INTRODUCTION

Objective

The idea to work on the concept of union territories occurred to the researcher at the time of the reorganisation of the north-eastern areas when the areas of N.E.F.A. and Mizoram were separated from the State of Assam and were constituted into union territories and the existing union territories of Manipur and Tripura were elevated to Statehood. The creation of union territories and the conferment of Statehood on some union territories kindled in him a curiosity to know the objective of introducing this concept into the Indian Constitution. What purpose did the makers of the Constitution and subsequently those who were engaged in the task of reorganisation of the States intend to attain by this institution? What was the basis of distinction between different types of constituent units in the Indian Constitution? It was also desired to know whether precedents in this respect existed elsewhere in the world.

To satisfy his curiosity, the researcher tried to check up the relevant literature and the work done on this subject. He discovered that very little work had been done in the manner in which it was contemplated by him. All that
he could find was that the work done pertained to a limited sphere and was confined to a micro study of a particular union territory or at best of the territories of a particular country.

**Review of literature**

Scores of books have been written on territories of the USA, Australia and Canada, but they deal with their historical background or their development from the historical perspective. One also comes across a few books and articles analysing the constitutional provisions of territories. In any case, there has not been any attempt at probing into the formation of territories on the lines undertaken by the researcher. Specific mention may, however, be made of the following books and articles on territories of the above-mentioned countries.


Trumbull, White (1938) *Puerto Rico and its People*, Stokes

Coming to the Union Territories of India, there are seven books and two treatises on the subject. The two treatises are on Delhi and Chandigarh.

The thesis of Dr Am Dutt Sharma, entitled "Municipal Enterprises in Delhi" is related only to the performance of the Municipal authorities regarding the provision of the utility services in the ever-expanding metropolitan area of Delhi.

Dr Shyamlala's treatise on 'Some Aspects of Administration of a Planned City - Chandigarh', deals only with the general administration of the Union territory of Chandigarh.

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McCourt, E. (1969) *The Toronto Court
K. N. Menon's book, 'Portuguese pockets in India', is a historical account of the Goan People's during the Portuguese regime.

Sarto Esteve's monograph on 'Goa and Its Future' pleads that Goa be made a full-fledged State on the basis of its distinctive life and culture. It has also been contended that the area is economically viable.

Dr Y. S. Farmer in his book, 'Himachal Pradesh: Its Proper Shape and Status', entirely deals with the issue of Statehood being conferred on Himachal Pradesh.

The book by L. P. Kathur, 'History of Andaman and Nicobar Islands', is again a historical work on the people of these Islands.

'Himachal — Nature's peaceful paradise' by Dr S. S. Shashi deals intensively and comprehensively with the history, geography, flora, fauna and the economic potentialities of Himachal Pradesh.

Two books, which are of a general nature on union territories, are written by Dr S. K. Sharma and Sukhdev Singh Chib. One book deals only with the administrative aspects of the union territories, whereas the other focuses attention on the physical environment, cultural heritage and economic prospects of the union territories.

Besides, many articles have appeared from time to time in various periodicals and newspapers. Their subject-matter
is also limited. Those that need special mention are as under:

In two special volumes of *Commerce* of 1968 and 1970, the subject of union territories has been considered at length through contributed articles. The 1970 volume is devoted exclusively to Himachal Pradesh. The 1968 volume contains articles relating to all the union territories, except Mizoram. These articles, however, concentrate on the economic potentialities and obstacles that stood in the way of economic growth of the union territories. Occasional references have been made to matters in which progress had been made in certain aspects, as featured in administrative reports. In other words, they serve a limited purpose, focusing attention on one aspect of union territories or another.

Two articles appeared in *Modern Review* in 1970. They are on Manipur and Himachal Pradesh, and are solely connected with the history and culture of the people.

The article of C. Rajeswara Rao, published in *New Age*, entitled 'Explosive situation in Manipur', that of Arun Kumar Chakma in *Frontier*, entitled 'Manipur — A Sick State', that of Samarendra Kundu 'The Neglected Manipur' in *Janata*, and that of Ratan Rudra, entitled 'Will Statehood solve Manipur's problem' in *Mainstream* highlight the factors that had led to the economic backwardness of Manipur.
The articles written on Chandigarh deal with the problem of its future. In order to settle the controversy with regard to the future of this area, Ashish Bose in 'The future of Chandigarh' suggests that it should be made a chartered city. R. R. Sengupta in his article 'The Chandigarh Problem', proposes the establishing of a condominium over Chandigarh and the declaring of the city to be belonging to both the States. Acharaya J. B. Kiriplani's article 'Status quo — A Rational Solution for Chandigarh' expresses the opinion that status quo is the only alternative to Chandigarh's problem. The article of K. Santanan, entitled 'Dangerous Indecision over Chandigarh' examines the possible alternatives and warns the Centre of the consequences of indecision.

M. L. Khurana's article 'Why Not Delhi State', and Shergill's article 'Why this White Elephant' in the January-March 1971 issue of Niti argue the case for and against the conferment of Statehood on Delhi. The case for Statehood is based on the eradication of the ills of the City owing to the multiplicity of authorities and the case against Statehood by arguing that there is no need for the multiplicity of authorities and, instead, the executive powers be conferred upon existing Municipal Corporation.

In an article entitled 'Reorganisation of North-East India', in Assam Tribune Dr V Venkata Rao analyses merely the proposals contained in the North-Eastern Areas (Reorganisation) Bill.
The Illustrated Weekly of India, in its issue of 8 December 1974, carried an article on 'Lakshadweep' by Captain M. S. Kohli. The article deals solely with the development of the islands as a tourist spot which might help the territory to raise its resources.

What the researcher felt was that the concept of union territories introduced into the framework of the Constitution, over two decades ago, contained in it a potential unforeseen that it could serve the purpose, *inter alia*, of political expediency in certain situations and fulfilling certain objectives, which could not otherwise be achieved. It was only possible when the concept of 'Union territories' was viewed in a broader perspective or was subjected to a macro approach. Even otherwise, as it is, not much light has been thrown on the purpose, significance and utility of Union territories in the Indian Constitution.

Besides, it was felt that this study would supplement and complement the work of the researcher's supervisor, Dr K. C. Markandian, who has undertaken the task of making a critical and analytical study of the Indian Constitution. He has already completed work on two important aspects of the Indian Constitution, namely "Directive Principles" and "Amending Process" and at present he is working on the "Preamble" of the Constitution. The work on "Union territories" is, therefore, an endeavour in this broader perspective.
In the Context of a Strong Centre

To start with, it is necessary to go back to the days of the framing of our Constitution and see how the minds of the framers were working in regard to the future set-up of India. They had no doubts regarding the form of government for the country. But they were bothered about the nature of the federation: should there be a voluntary federation, as mooted under the Act of 1935? Or should it be an obligatory one? Should the federation have a Centre, with limited powers, or should it have a strong Centre? But, above all, their anxiety was how best the federation would secure and preserve the unity of India.

At the outset, it is to be mentioned that throughout the British rule to safeguards imperial interests in India, the object of the rulers had been to make the Centre as strong as possible. Whereas under all the previous Acts, the Government of India was unitary, the Act of 1935 prescribed a federation. Although the federal structure under the Act never came into being, only the part relating to the provincial autonomy was given effect to in 1937. But notwithstanding the introduction of provincial autonomy by requiring the Governor to act in his 'discretion', or in the exercise of his 'individual judgment', and conferring power on the

1 See the Government of India Act (25 and 26 Geo. V, C. 42), 1935, chiefly Sections 11, 102, 126(4)
2 Ibid., Sec. 12
Governor-General to give directions, the Centre remained strong. In addition, the object of maintaining a strong Centre, was secured through the retention of important and a large number of subjects in the federal list and through direct territorial control over areas of vital concern.

The Cabinet Mission that was sent by the British Government to break the deadlock between the two major political parties of India, namely the Muslim League and the Indian National Congress, on the future framework of India, to accommodate the demands primarily of the Muslim League, reversed this position and envisaged a weak Centre, with limited subjects and residuary powers vested in autonomous provinces. In view of the then existing political climate, the makers of the Constitution accepted the objective of the Centre with limited powers. Consequently, the historic objective resolution was moved in the Constituent Assembly on 13 December 1946. It was adopted on 22 January 1947, in the hope that it would ensure the co-operation of the Muslim League in the task of framing the Constitution. However, the Muslim League abstained from participation in the

3 Ibid., Sec. 126
4 See Cabinet Mission Plan, para 15, dated 16 May 1946
5 See the Resolution of Congress Working Committee, dated 25 June 1946
7 See, p. 326, C.A.A.P., Vol. II
deliberations of the Constituent Assembly. On 3 June 1947, the British Government proclaimed the partition of India into two sovereign states. Consequently, the Muslim League had nothing to do with the framing of the Constitution of India.

With the severance of the Muslim League from the framing of the Constitution, it was no longer obligatory on the founding fathers to give effect to the limitations imposed by the Cabinet Plan on the nature of federation. In consequence the Union Constitution Committee was faced with the question whether India should have a unitary or a federal set-up. On 6 June 1947, it was decided to have a federal set-up, but with a strong Centre vested with residuary powers. The Committee incorporated this decision into its Report of 4 July 1947. However, the word 'federation' was dropped by the Drafting Committee and the word 'Union' was substituted for it. The substitution of the word 'Union' for 'federation' was very significant. It meant that the constituent parts of India had no right of secession and although the country and the people were divided into different states for administrative convenience, the country was one integral whole with its people living under one sovereign

8 See Minutes of the Union Constitution Committee in R.K. Shiva (1967) The Framing of India's Constitution, Select Documents II, p. 553

9 See Reports of Committees of the Constituent Assembly of India, First Series, pp. 55-56

10 Ibid., p. 173
authority derived from a single source. Dr Ambedkar succinctly explained the implications of the term 'Union' in the Constituent Assembly on 4 November 1948.\footnote{He (Dr Ambedkar) observed: "It is true that South Africa which is a unitary state is described as a Union. But Canada which is a federation is also called a Union. Thus the description of India as a Union, though its Constitution is federal, does no violence to usage. But what is important is that the use of the word 'Union' is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear 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 country and the people 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." p. 43, \textit{C.A.D.}, Vol. VII, dated 4 November 1948}
compactness was another factor. Besides, it was not possible to make the Union as an 'exceptional' government, as in the United States, because all the units of federation were not equally developed economically and politically and the Central control was necessary to secure uniform development of the country as well as of the backward classes of the population.

Above all, the case for autonomous component units had lost its force and significance with the partition of the country. The object of the founding fathers had thus shifted from a weak Centre under the Objective Resolution to a strong Central authority which might resist external aggression and also check the disruptive forces that might tend to undermine the nascent State.

The entire Constitution, thus, was framed in the light of this objective, namely the Centre endowed with larger enumerated powers, along with the residuary ones, as in Canada. However, to further strengthen it, a class of constituent parts, known as Part C States and D territories which, subsequently, by the Constitution(Seventh Amendment) Act, 1995, came to be called 'Union territories' were kept under the Central control.

The Policy Adopted

The framers of the Constitution initially placed under the

12 See chiefly New York v US (1946), 326 U.S. 572, p. 592
Centre as large areas as possible. It was felt that by this process the Centre would become strong and facilitate the administration of the country. But soon difficulties in administration cropped up. It was also felt that an impression might be created in the minds of the people of the States that the Centre was enhancing its powers not only functionally but also territorially by retaining territories under its control rather than making them full-fledged States, or by attaching them to the existing States. Consequently, there was a shift in the policy to the effect that as small a number of areas as possible should be kept under the control of the Centre on the principle of strategic importance. However, factors such as economic, cultural and historical warranted, in the case of certain areas, to be kept under the control of the Centre. It was possible to find a solution to the problems of those areas by readjusting the boundaries, but the makers of the Constitution, on the advice of the Dar Commission, felt it unwise to disturb the existing set-up. Later on, when the Government of India reorganized the territories of India, the objective in reducing the Centrally administered areas was achieved. Union territories were created only for strengthening national security, for preserving cultures and for the

13 See the Minutes of the Meeting of the Special Committee, dated 10 April 1948 in Rao, B. Shiva, op. cit., Select Documents IV, pp. 409-410

The Special Committee consisted of the Union Constitution Committee, the Provincial Constitution Committee and the Union Fowers Committee.
economic advancement of geographically isolated areas. Subsequently, however, other criteria were added to the creation of union territories. Attention, however, should be drawn to the fact that although the policy was to limit the extent of centrally controlled areas for administrative convenience, the objective of maintaining a strong Centre was achieved through other institutional devices provided for in the Constitution.

Scope and Significance

The concept of union territories, which was introduced for a limited purpose, subsequently assumed importance for solving many inextricable problems, such as cultural and territorial disputes. The researcher feels that in a large country, such as ours, many problems of existing nature or new complex problems, relating to development, inter-state disputes, over the allocation of power resources, prevention of internal dissensions in a state etc. may arise and the institution of union territories in that context can assume greater importance and the possibility, therefore, to press this device into service cannot be ruled out.

An argument was advanced in the preceding paragraphs that the union territories were created to further strengthen the Centre. But if statehood upon these union territories is ultimately to be conferred or they are to be merged into adjoining states, a pertinent question may be asked: How then
in the elevated status or altered circumstances are the former union territories going to serve the objective of creating and maintaining a strong Centre? The answer to this question is not far to seek. If a union territory is merged into a neighbouring state, the existing institutional devices available under the Constitution with the Centre can be invoked. If, on the contrary, statehood is conferred upon a union territory, the very act on the part of the Centre, however, justifiable the case for such conferment may otherwise be, it is bound to be looked upon as an act of good gesture and the elevated union territory will willingly subscribe to the theory of a strong Centre. In any case, it will not pose a challenge to the authority of the Centre as is likely in the case of other States. One may even go further and venture to say that a union territory, on which statehood has been conferred, may induce recalcitrant states to emulate its example of compliance with the Central authority and, thereby, strengthen the cause of a strong Centre.

Methodology

As regards methodology, in the background of the purpose and objective in view, it has to be, by and large, historical, legalistic and analytical. An attempt has been made, however, to introduce empiricism while dealing with the criteria of union territories. The study had to be historical, because a probe was to be made into the intentions of the architects
of the union territories and the subsequent modifications it underwent. A similar probe had to be made into the intentions of those who were engaged in the framing of the Constitutions of the USA and Canada and also their subsequent development.

Not less important are the legalistic and analytical aspects, as the intentions are conveyed through written words. Comparisons have been made with similar provisions, precedents, articles, and reports, memoranda, and other documents have been subjected to critical analysis.

The study is also perspective, since it examines what the future of union territories would be and to what use they could be put in the times to come.

As far the sources of the study, the researcher has primarily relied upon original sources, which are the reports, debates, memoranda and the articles of the Constitution. All relevant documents, except those which were confidential and, hence, could not be made available to him under any circumstances, have been consulted. Similarly, all books and articles, even remotely connected with the subject, but serving to provoke thought or suggesting a point, have not been left out.

The study has been distributed over six chapters. Chapter I provide a background for the genesis of the territories, the reasons for the federal administration and the administration of the 'territories' of the USA,
Australia and Canada. It also deals with the evolution of chief commissionerships during the British period and Part C States and D territories under the Constitution of India. Chapter II contains the proposals of the States Reorganization Commission in respect of the Centrally administered areas, the reaction of Parliament to the Report of the States Reorganization Commission, the genesis of union territories and the changes made in the Constitution to provide for the administration of union territories. Chapter III throws light on the nature of the Indian Union and the existing administrative set-up of union territories. Chapter IV deals with the analysis of criteria which have been used for constituting the union territories. Chapter V discusses the rationale behind the criteria which were used for the creation of the union territories and the extent and scope of some of the existing criteria. New criteria have also been suggested, which the Government of India may itself avail of in future for the creation of new union territories. Chapter VI is a perspective part. It deals with the policy of the governments of the USA, Australia and Canada in respect of the future of their territories and the Government of India in respect of union territories.