



during the British times. No wonder then that during the time of independence from the British we were numerous princely states, some presidencies, and provinces directly administered by the British government. All of them continued to be sovereign, even though only to some extent. Vallabhbhai Patel, the first home minister, had the tough job of integrating all of them into the Indian Union.

**Ira:** Like a dear friend says, everything has a history. This process of power sharing had started much before. There were three phases during the British rule – first when the British government dissolved the East India Company and took over the administration of India through the Indian Civil Services in 1858; second with the Montague-Chelmsford Reforms (Government of India Act, 1919), which created a bicameral legislature and increased the participation of Indians in the administration, and finally the Government of India Act in 1935, which established an all-India federation and awarded provincial autonomy.

Of course, the Indian political parties were unhappy with the limited autonomy awarded by the Government of India Act, because the British retained key portfolios like defence and foreign affairs. What was the rationale behind federalism in the Indian Constitution?

**Anubhuti:** Mainly it has been the consideration that India is a large nation, and different provinces have a history of being autonomous even if partially. The Constituent Assembly was also concerned that there should not be a risk of power being concentrated in a central government. I like what T. T. Krishnamachari said during the debates in the Constituent Assembly. He said, the criterion for whether we are federal or not should be based on three conditions, of which the third is “that the activity of the State must not be *completely circumscribed* by orders handed down for execution by the superior unit.”<sup>[i]</sup> He clarified that if power should not be *completely circumscribed*, it is implied that some power is bound to be controlled by federal authorities. I think it is brilliant how he articulated what we usually call *checks and balances*. State governments have full power in some areas but are controlled by the central government in other areas. For example, states have full authority in trade and commerce; they can engage directly with even foreign companies and governments, but the nation’s budget is managed by the centre.

**Ira:** That is why we have these three lists – State list, Union list, and Concurrent list – defined in the Constitution. It is interesting to see these lists in the Constitution. It is a carefully made list of numerous areas which will be dictated by the central government. For instance, I found it amusing that apart from banking and defence, railways are managed by the centre. India’s dependence on the railways to travel is articulated so clearly and strongly here. Of course, the Constitution itself and amendments made to it

are also the duty of the legislature. States have authority over theatre and dramatic performances and for cinema; but cinematic exhibitions are controlled by the centre through the CBFC (Central Board for Film Certification).

**Anubhuti:** Education is an interesting example in the concurrent list. The central government drafts the education policy and curriculum framework, but the states have the right to customize the policy and curriculum to suit their context. I guess the worry here was not so much the risk of concentration of power, as it was about familiarity of cultural context, which is exemplified by language in today's India.

**Ira:** Isn't it fascinating that the Constituent Assembly thought through all this, even though Indian states were not organized based on language. Linguistic reorganization of states happened in 1956, a few years after the Constitution was drafted. But then the first Indian education policy was not out until 1966, so it came late enough that it could be implemented in the reorganized India.

What is the difference between decentralization and distribution of power? I see huge similarities in them. The education example seems similar to decentralization, rather than an example of federalism.

**Anubhuti:** They are very different – both in purpose and in the way they are implemented. Decentralization is to provide autonomy (not freedom) to the smallest unit of the nation so that policies and law can be efficiently implemented. Take the local self-government as an example. They don't create policies or interpret them the way they want. They implement policies the way they have been articulated and customize it to suit the immediate needs of the small unit be it a district, taluka, or village panchayat. By the way, this level of autonomy was also implemented as late as 1992 through the 73<sup>rd</sup> amendment of the Constitution. Whereas federalism allows states to interpret and customize the policy.

This reminds me of the difference of opinion between Gandhi and Ambedkar, with respect to federalism. Gandhi had this imagination of Hind Swaraj in which every village is a self-sufficient unit, with little or no control from higher forms of government – state or central. His argument was unfamiliarity and local autonomy. Whereas, Ambedkar was a strong critic of this model of governance. He believed that villages were the *sink of localism and a den of ignorance*[ii], and that a higher form of government should control them to ensure they function the way they ought to. He strongly supported the current model of state level federalism.

**Ira:** I am still thinking of the historical nature of federalism. During the British times, we had presidencies they had formed, numerous kingdoms, and princely states; also some parts of India like Goa and Pondicherry were not in their control. For example, princely states were given more autonomy since they had sovereignty and the British controlled

them only through treaties. During independence in 1947, there were around 555 princely states which covered almost 50% of the Indian geography and 28% of the population. Consider Mysore, Hyderabad, Jammu and Kashmir, and many Rajput states. How did the first Indian government even manage all of them?

**Anubhuti:** Vallabhbhai Patel and V. P. Menon had a tough job on their hands. They spent a lot of effort convincing the sovereigns of the princely states of the advantages of becoming a part of India – mainly because most of them were geographically surrounded by India. The negotiations were done through requesting them to give up defence, communications and foreign affairs, and awarding them privy purses – an amount of money given to the princes from a consolidated fund of India to meet the expenses of their families and monarchical traditions. This privy purse was coded in the Constitution in Article 291, which was removed through an amendment only in 1971.

Seeing the map of India in 1951 and today is very revealing of this transition of power.

**Ira:** Coming back to federalism, how is it actually coded in the Constitution? Particularly the exceptional situations when the centre can *circumscribe* the state government.

**Anubhuti:** Most of it is embedded in particular articles and in Part 5 where the functioning of the union government is written, Part 6 where the functioning of states, and Part 8 which contains how union territories are to be governed. The Seventh Schedule contains the lists of responsibilities of the union, state, and those which are concurrent – both union and states.

Situations when the union government can exercise control are documented in the Directive Principles of State Policy. Here too the Constitution takes a very careful approach to ensure central control cannot be permanent. Article 249 says that the union government can make laws related to the goods and services tax or any matter in the state list ONLY if they have two-thirds majority and this law can be in force only for a year.

**Ira:** Wow! That is impressive. It is one thing to say we adopted federalism to ensure power is not concentrated in one space and to respect the linguistic and cultural diversity in India. But on the other hand, it is not easy to adopt this kind of federalism unlike say in the United States, which is more strongly federal than us.

**Anubhuti:** The Constituent Assembly debated this at length – whether to adopt a presidential form of government or parliamentary, whether to mirror their form of federalism or create a new form. The unanimous decision was to borrow the core idea from the USA, but to adapt it to suit the Indian context.

**Ira:** Our Constitution is rather unique. This is an altogether different type of democracy, not comparable with others. It pushes us to think hard and learn to be a democratic civic culture. Like Madhav Khosla said, 'our constitution is a pedagogical tool to *force* us to learn what democracy really is.'

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