayyar felt that it was necessary to enlarge the scope of the Union's jurisdiction under the subject "communications" so as to cover trade relations between different parts of India since the whole basis of an enduring future structure of the Union would depend upon the freedom of inter-state or inter-provincial trade". Further, he pointed out, trade and

187 Id. at 691-696.
188 Alladi Krishnaswami Ayyar's notes on Union Powers, Select Documents II, 28(ii) (a), pp. 714-5.
commerce with the outside world, which would have necessarily to be brought under foreign relations, might also impinge on the subject of "communications".\footnote{Select Documents II, 28(ii) (d), pp. 719-22.}

On the subject of the financial resources of the Union, Alladi Krishnaswami Ayyar was definitely of the view that the Union's powers, under the Cabinet Mission's Statement, to raise the requisite finances must necessarily be taken to include the power to impose the necessary taxes. The defence of the country being a vital principle on which the Constitutional structure must rest, it was inconceivable that the Union could rely upon uncertain contributions from the units for the purpose of meeting its defence needs. He suggested that in allocating the taxing power between the Union and the Provinces it might be useful to proceed on the basis of the scheme embodies in the Act of 1935. While in terms of the Cabinet Mission's Statement, the Union's power to tax had to be regarded as a power to levy taxes for particular subjects and not as a general power to levy taxes, it was not possible to equate the finances raised with the amount required for a particular subject. A provision might therefore have to be made for the handing over of any real surplus to the Provinces concerned.\footnote{Id. at 722-3.}

As regards the powers implied or inherent in or resultant from the express powers of the Union, the committee recommended fourteen items as coming within this category. Significantly, "currency, coinage and legal tender" and "powers to deal with grave economic emergencies in any part of the Union affecting the Union" -- both implying a considerable accretion to the range of the Union's powers and its strength—found a place in this list. Other notable items were the Reserve Bank of India and Union services. All subjects in respect of Union areas, naturally came within the exclusive jurisdiction of the Centre. “Planning”, on which Munshi had laid
considerable stress, was not included in this category. However, the committee recognized the necessity of uniformity and coordination in regard to planning and in certain matters having a bearing on trade and commerce, such as insurance, company laws, banking, etc., and expressed the hope that all these subjects would be included by agreement in the Union List. It also recommended the insertion in the Constitution of a provision on the lines of Section 51 (xxxvii) of the Australian Constitution, empowering the Federal Government to exercise Authority on matters referred to it by one or more units, it being understood that a Union Law made under this power would extend only to the units by which the matter was referred or which afterwards adopted the law. A further recommendation was made that by agreement there might be a list of concurrent subjects as between the Union and the units.191

The three lists of the Constitutional Adviser’s Draft enumerating legislative powers were adopted by the Drafting Committee with some changes and reproduced in the Seventh Schedule of its Draft Constitution as List I or the Union List, List II or the State List, and List III or the Concurrent List. The more important changes made by the committee related to a few items in the Union List and the Concurrent List. In the Union List, in the entry dealing with preventive detention, the words “reasons connected with defence, external affairs or the security of India” were substituted for the words “reasons of States”, So as to avoid any conflict with entry I of the State List relating to preventive detention for reasons connected with the maintenance of public order.192 The item relating to the maintenance and control of the armed forces, as adopted earlier by the Constituent Assembly was reproduced in entry 4 as follows:

192 Drafting Committee minutes, February 10 and 11, 1948 and Draft Constitution, Seventh Schedule. Select Documents III, 5 and 6, pp. 492, 498, 662-70.
“The raising, training, maintenance and control of the naval, military and air forces of the Union and their employment; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.”

The problem of defining the administrative relations between the Union and the units received little attention in the early drafts and notes submitted to the Union Powers and Union Constitution Committees, because of the preoccupation of these committees with the basic features of the Constitution. The Constitutional Adviser’s memorandum on the Union Constitution issued on May 30, 1947, was silent on the subject and merely drew attention to the provisions regarding administrative relations contained in Part VI (Sections 122-135) of the Government of India Act, 1935. The lack of any specific provisions in the memorandum at that stage was unavoidable as the nature and scope of the provisions to be made had to depend on the decisions that might be taken in regard to the distribution of legislative powers.\textsuperscript{193}

When the Union Constitution and Powers Committees deliberated on administrative relations at their joint meeting on June 30, 1947, Munshi suggested the inclusion of a provision to the effect that in the event of a unit failing to carry out Central directions with regard to a federal subject the President might take the necessary steps to have them carried out. The proposal was not adopted at that stage; the committees apparently considered the provisions on the subject recommended by Gopalaswami Ayyangar and Alladi Krishnaswami Ayyar adequate and sufficient.\textsuperscript{194} These provisions were accordingly incorporated in the memorandum on the Union

\textsuperscript{193} Select Documents II, 15(ii), pp. 492, 527.
\textsuperscript{194} Minutes, June 30, 1947. Select Documents II, 32, p. 762.
Constitution (Part VI) annexed to the Union Constitution Committee’s report of July 4, 1947. 195

All the provisions on the subject of administrative relations, as settled by the Drafting Committee, appeared in the Draft Constitution of February 21, 1948, as Articles 233 to 246. Briefly, Article 233 Stated the obligation of every State to exercise its executive authority as to ensure compliance with the laws made by Parliament and any existing laws which applied in the State.

Article 234 required that the executive power of every State should be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and empowered the Union to give such directions to the States as might be necessary for this purpose. The Article also authorized the Union to give directions to a State as to the construction and maintenance of means of communication declared to be of national or military importance. Article 235 dealt with the power of the Union to entrust functions to State Governments and officers. The Union Government could with the consent of the State Government entrust Union functions to Governments or officers of States either conditionally or unconditionally. Parliament could by law confer functions and impose duties (or authorize the conferring of powers or the imposition of duties) on States or officers or authorities of the States. Article 235 also laid down that, when functions were so conferred, either by arrangement or by legislation, extra costs of administration would be payable to the States. 196

As regards the Financial Relations, it had engaged the attention of two communities—the Union Powers Committee and the Union Constitution Committee from the earlier stages of Constitution making. The former did

195 Select Documents II, 180(i), p. 585.
196 Supra note 186 at 646.
not apply its mind to the specific question of allocation of resources. The three legislative lists compiled by it included taxing powers and generally followed the legislative lists in the Government of India Act, 1935. On the relative needs of the Centre and of the Provinces, the Expert Committee came to the conclusion that a substantial transfer of revenues from the Centre to the Provinces seemed inevitable. While the needs of the Provinces were almost unlimited, particularly in relation to welfare and development, which had been entirely suspended during the war, their revenues were likely to go much down below the peak levels achieved during the Second World War time. Moreover, Provincial Governments had to share the provincial sources with local bodies and would also have to abandon an important source of revenue—liquor excises—on account of the policy of prohibition adopted by the Indian National Congress. Even though the Centre would undoubtedly have to bear heavy expenditure in the initial stages because of certain temporary problems, such as food shortage and the refugee problem, its financial position was regarded as essentially sound and, in normal conditions, its expenditure should be comparatively stable and capable of releasing sizable sums every year.

As regards the position of the Indian States in the new financial system, the committee expressed its complete agreement with the Union Power’s Committee’s plea that for a period of about 15 years the levy, realization and apportionment of central taxes in those units might be regulated by agreements between them and the Central Government. It urged that in the interim period the States should gradually develop all taxes in the Provincial Legislative List so that they might correspondingly give up reliance on taxes in the Federal List. The committee also recognized the necessity for

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199 *Id.* at para 83-99.
incorporating in the Constitution a special provision authorizing the President to suspend or vary the financial provisions relating to the distribution of revenue etc. in times of emergency.200

Finally, the committee formulated appropriate amendments to the relevant provisions of the Constituent Adviser’s Draft Constitution, embodying the recommendations made in its report201 which was sent to the Secretary to the Constituent Assembly on December 5, 1947, for submission to the President of the Assembly.

Thus, there are various provisions in the Indian Constitution to protect group rights, and to compensate for initial inequalities in the social system. Thus the Constitution, while recognizing the idea of fundamental human rights at the individual level, does not assume an idealized initial condition of equality, either in pure economic terms or otherwise. Thus there are allowances for separate laws to govern different religious groups, and there are provisions for various kinds of “affirmative action” for extremely disadvantaged groups. The first kind of provision simply respects diversity (though this can create issues of unequal treatment across subgroups, e.g., women in two different religious groups). The second attempts to correct for specific inequities, recognizing that legislative equal treatment from very unequal initial conditions would not achieve desired equity goals. Conceptually, at this level of ethical or normative judgement, there is no difference between these provisions and the ones for the indigenous residents of northeastern States, except that the latter happen to be geographically concentrated into reasonable administrative units. If that is the case, then the relationship to federalism is not essential.202

G. ASYMMETRIC STRUCTURE AT INDEPENDENCE

200 Id. at para 75.
201 Id. at Appendix VI.
202 Supra note 94.
The asymmetric arrangement in Indian federalism has a long history and goes back to the way in which the British unified the country under their rule and later the way in which the territories under the direct control of the British and various principalities were integrated in the Indian Union. While the territories ruled directly by the British were easily integrated into the Union, the treaties of accession signed by the individual rulers covered the integration of different principalities. The provinces ruled directly by the British had a modicum of autonomy and rudimentary form of parliamentary Government as the British loosened the grip gradually from 1919. The Constitution that was adopted in 1951 itself classified the States into four categories. The provinces directly ruled by the British were classified as Part A States. Those princely States which had a relationship with the Government of India based on individual treaties signed were classified as Part B States. These included the States of Hyderabad, Mysore, Jammu and Kashmir and 5 newly joined unions of princely States. In the case of Jammu and Kashmir, the powers and special powers were given in the terms of accession. The remaining princely States acceding to the union were grouped under Part C States. Finally, the territories ruled by other foreign powers gaining independence (French and Portuguese) and areas not covered in the above three categories were brought under the direct control of the Union to form Part D States or Union Territories.

Thus, the Union of India in 1947 began with a major asymmetry between British India and the princely States and even among the latter, the terms of accession differed depending on the bargaining strength. In almost all cases, the princely States surrendered whatever notional sovereignty they had to the new country of India, in exchange for a guaranteed revenue stream: their “privy purses”. The nature of this bargain was clear - security and money in exchange for giving up authority or residual control rights. This is close to the standard view of federation as a political bargain, with the difference that the successors of the British in India, the Indian National Congress,
were in an extremely strong bargaining position, even relative to the coalition of the princes. This was illustrated in the case of the exceptions to voluntary accession, such as Hyderabad, where military force (the authority over which was also inherited from the British) ensured integration into the new Union.

H. ASSIMILATION OF UNITS AFTER INDEPENDENCE
While many of the former princely States, particularly the Part B States continued as administrative units after their integration into India, this continuation was not an essential part of the bargain. Furthermore, reorganization of State boundaries from 1953, freely permitted to the Centre by Article 3 of the Constitution, gradually eroded this status. The Constitution allowed sub-State structures for regions closely tied to some former princely States, but this had little practical import as the States became almost the sole significant subnational units of governance. Thus, in general, the princely States ceased to matter as geographic entities. In this respect, the outcome was completely different from the standard case of federation, where the constituents of the federation would normally retain their identities. Broadly, the asymmetric arrangement was recognition of the different set of institutions and administrative standards in the country, which, over the years was unified. The asymmetries present in 1947 with respect to almost all the princely States disappeared from Indian federalism.

I. SPECIAL POSITION OF STATE OF JAMMU AND KASHMIR
The sole exception, of course, was the State of Jammu and Kashmir. While this State included several diverse populations and regions, the overwhelming majority of population in the Kashmir valley was Muslim, and the State bordered the new nation of Pakistan. The history of the
conflict over Kashmir has been written on extensively, even though there is no consensus on the interpretation of events in 1947-48. Here, we merely note that the State acceded to the Indian Union under very special terms, which were subsequently incorporated in the famous Article 370 of the Constitution. This Article provided the State with a unique position in the Indian Union, with its own Constitution, a title interpreted as the equivalent of Prime Minister for its chief executive, and a special assignment of functional responsibilities. Specifically, the jurisdiction of the Centre was restricted to foreign affairs, defense and communications, with the State’s legislature having residuary powers. This was in striking contrast to the situation of other States, where the Centre’s assignment of responsibilities was much more extensive, and where the Centre retained residuary powers.

Further special Proviso to Article 3 provides that no Bill providing for increase diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State.

J. INTEGRATION OF NORTHEASTERN HILL STATES

The process of administrative reorganization of India focused on the creation of new boundaries based on the main principle of language. Typically, separate religions, caste, ethnic or tribal identities within these boundaries were not the basis for further divisions. One major exception to this has been the north-eastern part of India, where there is a distinct difference in ethnicity from the rest of India, and several strong divisions based not only on language, but also on culture and other traditions ("tribal", if one wishes to use that term). This part of India contains the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. Of these, only Assam has a population comparable to other typical Indian States. Most of these States were upgraded from the status of Union Territories, this reclassification giving
them, at one level, a political status equivalent to that of larger States such as Bihar, Madhya Pradesh and Uttar Pradesh. Each State carries equal weight in mustering the 50 percent of States required to ratify an amendment to the Constitution.\textsuperscript{203}

Furthermore, there are various clauses in Article 371 which accord special powers to northeastern States. These provisions have been introduced through amendments, typically at the time of conversion of a union territory to a State, or in the case of Sikkim, after its accession to India. The safeguards provided to these States through these special provisions include respect for customary laws, religious and social practices, restrictions on the ownership and transfer of land, and restrictions on the migration non-residents to the State. State legislatures are typically given final control over changes in these provisions.

Centralization of power in New Delhi was always a necessity of the centralized planning system introduced by the country's first Prime Minister, Jawaharlal Nehru, after independence in 1947. His development strategy combined public investments in infrastructure with the promotion of industries that required large capital outlays, like steel plants, machine tools and ship building. These investments often implied central Government support in the form of loans, loan guarantees or subsidies. True, the Constitution always proclaimed India to be a federal republic and New Delhi relied on State Governments for the implementation of these policies, but in reality India was always a centralized State with most powers vested in the central Government, including the key one of taxation.\textsuperscript{204}

But now that India is moving away from Nehruvian socialism, it also seems to be dumping rule by the Centre. The State Governments may now be able

\textsuperscript{203} Ibid.  
\textsuperscript{204} Virendra Singh, India’s March Towards Federalism viewed at online.wsj.com/Article/SB132281364235275000 ...
to use the leverage they have built over time at the expense of New Delhi through the rise of linguistic and caste-based political formations. Economic reforms introduced in 1991 provided incentives to the States to introduce reforms promoting foreign investment, encouraging private participation in the development of ports, roads and power generation and to remove regulations which constricted economic development. Far more important was the decentralization of decision making regarding the clearance of projects, initiatives relating to privatization and the closure of money-losing State-owned enterprises, all of which were transferred to the State Governments. As a result, most States introduced new measures to encourage industrial growth, streamlined the decision-making process and competed fiercely among themselves for foreign investment.205

Thus, India has a highly complex and colourful social mosaic. Yet, although characterized by a vast spread of cultural diversity and heterogeneity, this mosaic is not chaotic. It has a clearly discernible pattern, wherein sociocultural diversity draws its strength and sustenance from India’s composite culture and civilizational thrust. This culture has evolved over centuries, through a process of assimilation and amalgamation of the diverse cultural influxes coming with the hordes of invaders - the Aryans, the Sakas, the Huns, the Pathans, the Moghuls, and the Europeans. Thus, the evolved composite culture of India cannot be compared either with the melting-pot of American society or with the multinational state exemplified by the now defunct Soviet Union. India’s socio-cultural mosaic is the true picture of "unity in diversity," like a bouquet of flowers or vegetables in a salad bowl, where every component, while retaining its specific identity, is a part of a larger whole.206

205 Ibid.
206 http://www.unu.edu/unapress/unapbooks/uu12ee/uu12ee09.htm