

Adoption of Federalism and Constituent Assembly of India

***Armaninderjit Singh, Research Scholar, Department of Political Science, Desh Bhagat University, Mandi Gobindgarh. ** Dr. Sumanpreet Kaur, Assistant Professor, Department of Political Science, Desh Bhagat University, Mandi Gobindgarh.**

The framers of the Constitution did not describe India as a 'federation'. Instead they made an important change in the nomenclature of the country. India was dubbed as a 'Union of States' instead of federation as had been the practice. Hitherto all documents including the draft constitution submitted by B. N. Rao had described India as a federation.¹ Dr. B. R. Ambedkar had made the following explanation with regard to this change: -"Nothing much turns on the name, but the Committee has preferred to follow the language of the Preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its constitution may be federal in structure."² In the Constituent Assembly, he further pointed out that the use of term Union of States is indicative of two things- the Indian 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 an 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.³

Dr. Ambedkar also asserted that the Draft Constitution was federal. He pointed out that 'a Federal Constitution is marked- (I) by the existence of a Central polity and subsidiary polities side by side and (2) by each being a sovereign in the field assigned to it. In other words, Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity.⁴

Dr Ambedkar also opined that federalism had two inherent weaknesses of rigidity and legalism. He, however, felt that adequate protections had been incorporated in the Constitution to remove those weaknesses. He also drew the attention of the members towards the growing trend of centralisation among the federal constitutions. Talking about the American Constitution, he said, ‘one has to only consider the growth of the Federal Constitution in the USA, which, notwithstanding the very limited powers given to it by the Constitution, has outgrown its former self, and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong.’ He, however, felt that the tendency to make the Centre stronger should be resisted as, ‘it cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it would fall by its own weight.’⁵

But definitely there was an element of flexibility in the Draft Constitution. Dr. Ambedkar pointed out that there was a difference between the Draft Constitution, on the one hand and other Constitutions including that of America. While other federal systems were placed in a tight mould of federalism and they could not change their form and shape, the Draft Constitution could be both unitary as well as federal according to the requirements of time and circumstances. In normal times, the Constitution was to work as a federal constitution but in times of war it was ‘so designed so as to make it work as though it was a unitary system. Once the President issues a Proclamation, which he is authorised to do under the provisions of Article 275 (which later on became Article 352), the whole scene can become transformed and the State becomes a unitary state.... Such a power of converting itself into a unitary state no federation possesses.’⁶

Deliberations in Constituent Assembly

The majority of the members in the Constituent Assembly were in favour of a strong Centre. G.L Mehta felt that only a strong Centre could build up adequate political autonomy and decentralization. He also supported a strong Centre based on economic development and welfare. He pointed out that, economic forces and strategic considerations today tend to invest the Centre with large powers. If we want to organize economic development and

social welfare as people organize for war, then the state of the future have to be a 'positive' state, it will have to be a social service state. It will require large finances and more or less homogenous economic conditions will have to maintain in order to achieve these purposes." He also stressed the need of public health to be included in the concurrent list because there were innumerable diseases in the country.⁷ For T.T. Krishnacharya also the social welfare was the reason to make the Centre strong. He wanted a strong Centre to improve the economy of the common man.⁸ However, Pandit Hira Lal Shastri favoured a strong Central government because 'if the central government is weak there will be no peace in the country. Maintaining the peace in the country is the greatest of all tasks.'⁹

Frank Anthony's argument for a strong Centre was based on the nature of the Indian polity. He defended the Draft Constitution on the plea of divergent and disintegrative potential which was inherent in the country's vastness. He felt that 'the maximum possible powers that can be given to the Centre must be given to the Centre in the interests of the integrity and cohesion of the nation.'¹⁰ He also demanded that police education and health should be given to the Centre. Pandit Lakshmikant Maitra, while maintaining that the Provincial autonomy should not be ruthlessly curtailed found centrifugal and fissiparous tendencies generated by the provincial autonomy under the Government of India Act 1935 and hence advocated a strong Centre with ample powers so that all the component units could be held together and be cohesive. He favoured a strong Centre also, to preserve or to maintain our newborn freedom and solidarity of the country.¹¹

Certain members advocated a strong Centre from the historical point of view Pundit Bal Krishan Sharma justified the need of a strong Centre based on our historical tendency, 'of various limbs to break off from the body politic' which he also called a chronic illness from which the country had been suffering for centuries and if unguarded, we were likely to come to grief. "Therefore I say that these friends and critics, who think that the Centre which has been given certain powers to meet certain emergencies is likely to abuse those powers, are trying to cry 'wolf, wolf before actually the wolf comes to their doors.'¹² Suresh Chandra Majumdar and K M Munshi supported him. Majumdar said, "Among the many lessons with which our history is replete, there is one which in my opinion should command our utmost attention as we are engaged in settling the forms of our State and

Government. It is this that throughout history our finest glories in whatever field they might be were achieved precisely during those periods when India, striving towards political cohesion was most successful and such cohesion always presupposed a strong unifying Central authority.”¹³ K. M. Munshi pointed out that the glorious days of India were only the days when there was a strong central authority and the most tragic days were when the central authority in the country was dismembered by the Provinces trying to resist it.¹⁴

Alladi Krishnaswami Ayyar who was also a member of the Drafting Committee defended a strong federal Government on economic and defence considerations. He pointed out, “In view of the complexity and financial conditions in the modern world and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal Government. The Draft Constitution in several of its provision has taken note of these instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation.”¹⁵

However, the decision to adopt a strong Central Government was not unanimous. Many members did not appreciate the idea. Maulana Hasrat Mohani was very sharp and agitated in his views. He complained that the rights and powers of the Provinces were being curtailed which they had been enjoying before independence. He pointed out that the demand for a strong Centre was justified till Pakistan was not separated since there was an apprehension of trouble from the Muslim majority Provinces, but after the separation of Pakistan, there was no need for such a strong Centre. According to Maulana, Aurangzeb wanted to build up unitary Mughal empire and lost his kingdom, ‘if he had not done that, he would not have lost the kingdom. Do not think it is easy to form a single unitary government by coercing each and all into your fold that cannot last...we regard the constitution framed by you worthy of being consigned to the waste paper basket.’¹⁶ Another member Mahomad Sheriff was equally sharp “we have uprooted British. Let not that imperialism be perpetuated in another form.” He felt that the Centre should not be jealous of the component parts as the people living in the States and Provinces were part of the whole. He requested the House ‘to see that the Centre does not arrogate to itself all the powers hut that there is an equitable and happy compromise in the distribution of powers between the Centre and the units.’¹⁷ Professor N.G.Ranga felt that in any case, the Centre

was going to be strong due to the modern industrial development and economic conditions. Therefore, it was 'superfluous and indeed dangerous to proceed with the initial effort to make the Centre specifically strong.' He also felt that a strong Centre ultimately meant as strong Central Secretariat. He said, "From the *chaprasi* or the *duffadari* at the Central Secretariat to the Secretary there, each of them will consider himself to be a much more important person than the Premier of a Province and the Prime Ministers of the Provinces would be obliged to go about from office to office at the Centre in order to get any sort of attention at all from the Centre...Under the circumstances, it is highly dangerous indeed to enslave these Provincial Governments and place them at the mercy of the Central Secretariat and the Central bureaucracy."¹⁸

K Santhanam protested against the division of powers between the Centre and the State, which he felt, had led to a position where there was a unitary Centre which was trying to hand over certain powers to the States. In fact, Santhanam tried to be the most logical and coherent proponent of state autonomy when he pointed out, "I do not want that the Central Government should be made responsible for everything. The initial responsibility for the well being of the people of the Province should rest with the Provincial Government. It is only in strictly all-India matters that the Central Government should have responsibility and should come into play. Therefore, the strength of the Centre consists not only in adequate powers in all-India subjects but freedom from responsibility for those subjects which are not germane to all-India but which really should be in the Provincial field." On financial distribution of power between the Centre and the State, Santhanam said, "I do not want any constitution in which the unit has to say to the Centre - that I cannot educate my people. I cannot give sanitation; give me a dole for the improvement of roads, for industries, for primary education." Santhanam was highly critical of concurrent list, which he wanted to be restricted to the minimum. He said that "... it is an inevitable political tendency of all federal constitutions that the federal list grows and the concurrent list fades out because once when the central legislature takes jurisdiction over a particular field of legislation, the jurisdiction of Provincial legislature goes out. Therefore, we may take it that in ten years or 15 years of time, entire concurrent list would be transferred to the federal list." Santhanam also predicted that the Provinces would revolt

against the Centre unless the distribution of powers was not properly adjusted. He said, “Let us not give all the powers to the Centre. Let the Units also have some work, some responsibilities and some resources. Unless we do this, our Constitution will break down. This is a warning I wish to utter”.¹⁹

Many members were not satisfied with the financial arrangement between the Centre and the State. Among them, Sir A. Ramaswamy Mudaliar objected to the division of taxes. He pointed out that the nation building activities were the unit’s responsibility and the units lacked enough taxing power.²⁰ R.Sankar who represented Travancore State stated that 45 percent of his State income came from the taxes like income tax and custom duties, which were now given to the Centre.²¹

Shri Lokanath Mishra criticised the Draft Constitution on the ground that it was ‘laying the foundation more for a formidably unitary state than a federal one’. He wanted to know the reasons for having a strong Centre. Was the strong Centre needed against Pakistan, Russia or the people of India? He tried to be prophetic when he said, “But if by taking so much powers into the hands of the President or Ministers, or the central oligarchy, we want to unite India, I am sure India will either break or it will be another menace to us and all.” He further pointed out that he was ‘wholly against a very strong Centre in the sense that the Government will be so strong, though not dictatorial or oligarchic that the Provinces will lose all importance, all initiative and drive.’²² Professor K.T.Shah welcomed the strong Centre but he did not want the provincial autonomy to be curtailed.²³ Many members expressed similar reactions. Mehboob Ali Baig Sahib Bahadur complained that the Constitution provided for a ‘glorified district boards.’²⁴ K.Hanumanthaiya, argued that the Draft Constitution made the Indian Union a Unitary State and not a federal State. ‘In their anxiety to make the Centre strong, they have given too much legislative and financial powers to the Centre, and have treated the Provinces and States, as though they were mere districts of a province’. He also observed, “It practically makes the Indian Union a unitary state and not a federal state.”²⁵ P.S.Deshmukh felt that the Constitution was neither unitary nor federal. It was unitary ‘because provincial autonomy of a sort will continue; it is not federal because there is no freedom allowed to any of the units to any substantial degree.’²⁶ Mohammed Ismail Sahib expressed his displeasure against the unitary nature of the state

that in his view was not conducive to the ‘happiness and prosperity of the country.’ He said, “ I say that the federal system is more suited to the conditions of our country than the unitary type.”²⁷ Another member, Lal Krishnaswami calculated that the Draft Constitution provided for 75 percent unitary and 25 percent federation. He also founds the tendencies to overburden the Centre and towards over centralization.²⁸ Arun Chandra Guha pointed out that having a strong Centre did not mean that its limbs should be weak. Guha stressed the importance of panchayati raj and said, “ If we can build the whole structure on the village panchayats, on the willing co-operation of the people, then I feel the Centre would automatically become strong.”²⁹

Support for a Unitary State

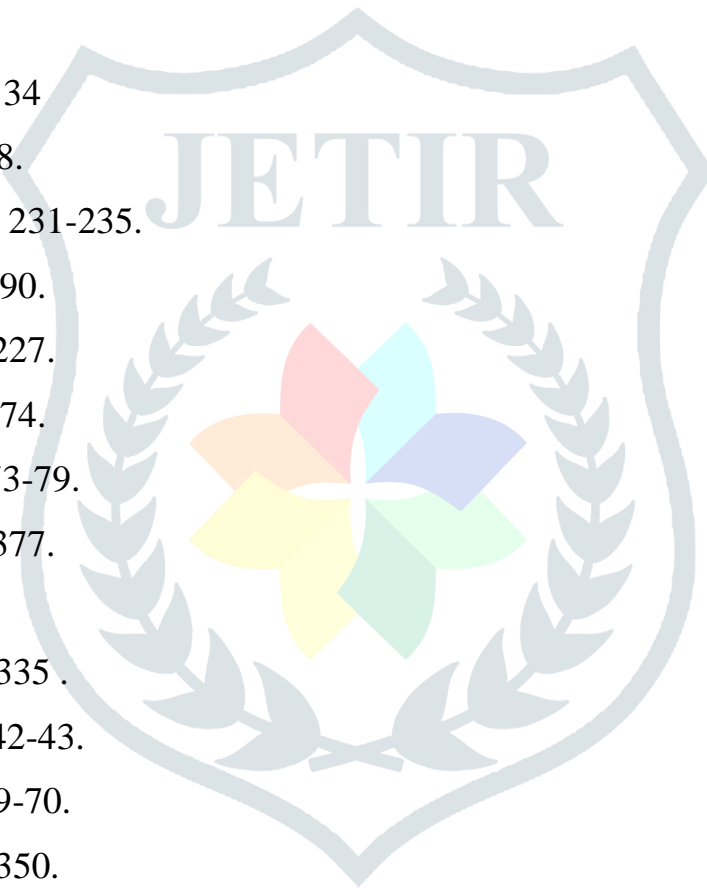
The Constituent Assembly also had a few members who were against federation and wanted a unitary state. Among them Sardar K.M.Panikkar in a note to the Union Powers Committee pleaded the ‘ the basic principles of the constitution should be a unitary one with large devolution of powers to the Provinces...’ He pointed out, “The demarcation of Union and Provincial powers which federalism involves, is to my mind a dead issue, and the idea which has gained prevalence that the Indian Constitution must be of federal type is definitely dangerous to the strength, prosperity and welfare of India.” He accused federalism of being a fair-weather constitution, which in the Indian circumstances could be dangerous. It might leave the national government with limited powers and it might prove incapable in dealing with the national problems. He further noted, “The American example is totally inapplicable to our circumstances as the United States of America has a hundred years of peaceful development to enable it to build up a strong Centre.”³⁰ In another note, Sardar Panikkar pointed out that due to modern developments in warfare, the war had become total and thus there is a need for total defence. He wrote, “So with the total defence to face, and with but a weak and insecure national integration with which to face it, we shall be courting disaster, if we now create a Centre limited by legalism and cramped by the indefeasible rights of Provincial units.”³¹ Sardar Panikkar did not carry on his attack against federalism in the Constituent Assembly, which was done by Brajeshwar Prasad who was against both federalism and democracy. He felt that ‘federalism will lead to establishment of innumerable Pakistans in the sub-continent’ According to him, federalism was unsuited

to the modern times in view of the concept of the world state, the fear of the third world war and the needs of economic development. Referring to Dr. Ambedkar's speech in which he termed the Indian Constitution as federal in peace times and unitary in war, Prasad said that the distinction between peace and war had become fictitious in the wake of Cold War.³²

It can be safely concluding that the prevailing political, economic and social conditions resulting from the Independence and the Partition created an environment that helped in creating a consensus in favour a of a strong Centre. The communal riots, rehabilitation of refugees from Pakistan and economic crises enforced the feelings that only a strong Centre could work to effectively face them. A possible rebel could be expected from the Princes who had acceded to the dominion of India based on Cabinet Mission Plan, which had vested with them a large amount of autonomy. But the events after August 15, 1947 moved very fast and the merger and integration of the States were effected in a rapid evolutionary manner and by the time the Constitution of free India became operational, they had become one with the Indian polity. However, the very fact of their existence and their merger into the Indian Union, which was subject to the Cabinet Mission Plan, necessitated federalism as the only alternative. There was no other road except federalism for the future polity of India. Further, there was a legacy of provincial autonomy under the Government of India Act, 1935 and many powerful leaders like G.B. Pant and B. G, Kher had experienced the operation of provincial political power and hence were averse to the unitary system. It was also felt that all the advantages claimed for a unitary system could be secured if the Constitution provided for federation with a strong Centre. It was this background, which prompted the Union Powers Committee in its Second Report to view the unitary state as a retrograde, step both politically and administratively. Coupled with these considerations were the Indian domestic needs and the prevailing international situation. The centralising tendencies witnessed in all the federations complimented these considerations. As a result, the protagonists of the state autonomy lost their importance and there was a tremendous support in favour of a federation with a strong Centre.

End Notes

1. The Article I of the Memorandum on the Indian Constitution of the Union Constitution Committee had a note: -'The structure proposed to be established by this Constitution being federal in character, the term Federation has been used.' CAD, Vol. IV, p.717
2. B.Shiva Rao, *The Framing of India's Constitution*, Vol.III, p.511
3. CAD, Vol. VII, p. 43
4. Ibid, p. 33
5. Ibid, p. 42
6. CAD, Vol. VII, p. 34
- 7.C.A.D. , Vol. V. P.78.
- 8.C.A.D. Vol. VII, pp. 231-235.
9. C.A.D. Vol. VII, p. 90.
- 10.CAD, Vol. VII, p. 227.
- 11.CAD Vol. VII, p. 274.
12. CAD Vol. V, pp. 73-79.
13. CAD Vol. VII, p. 377.
14. Ibid, p. 927.
15. CAD Vol. VII, p. 335 .
16. CAD Vol. V, pp. 42-43.
- 17.CAD Vol. V, pp. 69-70.
18. CAD Vol. VII, p. 350.
19. CAD Vol. V, pp. 54-56.
20. Ibid, pp. 80-82.
- 21.CAD Vol. VII, p. 346.
- 22.CAD Vol. VII, p. 242.
- 23.Ibid, p.244-46.
24. CAD Vol. VII, pp. 295-97.
25. Ibid, pp.338-40.
- 26.Ibid, pp.250-52.



27.Ibid, p.330.

28. Ibid, p.365.

29 . Ibid, p.256.

30. B.Shiva Rao, op.cit., Vol. II, pp. 533-38.

31.Ibid, pp. 539-40.

32. CAD, Vol. VII, pp.371.

