

THE NATURE OF FEDERAL BARGAIN IN THE EVOLUTION AND WORKING OF INDIAN FEDERALISM

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NEW DELHI**

CERTIFICATE

I have the pleasure to certify that **Shri Kamkhenthang Guite** has pursued his research work and prepared the present dissertation titled “**The Nature of Federal Bargain in the Evolution and Working of Indian Federalism**” under my guidance and supervision. The dissertation is the result of his own research and to the best of my knowledge, no part of it has earlier comprised any other monograph, dissertation or book.

The dissertation is being submitted to the Indian Institute of Public Administration (IIPA) for the Master’s Diploma in Public Administration (MDPA) in partial fulfilment of the requirement for the 44th Advanced Professional Programme in Public Administration (APPPA) of the Indian Institute of Public Administration (IIPA), New Delhi.

I recommend that the dissertation of **Shri Kamkhenthang Guite** is worthy of consideration for the award of MDPA of the Indian Institute of Public Administration (IIPA), New Delhi.

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SELF DECLARATION

I declare that the dissertation titled “The Nature of Federal Bargain in the Evolution and Working of Indian Federalism” for the award of Master’s Diploma in Public Administration by Indian Institute of Public Administration (IIPA), New Delhi is original research work and that as per the best of my knowledge the work or part thereof has not been submitted earlier for the award of any diploma of either IIPA or any other university.

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EXECUTIVE SUMMARY

The advantage of federalism is that it combines the virtues of small states with that of large states in a single union by providing political recognition of territorially-based social pluralism within the union. William Riker theorized the origin of federalism as a bargain between prospective national leaders and officials of constituent governments for the purpose of aggregating territory, the better to lay taxes and raise armies. On the operation of federalism he proposed that federal bargain after the formation of federal union is maintained by the structure of the party system. This dissertation attempted to examine the nature of federal bargain in the Indian federalism.

India is a vibrant federal polity with a unique federal constitution designed to meet the conditions and constraints. Constitution provided for distribution of sovereign legislative powers basically between the union and the state governments. The formation of the union of India involves constituting the provinces and integrating over 560 semi-autonomous Princely States to the Union which involve negotiation and renegotiation of the terms of accessions in exchange for tangible and intangible privileges to the Princes. These processes have been examined from the perspective of the Rikerian theory of the origin of a federal union.

The nature of post-constitutional federal bargain in India changes according to the regime in power, the leadership and the degree of party centralization. High degree of party centralization in the dominant national party ruling the union government during the initial two decades has held peripheralising forces in check. But authoritarian control over party organization and arbitrary use of central executive powers by Indira Gandhi had disruptive effects on federal bargain in the form of demands for greater autonomy by states, instead of political centralizing effect. The post-economic liberalization coalition era has heralded a marked change in the issues and tone of federal bargain as these two factors, viz., economic liberalization and coalition politics, opened up the scope for horizontal competition among states for development and participation of regional parties in national politics. Even though electoral competition could, at times, resulted in temporary disruptions, federal bargain has swung towards cooperation for stronger economic unity thereby keeping the peripheralising forces at bay.

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CHAPTER 1

INTRODUCTION

The advantage of federalism is that it combines the virtues of small states with that of large states in a single union¹ by providing political recognition of territorially-based social pluralism within the union. Federalism characterized by formal division of powers, by means of a written constitution, between the federal government and the constituent units and the supremacy of the constitution are the basic distinctive features of a federal government. Regardless of the varieties and historical backgrounds, federal regimes are characterized by tensions between unity and diversity, between centralization and decentralization and between different levels of governments. Buchanan (1998) describes federalism as a shaky equilibrium of “two separate forces in opposite directions – a force toward monolithic centralized authority and forces in other direction toward a set of autonomous separate units.”²

India is a vibrant federal polity with a unique federal constitution designed to meet the social and political conditions, constraints, objectives and ideals of the founding fathers. The constitution provided for distribution of sovereign legislative powers between the union and the state governments. The third tier of government viz., the panchayats and

¹ Tocqueville, Alexis de: Democracy in America, Wordsworth Classics of World Literature, p.70

² Buchanan, James. M and Richard A. Musgrave (1998): Public Finance and Public Choice, Two Contrasting Visions of the State, The MIT Press, Cambridge

municipalities are basically devolution of state legislative powers as local government remained a state subject under the constitution.

Statement of problem

William Riker (1964)³ theorized the origin of federalism as a bargain between prospective national leaders and officials of constituent units for the purpose of aggregating territory, the better to lay taxes and raise armies. Existence of external military-diplomatic threat or internal security threat predisposes the political leaders to engage in the bargain for a federal union. He further asserts that federal bargain after the formation of federal union is maintained by the structure of the party system.

Riker's theory has been criticized for the proposition that the threats to external or internal security must always be present for a federation to be formed and must always be military-diplomatic in nature. To support his theory Riker, indeed, has offered an over-simplified explanation of the condition under which the Indian federalism was formed – internal riots and undeclared war with Pakistan over Jammu & Kashmir. The theory is being applied in this study not for its factual accuracy, but as generalized framework to examine and explain the nature of federal bargain in the formation and operation of the Indian federalism.

The evolution, framing, and operation of the federal Constitution of India has been studied extensively from the perspective of historical and political compulsions and the socio-economic development strategy such as communalism, social and cultural

³ Riker, W. (1964), *Federalism, Origins, Operation, Significance*, Boston: Little Brown

diversity, countering fissiparous tendencies, socialist pattern of development and cooperation in terms of centre-states partnership in the pursuit of development. Despite the existence of voluminous literature on the subject, there has not been a substantive study of Indian federalism from the explicit perspective of Riker's theory of federal bargain.

Objectives of the study

The objective of this dissertation is to study the formation and the working of the Indian federalism from the perspective of Riker's theory. It is attempted to explore and analyze the nature of federal bargains in the origin federalism in India, the historical circumstances, composition of the Constituent Assembly, the dominant political party and its organization structure, political and ideological positions of the founding fathers and key personalities involved in the drafting of the federal constitution are examined from the perspective of federal bargain theorized by Riker. As against the normative approach which rationalizes the preference for federal ordering in terms of according political recognition of territorially-based social pluralism, this study endeavours to investigate on the Rikerian assumptions about the political compulsions, relative strength of the parties engaged in federal bargain and the self-interested nature of political actors striking the original federal bargain.

The nature of post-constitutional federal bargain in India is analyzed from Riker's proposition about the structure of party system determining the federal dynamics of oscillation between centralization and peripheralisation. Riker's proposition about party

centralization, defined by the degree to which the party controlling the central government exercise control over its party fellows controlling the state governments, and its impact on federal bargain is examined against the internal functioning such as intra-party democracy, the concept of high command etc. of national parties which had formed governments at the Centre. In addition, the rise of regional parties and the dynamics of coalition governments in India's multiparty democracy are considered to have shaped the discourse on federalism in the past.

The research design is explorative. Archival material, books, literature and journals on Constituent Assembly debates, political economy in India etc. are examined against theoretical political science and political economy literature to understand the nature of federal bargain.

Research questions and hypotheses

Considering the theoretical assertion that a federation is the result of a bargain struck between two principal parties: those predisposed to offering the bargain and those predisposed to accepting it (Riker, 1964:12)⁴; and that the political actors in the bargain are self-interest driven individuals (Volden, 2004)⁵. Then the constitutional design will reflect the relative bargaining powers of the parties across the table as well as the self-interests of the key personalities framing the federal constitution.

⁴ Riker, W (1964), *Federalism, Origins, Operation, Significance*, Boston: Little Brown

⁵ Volden, Craig (2004), *Origin, operation and significance: The federalism of William H. Riker*, *Publius: The journal of Federalism* 34:4 (Fall 2004)

Secondly, federalism is maintained by sustaining the federal bargain so as to avoid its rupture into either disintegration or unitary system, and federal bargain is maintained by the structure of party system which may be centralizing or peripheralising. Given the convention of party discipline, the nature of federal bargain would be determined by the structure of party system defined as territorial symmetry of party competition and vertical integration of party organisations.

In Chapter 2, we discuss the theory of federalism from the traditional legal institutional views of Wheare (1953) to the sociological approach of Livingstone (1956). The positive political theory of Riker (1964) on the origin and operation of federalism has been given special focus in order to define analytical framework of the study and to identify the hypotheses. The formation and operation of Indian federalism have been briefly discussed in the context of Riker's generalized theory of the origin and operation of federalism. In the formation of Indian federalism, federal bargain in Rikerian sense has not been applicable for the portion constituting provinces under the British India because they were already part of the union and were not sovereign units. The princely states, on the other hand, presented a more familiar federal problem as they exercised certain degrees of sovereignty. Integration these princely states in the union did involve initial federal bargain, but the outcome of the bargain was a complete dissolution of these states and a reconstitution or absorption into the provincial states.

In Chapter 3, the nature of federal bargain in the formation of Indian federalism which involve deliberations in the Constituent Assembly of India and negotiations princely

states outside the Assembly are discussed in the context on Riker's theory. To highlight the condition under which the federal bargain took place, special focus is given to the composition of Constituent Assembly members, official representations of political parties, prominent provincial leaders in the Assembly and the process of negotiation with princely states. A brief discussion on prominent figures in the Constituent Assembly, referring specially to Jawaharlal Nehru, Congress leader and head of the Interim Government, and B.R. Ambedkar, Chairman of the Constitution Drafting Committee, their ideological leaning and biases has also been included in the Chapter. It has been observed that the absolute dominance of the Assembly by the Congress party and the control wielded by the central leadership on the party had facilitated deliberations and consensus. It is also to be observed that within the Congress party, the central ministers had been accorded priority over state/provincial premiers on matters pertaining to assignment of legislative subjects between the Centre and the states. The manner in which the Congress Working Committee dictated on the Provincial Congress Committee on the persons to be nominated to the Assembly is indicative of party centralization within the Congress party.

In case of the princely states, negotiations were initiated on a highly liberal terms – they were to surrender only three subjects, viz., foreign affairs, defence and communication to the union and they were to have their separate constituent assemblies. As negotiations progress the initial terms were re-negotiated in stages until uniformity between the princely states and the provinces was achieved. While Menon (1956)⁶ insisted that the changes to the initial terms of accession were with the consent of princes, Copland

⁶ Menon, V. P. (1956), *The Story of the Integration of the Indian States*, New York: Macmillan

(1997)⁷ believed that the princes had been given no choice but to sign the revised instruments, and that a few princes expressed their unhappiness with the arrangements. An important element in the political integration of princely states, apart from the greater bargaining powers of the Indian union, was the people's movement in these states for democracy under the influence of the Congress. When the people of princely states shares the same political aspirations with the people of Indian union it legitimizes the methods, whether it was persuasion or coercion, employed by the States Ministry in dealing with the autocratic rulers of the princely states.

The nature of post-constitutional federal bargain in India and how it changes according to the regime, the party structure and leadership are examined in Chapter 4. The nature of federal bargain in India has, as theorized by Riker, been strongly influenced by the structure of party system. The structure and leadership of Congress party which dominated the national politics for about three decades from independence had a profound influence not only on the nature of federal but also on the structure of other political parties. In the initial years under Nehru's leadership, the party maintains some sort of federal principle by allowing space for regional or state level leadership even though the party's high command culture was already in existence. During this era, the Centre-state political relations were kept within the domain of intra-party bargaining.

Centralization of power under Indira Gandhi's leadership had not only undermined the state leadership within the Congress party, but also created tensions between the Centre

⁷ Copland, Ian (1997), *The Princes of India in the Endgame of Empire, 1917–1947*, Cambridge, England: Cambridge University Press

and states. This has moved the Centre-state political relations into the constitutional arena as states ruled by parties other than the Congress raised their voices for revision of the federal constitution. Federal bargain has ruptured on several occasions, on a regional scale, due to the imposition of President's rule in the states and it has ruptured on national scale when a country-wide emergency was declared for a period of 21 months.

The post-economic liberalization coalition era has seen a shift in the nature of federal bargain from the demand for institutional change and larger share in fiscal resources towards participation in the effort to expand the national resources through economic development. Economic policy decentralization has changed the nature of competition from vertical to horizontal and this horizontal competition has become more symmetric which further resulted in convergence of policy discourses across states ruled by parties of various ideologies (Sinha, 2004)⁸.

Another important factor contributing to the relative calm in vertical federal relations is the decline in party centralization and coalition politics. As a one-party dominance came to an end, regional parties gained importance in the national politics and played crucial role in the formation of government in the Centre in return for their issues and concerns being incorporated in the Central policies. At times, regional parties are able to extract largesse from the Central Government with which they become partners⁹.

⁸ Sinha, Aseema (2004): the changing political economy of federalism in India: A historical institutional approach

⁹ During the NDA regime the Telegu Desam Party (TDP) was alleged to have extracted largesse from the Central Government for the Andhra Pradesh State in allocation of rice, fund for rural development and for creation of new airport etc. <https://www.rediff.com/news/2002/may/17spec.htm>.

A brief comment on the present federal scenario in India and the factors considered important for sustaining federal bargain in the future are delineated as conclusion in Chapter 5. The major concern of federal politics in India has graduated from maintaining the territorial integrity of the country to creating a seamless economic integration between states and regions through infrastructure development and regulatory reforms.

CHAPTER 2

THEORY AND ANALYTICAL FRAMEWORK OF FEDERALISM AND FEDERAL BARGAIN

...federation is a bargain about government, a bargain based, however, not on an enforcement procedure, but on simple trust itself. Ordinary bargains or contracts depend on a judiciary to punish renegeing. But the agreement to create a judiciary can hardly depend on what is yet to be created. Riker, 1993

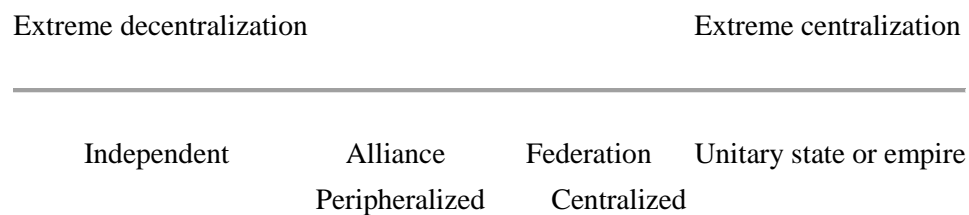
Federalism is a system of government in which power is divided between a national (federal) government and constituent state governments. Formal division of powers, by means of a written constitution, between the federal government and the constituent units and the supremacy of the constitution are the basic distinctive features of a federal government. As a dynamic concept, federalism is always in the process evolution and constant adjustments in accordance with the political processes of a federal country. It is also amendable to suit the unique the historical context of newly federalized states. Therefore, the definition federalism in terms of each level of governments being “coordinate and independent and not subordinate to each other” in their respective sphere (Wheare, 1963; 10)¹⁰ or as “an indestructible union of indestructible states”¹¹, have given way to a much more flexible union with overlapping spheres and cooperation between the

¹⁰ Wheare K.C, (1963), *Federal Government*, OUP, New York.

¹¹ Justice salmon chase in *Texas vs. White*, 74 U.S. (7 Wall.) 700, 19L. Ed. 227 (1868), explained the necessity for the constitutional limitations that prevent concentration of power on either the state or national level: “[T]he preservation of the States, and the maintenance of their governments, are as much within the design and care of the Constitution, as the preservation of the Union.... The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.” Source: <https://legal-dictionary.thefreedictionary.com/Federalism>.

federal government and the constituent units. According to Elazar (1987; p.5)¹², federalism is “self-rule plus shared-rule” which refers to the territorial autonomy granted to the sub-national units and the ability of the sub-national governments to participate in the central government. Riker (1975)¹³ offers a general definition of federalism as “a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions.”

Riker’s demarcation of federation from other forms of institutional arrangement



Modern federalism in practice varies from country to country depending upon the social, political and historical background in which the federal constitution is adopted by the country in question. Scholars of federalism such as Hicks (1978; 5)¹⁴ emphasized the causal relationship between the origin and success or failure of federations suggesting that the historic origin of federations affects “their constitutions and the working thereof.” Stepan (1999)¹⁵ argues that depending upon to historical backgrounds, democratic federal systems can be described as “coming together” as in the case of the USA where relatively

¹² Elazar, Daniel (1987), *Exploring Federalism*, University of Alabama Press, Tualoosa

¹³ Riker W (1975), *Federalism*, in *Handbook of Political Science*. In *Handbook of Political Science*, eds. Fred Greenstein and Nelson Polsby, Vol 5.

¹⁴ Hicks, Ursula K (1978), *Federalism: Failure and Success. A Comparative Study*, London and Basingstoke: The Macmillan Press Ltd

¹⁵ Stepan, Alfred (1999), *Federalism and Democracy: Beyond the US Model*, *Journal of Democracy* 10(4):19-34

autonomous units formed a union or “holding together” as in the case of India where power was devolved constitutionally to the constituent units.

Regardless of the varieties and historical backgrounds, federal regimes are characterized by tensions between unity and diversity, between centralization and decentralization and between different levels of governments. Federalism in operation is described by Buchanan (1998)¹⁶ as a shaky equilibrium of “two separate forces in opposite directions – a force toward monolithic centralized authority and forces in other direction toward a set of autonomous separate units.” Rodden (2004)¹⁷ emphasized this process by arguing that ‘federalism is not a particular distribution of authority between governments, but rather a process - structured by a set of institutions - through which authority is distributed and redistributed.’ These views are largely the extension of Riker’s (1964)¹⁸ seminal work in which he demonstrates that federalism in its origin as well as in its operation is a bargain between national and subnational interests.

William Riker and the Federal Bargain

A positive political theorist, William Riker developed a generalized theory on the origin of federal governments, their operation and significance in his seminal work *Federalism, Origin, Significance* based on the assumption that men in politics behave rationally in

¹⁶ Buchanan, James M and Richard A. Musgrave (1998): Public Finance and Public Choice, Two Contrasting Visions of the State, The MIT Press, Cambridge

¹⁷ Rodden, Jonathan (2004): Comparative Federalism and Decentralisation: On Meaning and Measurement, Comparative Politics, Nol.36, No.4

¹⁸ Riker, William (1964), Federalism, Origins, Operation, Significance, Boston: Little Brown

making bargains that involved mutual benefits. In his book he developed and tested various contentious hypotheses through inductive and deductive reasoning about the rational actors involved in constructing the federal bargain and in making political decisions within federal institutions. Riker described the origin of federalism as “a bargain between prospective national leaders and officials of constituent governments for the purpose of aggregating territory, the better to lay taxes and raise armies” (Riker, 1964; 11)¹⁹. This definition summarizes the broad purpose for engaging the bargain and the rational actors involved in the bargain which, like a contract entails some offer and acceptance. It also implies that the “rational” actors (prospective national leaders) making the offer must be convinced of the benefits derivable from the proposed union, while their counterparts accepting the offer would also have to be convinced that the advantages of belonging to the union outweigh the disadvantages.

The federal constitution bargain

The act of making federal constitution, according to Riker, should display the main feature of bargains that is, the willingness on the part of all the parties concerned. Given the existence of such willingness, two circumstances pre-dispose the parties to strike a federal bargain. These are: (i) The politicians who offer the bargain desire to expand their territorial control, usually either to meet an external military or diplomatic threat or to prepare for military or diplomatic aggression and aggrandizement, and (ii) The politicians who accept the bargain, giving up some independence for the sake of union, are willing to do so because of some external military-diplomatic threat or opportunity. He referred

¹⁹ *ibid*

these predispositions as (1) the expansion condition and (2) the military condition. Riker hypothesized that above two predispositions are always present in the federal bargain and each one constitutes a necessary condition for the formation of federalism.

According to Riker, federal bargain has two classes of participants: those who are predisposed to offer the bargain, and those who are predisposed to accept it. Those who offer the bargain constitute the prospective leaders of the national government, seeking territorial expansion by offering concessions. Conversely, the leaders of would-be constituent units are predisposed to accepting the bargain by relinquishing degrees of their autonomy in exchange for union in “recognizance of the pressing need for military strength or diplomatic maneuverability that come with a larger and presumably stronger government” (Riker, 1964: 12). The terms of the agreement ultimately become the substance of the federal constitution. If the regional leaders derive small benefits out of the union, they would surrender only little autonomy to the central government, resulting in peripheralized federal system that would soon fall apart. According to Riker, enduring federal systems are the more centralized ones in which substantial powers are given to the central government.

Riker dismissed the argument that federalism is a device to guarantee freedom as “ideological fallacy” and the idea that federalism is a response to social conditions that create sense of a common interest as “reductionist fallacy”. To him there is no simple causal relationship between federalism and freedom and to explain the formation of federalism on the basis of certain social and economic conditions reduces the explanation

of political phenomenon of the formation of federal union to social and economic condition of the population. Such explanation sidesteps the political process of bargaining and, “in bypassing the political, in bypassing the act of bargaining itself, it leaves out the crucial condition of the predisposition to make the bargain” (Riker, 1964:16).

To validate his theory Riker examined major federal countries including India and concluded that two necessary conditions, namely, the expansion and military conditions are fulfilled in all successful federations whereas it has failed in countries where the conditions did not exist. In his explanation of Indian federalism, Riker recognizes the historical background of constitutional development towards federalism after the Government of India Act of 1935 and existence of partially self-governing princely states. But independence came with partition of the subcontinent into India and Pakistan which caused massive rioting and vast transfer of people across the new boundary lines. The formation of the federation in India was occasioned by external threats from Pakistan, which was “more warlike, better armed, and more resentful”, and internal threats from the princely states, which were “a collection of partially self-governing colonies in 1947” (Riker, 1964: 29).

The post-constitution federal bargain

Riker explained the operation of federalism after the federal bargain is struck and military threats fade in terms of maintaining equilibrium between forces of centralization and peripheralisation: “becoming so much peripheralised that they fall apart or becoming so

centralized that they turn into unitary governments” (Volden, 2004)²⁰. He identified two equilibrating features which make federalism survive: (i) centralization, which allows the central government to exploit the advantages of a larger base for taxes and armies, and (ii) maintenance of guarantees to the constituent units, which prevents the transformation of federalism to a unitary government (Riker, 1964: 50). Centralization is necessary for survival of federalisms and it is achieved by overawing and overruling, but not annihilating of the constituent units by the rulers of federation using federal institutional devices. The features that maintain the guarantees to the constituent units are not simply the structure guaranteed on paper in a constitution; instead they must be based on actual incentives and abilities of politicians in key institutions (Volden, 2004)²¹.

Riker examine federal institutions in the US such as the administrative system which includes the constitutional division of functions, the courts, the senate, cultural conditions and party system for their performance in centralizing and guarantee-maintaining functions. Centralization in Riker’s view is political centralization. His interest was not on fiscal or policy centralization or paper guarantees in the constitution, but on political centralization which can be judged by the dominance of actual federal disputes settled in favour of the central governments. Based on his criteria he adjudged American federalism to be highly centralized. To him, the senate as an institution never played a substantial peripheralising role; the courts are a weak check on the power of the executive; and state

²⁰ Volden, Craig (2004), Origin, operation and significance: The federalism of William H. Riker, *Publius: The journal of Federalism* 34:4 (Fall 2004)

²¹ *ibid*

nationalism is fading away due to high degree of mobility, common culture and the inculcation of national patriotism²².

Political parties, according to Riker, are the only federal institution in US which plays effective peripheralising role because they are decentralized and therefore place peripheralising pressure on the federal system. Volden (2004) explain the process as follows: “Decentralized parties in the state and local arenas are more responsive to representative of diverse populations than would be centralized uniform parties. Thus, party competition puts a check on the desires of the president to fully centralize political control.”²³

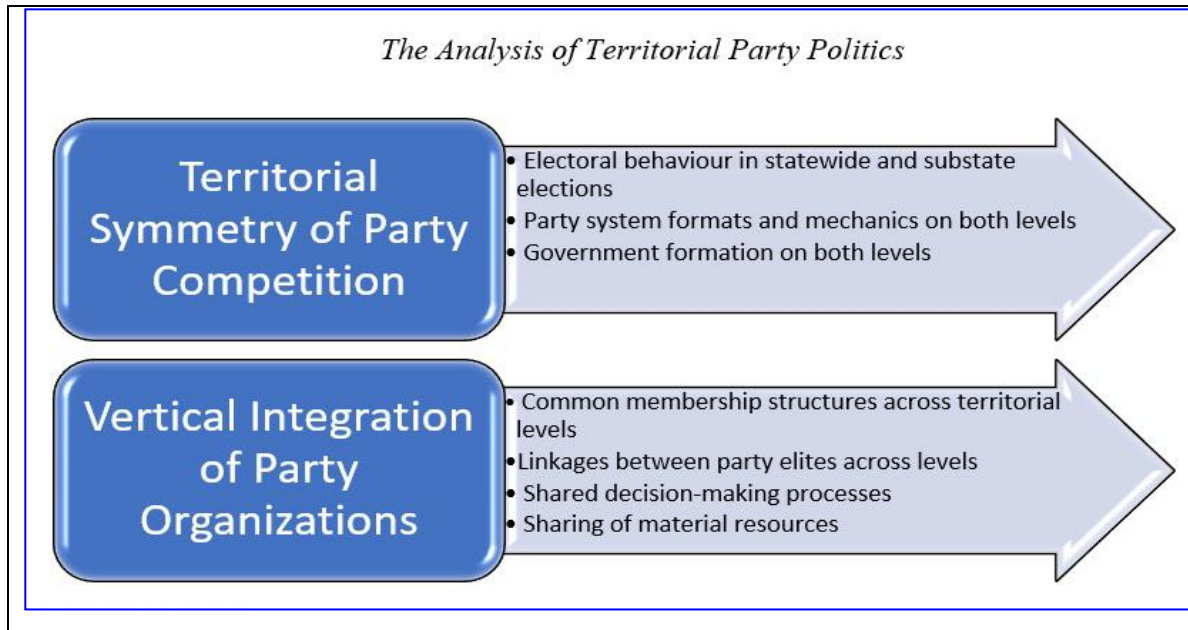
On the basis of his observations of the American federal system Riker posited a general theory which states: “The federal relationship is centralized according to the degree to which the parties organized to operate the central government control the parties organized to operate the constituent governments” (Riker, 1964:129). Party centralization occurs when the leaders of the party which operate the central government are also leaders of the party which operates the constituent governments through subordinate leaders. In such a situation, Riker argued that “all the constitutional and institutional prohibitions guaranteeing constituent governments against federal bargain would be ineffectual” (Riker, 1964:130). If the theory holds, he argued, then “it is the feature of one-partyism that causes the rupture of the federal bargain” (Riker, 1964:131).

²² Riker William (1964), *Federalism, Origins, Operation, Significance*, Boston: Little Brown

²³ Volden, Craig (2004), *Origin, operation and significance: The federalism of William H. Riker*, *Publius: The journal of Federalism* 34:4 (Fall 2004)

The two dimensions on which Riker's theory of the structure of party system is defined are: (i) the degree of symmetry between the national and regional arenas of party competition and (ii) the degree of vertical integration within party organizations. The first dimension, symmetry in party competition, refers to the degree to which political constellations are congruent between territorial levels. In party systems with high levels of symmetry, electoral behaviour is quite similar in the national and state elections as the same kind of cleavages are structuring the different arenas. The less these characteristics are given, the more asymmetrical party competition is. In party systems with low levels of symmetry, there is a more autonomous space for regional politics. Asymmetry in party competition is often associated with the success of regional parties. In many places, regional parties, which focus their agendas on regional empowerment, have been highly important for federalism.

The second dimension, integration of party organizations, looks at the political linkages between different party levels. Integrated parties show a strong degree of formal and informal cooperation across levels which exhibit a unified organization working for common political goals. There is a common membership structure from the local to the state-wide level, linkages between party elites in terms of career movements and mutual representation in leadership bodies, structures of joint decision-making with regard to party programs and strategies as well as a sharing of material resources. Parties in which these characteristics are weak have a low degree of vertical integration.



Source: Political Parties: Driving Federal Dynamics in <http://50shadesoffederalism.com/>

A critique of Riker's theory

Riker's generalized theory of federalism has its fair share of criticism, especially on his conditions for the origin of federation. Dikshit (1975: 223)²⁴ argued that his own study of the federations of West Germany and Austria had demonstrated that Riker's so-called necessary conditions were absent. According to Stepan (1999), Riker focus exclusively on the American model of federation and in the process missed out on federations that emerge from completely different historical and political logic. He chose to examine the modes of federal creation rather than the factors that give birth to democratic federations, and therefore came up with the following two types federal formations: coming together; and holding together²⁵. While the American, Swiss and Australian federations falls in the category of "coming together" federations as they were formed from previously

²⁴ Dikshit, R. D. (1975), *The Political Geography of Federalism: An Enquiry into Origins and Stability*, New Delhi, Macmillan

²⁵ Stepan (1999), mentioned the third type as 'putting together federalism' formed by coercive effort by non-democratic centralizing power to put together a multinational state as in the former USSR.

sovereign units, the Indian federation fits into “holding together” federation as it was created not as the result of an agreement but by an act of the constituent assembly. While contending that Riker’s theory cannot simply be flawed on the ground that all countries actually or potentially face security threats and commending the theory for providing “us with the most effective heuristic tools at our disposal in this subject area” McKay (2004)²⁶, concedes that Riker’s exclusion of the social and economic conditions is too restrictive because these factors were equally important to federal formation.

Riker’s exclusion of the role of underlying social and economic conditions in the formation and operation of federalism has indeed rendered his theory restrictive and awkward to be used for studying federal system such as India. Stressing the importance of these aspects W.S. Livingstone argued:

The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces – economic, social, political, cultural – that have made the outward forms of federalism necessary... The essence of federalism lies not in the constitutional or institutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected (Livingstone, 1956:1-2)²⁷.

The fact that federalism in operation differs across countries and undergoes changes over time reflects the variation and changes in socio-economic conditions. Livingstone (ibid: 4) insists that those who devise institutions can never be sure that the institutions so devised will be adequate to the needs they are designated to fulfill. As the social and

²⁶ McKay, D. (2004): William Riker on Federalism: Sometimes Wrong but More Right than Anyone else? *Regional & Federal Studies*, 14: 2, 167-186

²⁷ Livingstone, William S (1956): *Federalism and Constitutional Change*, Oxford Clarendon Press

economic conditions of groups changed over time, it encourages these groups to put pressures on the federation to adapt to these changes.

Federalism in India

Emphasizing the socio-cultural diversity aspect of the rationale behind federalism, Mukarji and Arora (1992:2)²⁸ argued that the preference for federal ordering arises from the need to accord political recognition of territorially-based social pluralism and to recognize rights of diverse communities to exist as distinctive entities. For a federal system to persist, this recognition of diversity must go simultaneously with strengthening of the strands of unity which runs through all pluralistic societies. The innovative constitutional design of India based on an inherently flexible, resilient and adaptable federal idea have to viewed as a continuing experiment in discovering the manner and extent to which ethnolinguistic diversity should not only be recognized but also assign a role in the politico-administrative system²⁹.

The historical background of Indian federalism could be traced back to the colonial constitutional development in response to the freedom movement and to the nation-wide organization of the Indian National Congress. As organizational framework for integration and mass mobilization, the Congress formed the *pradesh* as basic territorial unit based roughly on ethnolinguistic lines. The organization structure of the Congress therefore constitutes a broad acceptance of the federal principle as the basis for intra-

²⁸ Mukarji, Nirmal and Balveer Arora (1992), *Federalism in India, Origins and Development*, Vikas Publishing House Pvt. Ltd, New Delhi

²⁹ *Ibid*: 2

party organizational and policymaking purposes³⁰. The colonial power, on the other hand, espoused federalism from the perspective of containing the growing popularity of national movement with power sharing on the basis of communal representation and to adjust the autocratic princely states within the system. From the failed federal scheme of the Government of India Act 1935 till independence was dominated by intense negotiations for consensus on the basic nature of India's federal constitution.

Riker's theory and the Indian federalism

Riker's explanation of the origin of Indian federalism is at best a generalize one meant to prove his theory and it has not gone into the background and condition of the federal bargain and parties involved in it. The constitution was indeed deliberated and framed against the backdrop of war with Pakistan over Kashmir and threat on internal security arising out of massive riots and the challenge of integrating over 560 odd princely states into the union. To explain the condition for federal constitutional bargain only in terms of military or security considerations would obviously miss the unique historical, social and political condition under which the India's federal Constitution with all its unique features came to be framed and adopted. While we may not agree with Riker's generalize conditions, existence of the predisposition of parties to bargain and the underlying assumption of self-interested nature of political actors in his theory provides an interesting approach to the subject regarding the formation of the Indian federalism.

³⁰ Ibid: 4

At the time of independence about two-thirds of the geographical area and three-fourths of the population constitutes provinces of British India under the unitary colonial government. Delegates from these provinces came to the Constituent Assembly as members or nominees of a political party - mostly that of the Congress which came to command majority in all the provinces after Partition. They did not come as representatives of autonomous provinces to bargain for provincial interest because the provinces were not autonomous political entities. Even though “there was no dearth of arguments in the Assembly over distribution of powers, over the effects of the Emergency Provisions on federal structure, or over the distribution of revenue, but in general these disagreements concerned techniques as much as federal principles” (Austin, 1966)³¹. Such interventions, however, were inconsequential and does not constitute federal bargain.

Unlike the provinces, the princely states enjoyed some degree of autonomy and they have the Chamber of Princes to represent their collective interests. Further, Cabinet Mission Plan of 1946 provided for constitution of a Negotiating Committee to initially represent them in the Constituent Assembly. The princely states started off with reasonably strong bargaining position as a group of sovereign governments, once Paramountcy lapsed with India’s independence. Large majority of the princely states were small and obviously unviable, but as a group the rulers were in the position to play disruptive role in the highly polarized political environment prevailing till partition which came with independence. It took several rounds of negotiations, beginning from the manner for

³¹ Austen, Granville (1966), *The Indian Constitution: Cornerstone of a Nation*”, Oxford University Press, New Delhi

choosing representatives of princely states to the Constituent Assembly, negotiating the Instruments of Accession and Standstill Agreements, breaking the ranks of rulers by dealing with individual rulers, and dealing with recalcitrant states such as Travancore, Bhopal, Junagadh and Hyderabad, to integrate these princely states within the Union of India. The bargains that started off with the understanding that princely states would be retaining all subjects except defence, foreign affairs and communication³², but concluded with the rulers being stripped off their sovereignty in exchange for Privy Purses and other personal privileges.

The working of Indian federal system, at the outset, appears to be highly influenced by party centralization as posited by Riker and also on power structure within the dominant party. Centralized power structure within the Congress party, according to Santhanam (1960)³³, endorsed the country being governed in similar unitary and centralized fashion, notwithstanding the federal Constitution. In respect of party centralization, literature on Indian federalism have corroborate that the nature of dealing with federal issues during the periods of single party domination in both central and state governments were markedly different from that of multi-party governments and coalition era. The report of the Administrative Reforms Commission observed: “where a single party has control over affairs at the Centre as well as in the States an alternative channel becomes available

³² The terms of the Instrument of Accession signed by the rulers were not uniform. States which had internal autonomy under the British signed an Instrument of Accession which only ceded three subjects to the government of India. Small rulers of states which were in effect estates or talukas, where substantial administrative powers were exercised by the British, signed a different Instrument of Accession, which vested all residuary powers and jurisdiction in the Government of India. Rulers of states which had an intermediate status signed a third type of Instrument, which preserved the degree of power they had under the British.

³³ Santhanam, K (1960), Union-State Relations in India, Bombay

for the operation of Centre-States relationships. In the process, Constitution was not violated but was often bypassed”³⁴. The decline in party centralization after 1967 general election saw the demand of states for structural changes in Indian federalism (Ray & Kincaid, 1988)³⁵. In Tamil Nadu, the DMK government set up in September, 1969 a Committee under Justice Rajmanner to look into the Centre-state relations with reference to the provisions of the Constitution of India and to suggest suitable amendments to the Constitution so as to secure to the states utmost autonomy. In early 1980s regional parties ruling in major the States of Punjab, Jammu & Kashmir, West Bengal, Tamil Nadu, Andhra Pradesh and Karnataka developed a kind of forum to discuss issues such as fiscal relations between the Centre and the States, curbing of President’s Rule, supremacy of States’ power on State’s legislative list and vesting of residuary powers to the States. The Central Government responded with the demands by setting up the Sarkaria Commission, though its voluminous report remained unimplemented.

Coalition era roughly coinciding with economic reforms has kept constitutional aspects on the backburner and brought to the fore competition among the States for attracting investment thereby creating convergence in policy discourses (Sinha, 2004)³⁶. The coalition era post economic reforms had elevated regional parties to prominence, but this did not translate into coordinated demands for State autonomy. The 2014 general elections restored a de facto one-party government. The ruling BJP which pledged to put “centre-state relations on an even keel through the process of consultation” talked in

³⁴ Government of India (1968), Report of the Administrative Reforms Commission Vol.1, (pp.1,2).

³⁵ Ray, Amal and John Kincaid (1988), Politics, economic development and second-generation strain in India’s federal system, Publius: The Journal of Federalism, Vol.18, No.2

³⁶ Sinha, Aseema (2004): The changing political economy of federalism in India: A historical institutionalist approach, India Review, Vol.3, No.1

terms of cooperative-competitive federalism to strengthen collaboration through shared decision making. Commendable success has been achieved in the introduction of Goods and Service Tax (GST) and working of the GST Council which involves arduous process of consensus building for cooperation of all the States. However, means adopted by the Party ruling in the Centre to unseat opposition governments in a couple of States are the manner in which central leadership dictates on its leadership in the States are reminiscent of the Congress under the dictatorial leadership of Indira Gandhi which Sharma and Swenden (2018)³⁷ interpreted as apparent centralizing tendency in political affairs under the current BJP led NDA government.

Analytical framework

This study attempted to explore and analyze the nature of federal bargains in the origin and operation of federalism in India using data derived from archive material, books and literature from various journals. Archival records of the historical circumstances under which the Indian federation was formed, the dominant political parties, the intentions of the founding fathers and institutional designs pursued, key personalities involved in the drafting of the federal constitution and their political and ideological positions are examined from the perspective of federal bargain theorized by Riker. As against the normative approach which rationalizes the preference for federal ordering by the founding fathers of Indian federal Constitution to the need for political recognition of territorially-based social pluralism as manifested in ethno-linguistic diversity, this study

³⁷ Sharma, Chanchal Kumar and Wilfried Swenden (2018), Modi-fying Indian Federalism? Center–State Relations under Modi’s Tenure as Prime Minister”, *Indian Politics & Policy*, Vol.1, No.1

endeavours to investigate on the Rikerian assumptions about self-interested nature of political actors striking the original federal bargain.

The post-constitutional federal bargain in India too is analyzed from Riker's proposition about the structure of party system determining the federal dynamics of oscillation between centralization and peripheralisation. Riker's proposition about party centralization, defined by the degree to which the party controlling the central government exercise control over its party fellows controlling the state governments, and its impact on federal bargain is examined against the internal functioning such as intra-party democracy, the concept of high command etc. of national parties which had formed governments at the Centre. In addition, the rise of regional parties and the dynamics of coalition governments in India's multiparty democracy are considered to have shaped the discourse on federalism in the past. Data derived from books, journals, election and fiscal statistics from official sources are used to analyse the nature of these post-constitutional federal bargains. Guiding the exploration of the nature of federal bargains in India are the following research questions and hypotheses.

Research questions and hypotheses

Consider the theoretical assertion on federal bargain that a federation is the result of a bargain struck between two principal parties: those predisposed to offering the bargain and those predisposed to accepting it (Riker, 1964:12). And the political actors in the bargain are self-interest driven individuals (Volden, 2004). Then the constitutional design

will reflect the relative bargaining powers of the parties across the table as well as the self-interests of the key personalities framing the federal constitution.

Secondly, federalism is maintained by sustaining the federal bargain so as to avoid its rupture into either disintegration or unitary system. And federal bargain is maintained by the structure of party system which may be centralizing or peripheralising. Given the convention of party discipline, the nature of federal bargain would be determined by the structure of party system defined as territorial symmetry of party competition and vertical integration of party organisations..

According to Riker, federalism is a device for territorial expansion, but in operation he observe that “federalism make no particular difference for public policy” because in “contemporary federal and unitary governments and their public policy are more like each other” (Riker, 1975:143). Though his proposition is refuted by the works of various scholars, the fact that federal system presents both opportunities and constraints in a democratic polity and that federalism has its benefits and pitfalls are evident the works of various scholars. On the benefits of federalism, Tiebout (1956)³⁸, Buchanan (1995)³⁹ and Weingast (1995)⁴⁰ have argued that federalism fosters horizontal competition and improves efficiency in provision of public goods, counterbalances the excesses of the central government and a well-designed federal system serves to preserve market forces.

³⁸ Tiebout, C, (1956), A Pure Theory of Local Government Expenditure, *Journal of Political Economy*, vol.64

³⁹ Buchanan, J.M (1995), Federalism as an ideal political order and an objective for Constitutional Reform, *Publius: The Journal of Federalism*, 25(2)

⁴⁰ Weingast, Barry R, (1995): “The Economic Role of Political Institutions: Market Preserving Federalism and Economic Development”, *Journal of Law, Economic and Organisation*, vol. 11, (pp. 1-31)

Cai and Treisman (2004)⁴¹, on the other hand, showed that constraints imposed by subnational governments, sharing of power and revenues across multiple levels of government leads to “state corroding federalism.” Considerations of these possible contrasting outcomes of federal system have been observed in the Constituent Assembly and are found continue to remain, though at a much lesser degree, in the post-constitutional operation of Indian federalism.

⁴¹ Cai, Hongbin and Daniel Treisman (2004): State Corroding Federalism, *Journal of Public Economics*, 88(3-4)

CHAPTER 3

THE NATURE OF FEDERAL CONSTITUTIONAL BARGAIN IN THE FORMATION OF INDIAN FEDERALISM

The primary lesson of India's history is that, in this vast country, only that polity or system can endure and protect its unity, integrity and sovereignty against extreme aggression and internal disruption, which endures a strong centre with paramount powers, accommodating, at the same time, its traditional diversities. Report of Sarkaria Commission, 1988: p.7

The Constituent Assembly to frame the Constitution of India was constituted on the basis of the Cabinet Mission Plan of May 16, 1946. The Assembly had initiated its deliberations within the framework of the Plan despite the Muslim League's boycott. Ultimately, the Plan did not survive; but the delegates to the Assembly elected by the Provinces remains the constituent body, the national legislature and the basis for forming an Interim Government of India. The composition of the members, however, underwent substantial change after Partition.

The principles of the Cabinet Mission Plan of May 16, 1946:

The future constitution structure would be – A Union Government dealing with Foreign Affairs, Defence and Communications. There will be two groups of Provinces, one predominantly Hindu Provinces and the other predominantly Muslim Provinces, dealing with all other subjects which the Provinces in the respective groups desire to deal be dealt with in common. Provincial Governments will have all the residuary sovereign rights. In respect of Princely States, it was contemplated that the States would take their appropriate place in this structure on terms to be negotiated with them.

Composition of the Constituent Assembly

The Constituent Assembly, in the words of Granville Austin (1966:8)⁴² “was a one-party body in an essentially one-party country.” Following Partition the Congress commands overwhelming majority of 82 per cent of the seats allotted to the Provinces, and rest the seats were occupied by members from the Muslim League, Akali, Communist and Independents. It was Congress in the Constituent Assembly; Congress in the Central Government; and Congress in the Provincial Governments. Austin (1966: 9)⁴³ sums up the situation as, “The Assembly, the Congress and the government were like the points of a triangle, separate entities, but linked by overlapping membership, they assumed infinitely meaningful for India.”

The members to the Constituent Assembly were elected by the members of Provincial Assemblies who were elected in early 1946, under the 1935 Act, by a restricted electorate of just about 28.5 per cent of adult population. The mass of peasants, small traders and economically and socially depressed sections were disenfranchised by exclusion from the electoral rolls through tax, property and educational qualifications. Under such electoral system it is obvious that the Provincial Assemblies were, in today’s standard of universal adult franchise, hardly representative. Apart from being a one-party body, the Constituent

⁴² Austin, Granville (1966), *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, New Delhi

⁴³ *ibid*

Assembly was constituted by members elected by these barely-representative Provincial Assemblies.

It's the Congress central leadership's call

To make it a more socially representative body, the Congress had nominated few members from small minorities such as Parsis, Anglo-Indian, Indian-Christians, Scheduled Castes and Tribes which were not included in the scheme of communal representation. The Congress also got the Provinces nominate eminent persons and experts in administration, law, and constitutional law to the Assembly to utilise their expertise and to ensure that all shades of public opinion were represented in the Assembly. They include non-Congressmen such as A.K. Ayyar, H.N. Kunzru, N.G. Ayyangar, B.R. Ambedkar, K. Santhanam, M.R. Jayakar, Sachhidananda Sinha and K.M. Munshi.

The functioning of the Congress party has shown signs of party centralization in the way central leadership had controlled the provincial leaders which, according to Riker is an indication of centralizing thrust in a federal polity. In deciding representatives to the Constituent Assembly, the Congress Working Committee had issued directives to Provincial Congress Committee (PCC) regarding the names to be included. Communications were sent to Provincial Congress Committees to the effect that, for example: United Province PCC should include Nehru, Pandit Pant, Acharya Kriplani, Sir Tej Bahadur Sapru and H.N. Kunzu; Bihar PCC should include Mrs. Sarojini Naidu,

Rajendra Prasad; Madras PCC should include Pattabhi Sitaramayya, Rajagopalachari, A.K. Ayyar, N.G. Ayyangar, K. Santhanam and B. Shiva Rao and so on..(Austin, 1966:12). While party centralization in such a one-party polity is not unusual, what is surprising under the circumstance was that the Constituent Assembly should adopt a federal constitution.

Provincial leaders of the Congress silenced

The members of the Constituent Assembly include Premiers (Chief Ministers) of Provinces such Pandit Pant of United Province, T. Prakasam of Madras, B.G. Kher of Bombay, Harekrishna Mahtab of Orissa, Krishna Sinha of Bihar, P.C. Ghosh of West Bengal and Gopinath Bordoloi of Assam. But as members of Congress party, they did not represent provincial interest as such. Except for certain technicalities relating to power and revenue assignments, these provincial leaders hardly intervene in the Constituent Assembly debates. Even on those technicalities and specific provisions considered disadvantageous for the provinces they had to ultimately toe the party line. For example, on the issue of Governor's emergency power Pandit Pant held a view sharply different from Assembly leadership. However, when the proposal was moved, Pant, in obedience to the Whip, did not oppose the official position. In other instances like inclusion of forest, education and labour in concurrent list, Pant and Kher initially opposed the proposal made by the Union Ministers. However, the Union Ministers with the backing of Nehru managed in getting substantial part of their demands (Austin 1966:200).

After the declaration of Independence on 15 August, 1947, the Constituent Assembly became a sovereign body and also doubled as the Union legislature in which the leadership played the dual role of being Ministers in the Union Government as well as members of the Assembly. The administrative issues and problems encountered by the Government have their direct impact on the federal Constitution, especially on the distribution of legislative powers between the Centre and the Provinces. Given the flexible approach adopted by the Assembly, the allocation of a social or economic subject in either to the Union List or the State List or the Concurrent List involves prior negotiation between the Union Ministry and the provincial leaders within the Congress party. In these negotiations the Union Ministers, with the support of the Central leadership, usually have the upper hand over the provincial leadership. “With agreement on the lists reached by the heads of the union and provincial governments, the debate in the Assembly was of little consequence.”⁴⁴

Parties without official representatives

A notable aspect in the composition of Constituent Assembly was the absence of official representation of three political parties, viz., the Communist Party, the Socialist Party, and the Hindu Mahasabha. The elected representative of Communist Party from Bengal lost his seat with Partition. The Socialist Party did not take part in the Assembly as its leaders doubt the sincerity of the Cabinet Mission Plan. Later on its leader Jayaprakash Narayan made an overture for accommodation of some leaders, but none of them got nominated. In case of Hindu Mahasabha, its M.R. Jyakar and S.P. Mukherjee were

⁴⁴ Austin, 1966; p.201

nominated by the Congress and N.B. Khare entered the Assembly as member for the Princely State of Alwar. Since these parties, like the Congress, were in favour of centralized polity, their absence is of no particular significance on federal aspects of the Constitution.

The Congress took great pains to ensure fair representation in Constituent Assembly and inducted non-Congress experts in the project of framing Constitution for the nation. The contributions of these individual experts were, no doubt, immense. Representatives of small minorities had their voices heard in the Assembly. But when it comes to the federal aspects of the Constitution, the defining factor was the overwhelming dominance by the Congress party and its structure; supplemented by the absence of provincially-based political party. At the time of Constituent Assembly, the Centre and all the Provinces constituting two-thirds of India was ruled by a considerably centralized Congress party. The Muslim League which championed provincial autonomy was near defunct after Partition and for its few remaining members in the Assembly it became prudent option not to quarrel with the Congress policies, but to turn to its leadership for protection their interests. Given the political circumstances in this segment of Indian polity, federal bargains if any, would only be in the form of negotiated settlements amongst the leaders of the Congress.

The priority of nation building

Until Partition, the constitution for independent India was visualized in terms of a loose federation as a compromise formula between the Congress and the Muslim League. The Union Powers Committee, chaired by Nehru, which, till Partition, tried to squeeze in as much related elements possible within the three subjects of defence, foreign affairs and communication assigned to the Centre under the Cabinet Mission Plan of May 16, 1946 presented its supplementary report on 20th August, 1947 proposing a strong central authority. In his forwarding the report of Union Powers Committee to the President of the Constituent Assembly, Nehru, the Chairman of the Committee, wrote:

The severe limitation on the scope of central authority in the Cabinet Mission's Plan was a compromise accepted by the Assembly much, we think, against its judgment of the administrative needs of the country, in order to accommodate the Muslim League. 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 would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere. At the same time, we are quite clear in our minds that there are many matters in which authority must lie solely with the Units and that to frame a constitution on the basis of a unitary State would be a retrograde step, both politically and administratively. We have accordingly come to the conclusion – a conclusion which was also reached by the Union Constitution Committee – that the soundest framework for our Constitution is a federation, with a strong Centre.⁴⁵

Before coming out with their recommendation for 'federal constitution with strong centre', the Union Powers Committee and the Union Constitution Committee held a joint session considered and put to vote three options: a unitary State with provinces

⁴⁵ C.A.D Vol.5, p.58

functioning as agents and delegates of Central authority, or federation of autonomous Units ceding certain specific powers to the Centre, or a federal union with strong Centre. The members voted for the third option of federal union with strong Centre.

The unitary bias of the founding fathers, according to Bhattacharya⁴⁶ lies in the national movement which focuses on national emancipation, laying emphasis on integration and national strength. Their vision of building India into a developed and modern society was based on the assumptions of strong central authority. With Partition, the Constituent Assembly was no longer bound by the limitations accepted earlier by the Congress in order to accommodate the Muslim League. Another influence towards centralization was the communal problem which subsequently took federal form leading to Partition which was still fresh in the minds of the leaders. In such an environment the cause of provincial autonomy got inevitably linked to communalism as divisive forces to be contained in order to maintain unity of the country. Strong Centre was, indeed, necessary to deal with the challenge of integrating the Princely States, containing communal riots and to handle resettlement of refugees and food shortage of the times.

Despite the prevailing political environment and the existence of sufficient compelling reasons for unitary government, the joint meeting of Union Powers Committee and Union Constitution Committee voted for federal constitution observing that “unitary State would be a retrograde step, both politically and administratively.” Why was a unitary State considered a retrograde step? May be it was seen as undoing the progress made by

⁴⁶ Bhattacharya, Mohit (1992), *The Minds of the Founding Fathers*, in *Federalism in India – Origins and Development*, Mukherjee, Nirmal and Balveer Arora (eds.), Vikas Publishing House Pvt. Ltd., New Delhi.

provinces is running their own affairs or perhaps, because provincial governments were seen as an integral part of responsible government which the Congress had been demanding from the British Government. Though the concept of strong Centre went unchallenged, it may be the case that a unitary government was not politically feasible as because the 1935 Act had given the provincial politician a taste power, which according to Morris-Jones, “was unlikely that these men, when they came to form significant proportion of the members of the Constituent Assembly...would allow much talk of a purely unitary constitution.”⁴⁷

The nature of bargain with the Princely States

Unlike the Provinces, the Princely States, once Paramountcy lapsed, were sovereign governments. Integration of these States to the Union, therefore, presented the Assembly with the federal problem in its most familiar form. The basis for negotiations with the Princely States was incorporated in the Cabinet Mission Plan which proposed that Paramountcy could not be transferred to the Government of India but expected the States to cooperate in a form which would be a matter for negotiation. The States were to retain all subjects and powers other than those ceded to the Union, namely, foreign affairs, defence and communication and to have 93 seats in the Constituent Assembly. But in the preliminary stage they were to be represented in the Constituent Assembly by a Negotiating Committee.

⁴⁷ Morris-Jones, Parliament in India, p.17, as quoted in Austin (1966), p.193

The Negotiating Committee constituted by the Princes basically represented the Chamber of Princes headed by the Nawab of Bhopal as its Chancellor. While the Negotiating Committee was still in the process of defining the States' position, the Constituent Assembly on its part formed the States Committee to negotiate with the Negotiating Committee and adopted the resolution that Indian Union would include the States in the federal the framework proposed by the Cabinet Mission Plan and that democratic governments should be introduced in the States.⁴⁸ The Princes on their part, put up conditions such as, their participation in the Assembly would not imply a commitment to join the Union, the Assembly would not interfere in the internal administration of the States and the Assembly's negotiations with the States should be only through the Negotiating Committee. Nehru, who was already uncomfortable with the idea of the Assembly negotiating with the Negotiating Committee representing the Princely States rather than the representatives of the people, asserted that the Assembly did have the right to deal with individual States. The democratic principle apart, the stand taken by Nehru proved to be crucial for breaking the unity among the Princes. On the issue of joining the Assembly itself, the Princes could not arrive at consensus: Bhopal was opposed to joining the Assembly while Baroda, Patiala and Bikaner decided to join the Assembly; Travancore declared its intention of forming an independent State. As the situation became chaotic, the Interim Government established the States Ministry headed by

⁴⁸ Objectives Resolution moved by Nehru in the Constituent Assembly reads: ...the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and wherein the said territories,.....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; and....all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people;

Sardar Patel to deal with integration of the States to the Union. Thereafter, the Assembly's role was reduced to that of ratifying and incorporating in the draft constitution the agreements reached between the States Ministry and the Princes.

The Congress had expressed its demand for "introduction of responsible government based on representative institutions" in the States way back in 1928 at its Calcutta Session, though it chose not to interfere in the affairs of the States. Nehru, however, was closely associated with the All India States Peoples' Conference and regarded most of the States as "sink of reaction and incompetence". The main objection of the Congress to the federal part of the 1935 Act was the proposed incorporation of semi-democratic Provinces with feudal and autocratic monarchies. In Lucknow Session of the Congress held April, 1936 he observed:

So far as we are concerned, we shall fight against it to our utmost strength, and the primary object of our creating deadlock in the provinces and making the new Act difficult of functioning, is to kill the federation. With the federation dead, the provincial end of the Act will also go and leave the slate clean for the people of India to write on. That writing, whatever it be, can never admit the right of the Indian States to continue as feudal and autocratic monarchies....⁴⁹

The official policy of the Congress towards the Princely States took clear shift at the Haripura Congress in 1938 where it passed that resolution that:

The Congress stands for the same political, social and economic freedom in the States as in the rest of India and considers the States as integral parts of India which cannot be separated. The Purna Swaraj or complete independence, which is the objective of the Congress, is for the whole of India, inclusive of the States, for the integrity and unity of India must be maintained in freedom as it has been maintained in subjection.

⁴⁹ Jain, M.P (1977), Nehru and the Indian Federalism

This shift in policy has been explained in terms of Congress' concern about the possible impact of Princely States in the federation proposed by the government. Following the Haripura Congress, serious attempts were made to establish connections with the umbrella organization of All India States Peoples Conference that had by then emerged as a coordinating body to conduct the agitation against princely autocracy. As British withdrawal from India became evident, there arose inevitable confrontation between the monarchical Princely States trying to preserve their position and the Congress which was dedicated to establishment of responsible government throughout the country. Most of the Princes were, therefore, uneasy with the Congress.

As per the Cabinet Mission Plan, the Princely States were allotted 93 seats to the Constituent Assembly and the method of selection of representative was to be determined by consultation. One of the first bargains that had to be struck was the manner of choosing the States' representatives to the Assembly. On this issue, Nehru had, earlier expressed his annoyance with the idea of negotiating with the Negotiating Committee representing the Princely States, but the first meeting with the Negotiating Committee held in February, 1947, he made a significant climb down by assuring the Princes that deliberations must be on the basis of the Cabinet Mission plan which was accepted by the Congress⁵⁰. This assurance had helped ease the situation and the negotiations produced an agreement according to which not less than 50 per cent of each State's representatives were to be elected and the remaining could be nominated by the rulers.

⁵⁰ Jain, M.P. Nehru and the Indian Federalism

After the States Ministry took over the task of negotiating with the Princely States, the Ministry along with the Viceroy and Princes prepared an Instrument of Accession and a Standstill Agreement to be negotiated and signed between the Princes and the Ministry. The Standstill Agreement was basically a negotiating instrument which provided that the relations existing between the Union Government and the States would remain in force until altered by mutual agreement. The Viceroy, Mountbatten played the key role in bringing the States to the bargaining table by engaging in lengthy private negotiations and forceful persuasive speeches to the Chamber of Princes; reminding them, “you cannot run away from the Dominion Government that is your neighbor any more than you can run away from the subjects for whose welfare you are responsible.”⁵¹ By Independence Day, according to Austin (1966), all States excepting Hyderabad, Kashmir, Junagadh and two insignificant ones had joined the Union, ceding as a minimum of their authority over defence, communication and foreign affairs.

But the bargaining process was far from over. By the Instruments of Accession alone India would be a loose federation, with significant differences in administration and governance across the various States. The process of political integration of hugely diverse States involved negotiations and renegotiations between individuals States and the States Ministry, of the terms of the agreements so that the assigned powers of the States become comparable with that of the Provinces. Using various devices, the States Ministry undertook merging or “unionization” of States, democratization and centralization. The first step in this process was to convince groups of large States to combine to form a Princely Union through the execution of Covenants of Merger.

⁵¹ Munshi, K.M, Pilgrimage to Freedom, quotes p.150 cited in Balraj Krishna, 2005, p.321.

The Covenants of Merger made provision for creation of a constituent assembly for the Princely Union, Privy Purse for the rulers and the posts of Rajpramukh and members of the Council of Rulers and Presidium. The next step involves the process of democratization in which rulers of states were to take practical steps towards the establishment of popular government. For this a special Covenant was signed by the Rajpramukhs of the merged Princely Unions, binding them to act as constitutional monarchs. To bring the States within the centralized Constitution, a meeting was held in May 1948 at the end of which the Rajpramukhs signed new Instruments of Accession which gave the Government of India the power to pass laws in respect of all matters that fell within the Federal Legislative List in the Seventh Schedule of the Government of India Act 1935. Then in a conference of the Provincial Premiers and Rajpramukhs of Princely Unions with the States Ministry held in May 1949 decided that no separate constitutional should be framed by Provinces and Princely Unions, but a constitution for all the Provinces and Unions should be included in a special chapter of the Constitution. Thus, all the Princely Unions, as well as the non-unionised States were brought under the Constitution of India.

“Thus the rulers surrendered their sovereignty and as a quid pro quo they were granted handsome Privy Purses and other privileges”. Dewan Jarmani Dass of Kaputhala
https://en.wikipedia.org/wiki/Privy_Purse_in_India

The process of integration of Princely States to the Union began with federal bargain between the Government of India and the Princes on the basis of Cabinet Mission framework of loose federation. Instruments such as Standstill Agreement and Instrument

of Accession were employed at initial stage to make the States join the Constituent Assembly and to further engage in negotiation with them. The ultimate outcome of the negotiations has suggested, as Copland observed, that the Congress leaders did not intend the settlement contained in the Instruments of Accession to be permanent even when they were signed, and at all times privately contemplated a complete integration of the sort that ensued between 1948 and 1950.⁵²

Apart from the military might of the Indian Government and “the facts of geography”, a significant factor in the political integration of Princely States was the mass following that Congress had in most of the Princely States. This acted not only as a force against balkanization of India, but also as a force towards constitutional uniformity across the country. That centralized uniformity was considered necessary for India to fight against fissiparous tendencies and preserve the unity, to achieve social and economic development.

Some important figures in the Constituent assembly

An important aspect of Riker’s theory of federalism is the underlying assumption about the self-interested nature of political actors whose actions are influenced by incentives within the institution. While the preference for federal ordering may be decided by the socio-political circumstance and the form it takes in the constitutional framework is likely to be highly susceptible to personal tastes, biases and prejudices. Individuals involved in

⁵² Copland 1997; p.264

the project cannot be expected to be working behind Rawlsian “veil of ignorance”⁵³, but have certain assumptions about their post-constitutional positions in the society. This section briefly deals with two key persons in the Constituent Assembly, namely Nehru and Ambedkar.

Austin (1966) identified 21 important figures in the Constituent Assembly, of which 20 including Ambedkar were Congress nominees⁵⁴, one Muslim League (Saiyid Mohammed Saadulla) and one was not a member (B.N. Rau) of the Assembly. Among these, Nehru was Chairman of three Committees, viz., States Committee, Union Powers Committee, and Union Constitution Committee; and Ambedkar was Chairman of Drafting Committee and member of three other Committees.

Jawaharlal Nehru, Congress leader and head of the Interim Government

Nehru was a fierce nationalist, a vivid modernist and a staunch democrat in belief and practice. The nationalist and modernist in him were impatient to built India into a strong modern nation, the route to which, he believe, was through centralized planning. Obviously, the orthodox federal principles are not compatible with this development strategy. But the democrat in Nehru stood for mutual accommodation, consensus and participatory government which constitute the foundation of a federal democracy. The compromise of these contrasting ideals found its mark in flexible federal Constitution of

⁵³ Rawls, John: A Theory of Justice, 1999

⁵⁴ Ambedkar was initially elected from Bengal representing Scheduled Castes Federation of India party, but lost his seat as the constituent falls in East Pakistan after Partition. He was later nominated to the Assembly by the Bombay Congress.

India. Subsequently, Nehru found to have observed: “This is too large a country with too many legitimate diversities to permit any so-called ‘strong man’ to trample over people and their ideas.”⁵⁵

However, as a politician Nehru and the other Congress leaders considered the Congress as the only legitimate organization representing Indian nationalism and did not or refused to accept the Muslim League as another force till as late as the 1946 Provincial elections. According to Jaswant Singh, prior to Partition and Independence, “Nehru...unlike the commonly held perception he was not then any multi-cultural pluralist, he did indeed stand for equal right, but accompanied by majority rule resulting in secular governance with uniform and equal citizenship.”⁵⁶ Realising the difficulty of implementing a uniform citizenship, the Constitution of India incorporates asymmetric federalism by accommodating State specific provisions.

Nehru was an undisputed national leader anointed by Gandhi, commanding the Congress which was the only all India party, post Partition. His perspective of operating the Constitution would accordingly be from the perspective of a Central leadership. Similarly, the Congress was perceived as the party to form government both at the Centre and the States. Commenting on the invocation of Art.356 on non-Congress State governments during Nehru’s life itself, Sir Megnad Desai observed: “The problem was, of course, that while framing the Constitution, the firm expectation was that Congress

⁵⁵ Mukherjee, Pranab (2014), “The Man Who Saw Tomorrow, Pranab Mukherjee on Nehru”, The Week, May 18, 2014; <https://www.theweek.in/webworld/features/society/the-man-who-saw-tomorrow.html> accessed Feb.12, 2019.

⁵⁶ Singh, Jaswant (2009), Jinnah-India-Partition-Independence, Rupa & Co., New Delhi

would rule at the centre and in all the States and forever. The arrangements were for a single centralized federation however contradictory that may sound.”⁵⁷

Dr. B.R. Ambedkar, Chairman of the Constitution Drafting Committee

Federalism is basically a political system to accommodate territorially-based social pluralism. Social cultural diversity in India has many dimensions and territorially-based linguistic diversity is only one aspect. Ambedkar represents in the Constituent Assembly and outside, the interest of a dimension of diversity; that of the untouchables who lived under abject social oppression within the Indian society. Federalism cannot address this vertical diversity within the society and at times local governments may even endorse social oppressions or stand in the way of reforms. Therefore, Ambedkar was never enthusiastic about federalism.

He expressed his views in his Kale Memorial Lecture at Gokhale Institute of Politics and Economic in 1939 thus: “I am not opposed to a federal form of government. I confess I have a partiality for a unitary form of government. I think India needs it”⁵⁸. He maintained the same stance in the Constituent Assembly: “I like a strong united Centre, much stronger than the Centre we had created under the Government of India Act of 1935.”⁵⁹ The community whose interest Ambedkar was concerned, existed as marginal social group alongside more advanced communities without any specific provincial or territorial concentration. For such a community, strong central government that could

⁵⁷ Desai, Meghnad (2009): *The Rediscovery of India*, Penguin Books India Ltd., New Delhi p.333,334.

⁵⁸ Bhattacharya, M (1992): *The Minds of Our Founding Fathers*

⁵⁹ Ibid

protect them from the oppressive immediate local government would naturally be preferable.

A remarkable feature in the framing of the federal Constitution of India was the relative absence of federal bargain in the sense of conflict between the centralizers and the provincialists. In case of Princely States, the negotiations were carried out by the States Department outside the Assembly and by the time the rulers' representatives enters the Assembly, the business pertain to ratification and incorporation of the terms of the agreements. This, however, does not mean that the issues were not debated. In fact, there was no dearth of brilliant arguments by individuals on the federal principle. For example, when the report of the Union Powers Committee came for discussion in the Assembly, K. Santhanam observed:⁶⁰

As a member of the Central Legislature, I have always wanted more money for the Centre. If you put me in the provincial legislature, I would want more money for the provinces. The spirit of the corporation is something irresistible. It overpowers us and overcomes us. Therefore, we should see that the Centre is not allowed to infringe upon the power of the State.

Mutual trust and total faith in Central leadership appears to be the pervading mood of the time as Austen observed, "In twenty memoranda from provincial governments to the Assembly about sales tax and on distribution of revenues, each placing the strongest possible claim for increased funds, no provincial government couched its demands in terms of protecting its autonomy or states right"⁶¹. The atmosphere of goodwill at that period of time was presumed to continue as President of the Assembly, Rajendra Prasad

⁶⁰ CAD Vol.V, pp.5.

⁶¹ Austin, 1966; p. 234

said, “I do not anticipate that there will be any tendency on the part of the Centre to grab more power than is necessary for the good administration of the country as a whole”⁶².

⁶² CAD, vol. XI, 26 November 1949.

CHAPTER 4

THE NATURE OF POST-CONSTITUTIONAL FEDERAL BARGAIN IN INDIAN FEDERALISM

It is a recurring feature of Indian political history that only a charismatic leader with a simple appeal can unite the subcontinent or any of its larger peoples for a political purpose, Paul Brass, 1994; 26

Politics and federalism in post-Independent India have usually been studied in terms of Nehru or Nehru-Shastri period, Indira Gandhi period and Coalition period etc.⁶³ because of discernible differences in leadership style and the conduct of Centre-State relations. The role played by Prime Minister, apart from political party found significant importance in the parliamentary tradition of India because the exercise of executive as well as legislative authority rests with the Prime Minister and cabinet. From the perspective of federal politics would be the degree to which the party ruling in the Centre dominates in State Government governments because the nature of Centre-State is highly dependent on inter party competitions.

The nature of federal bargain during Nehru-Shastri period

The period from independence to 1966 coinciding with Nehru-Shastri era is usually described as co-existence of a strong central leadership with strong states, despite significantly stronger constitutional and political power of the Central Government. State

⁶³ Brass, Paul. R (1990): The Politics of India Since Independence; Ray and Kincaid (1988): Politics, Economic Development and Second-Generatiob Strain in India's Federal System

and central politics were largely autonomous, except for the central leadership of the Congress playing arbitrating and mediating roles between competing factions of the state Congress parties. According to Brass, “under Nehru, a strong central government coexisted with strong states and powerful state leaders in a mutual bargaining situation in which ultimate authority existed in Delhi.”⁶⁴ This was possible because of Nehru’s unchallenged leadership, Congress’ dominance of both the Centre and state politics and the composition of party leadership which still consist of leaders of independence movement and urban professionals.

Riker’s observation that federal bargain is maintained not by the letters of constitution, but by the structure of party system is apparently borne out by Indian experience. But those who looked to the constitutional scheme of federal arrangement were understandably disappointed as Centre-State issues were often played out within the ranks of the Congress party. According to Santhanam (1960)⁶⁵, centralized power structure within the Congress party endorsed the country being governed in similar unitary and centralized fashion, notwithstanding the federal Constitution. Administrative Reforms Commission in its report made similar observation: “where a single party has control over affairs at the Centre as well as in the States an alternative channel becomes available for the operation of Centre-States relationships. In the process, Constitution was not violated but was often bypassed”⁶⁶.

⁶⁴ Brass, 1990; p.37

⁶⁵ Santhanam, K (1960): “Union-State Relations in India

⁶⁶ Report of the Administrative Reforms Commission, (pp.1,2).

The dominance by Congress and centralisation project under Nehru was needed for political integration and development of loyalties to the Indian nation rather than subnational identities. But the reluctant recognition of diversity resulted in a lack of coherent policy frame for integrity and political expediency frequently became the guiding principle in the response to violent pressures and protests from below such as the demand for state on linguistic line. While party central is important for strengthening the Centre, its consequence can be seen in the lack of responsiveness to subnational assertions and demands.

The nature of federal bargain during Indira Gandhi period

The internal structure of Congress party came under severe strain after Shastri's death in 1966 following the open contest between Indira Gandhi and Morarji Desai for leadership. This strain created factions not only at the central leadership, but also at the states where party factions sought to strengthen their positions. As the result, Congress party suffered serious defeat in the 1967 elections and subsequently in 1969 the party split into two. The crises within the Congress also coincides with the emergence of non-Congress governments major states such as Tamil Nadu, Punjab, UP and West Bengal.

Indira Gandhi won the 1971 Lok Sabha elections, but the Congress party's dominance in state governments that marked the Nehru era was never regained. This has resulted in frequent conflicts between Centre and states, which, according to Ray and Kincaid⁶⁷, are

⁶⁷ Ray, Amal and Joh Kincaid (1988): Politics, Economic Development and Second-Generation Starin in Indian Federal System

observed in two distinct strains, namely, the number of times emergency powers provision of Art.356 of the Constitution was invoked to clamp central rule, called President's rule, onto states; and the nature of state demands. Article 356 of the Constitution provides that if the President of India finds, on the basis of report from the Governor of a state or otherwise that "a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution" he may, by proclamation, to the national executive and legislature all powers and functions pertaining to the state government.

During the first 10 years, i.e., 1967 to 1976, of India Gandhi's rule, President's rule was invoked 36 times as against 9 times during the Nehru period of 15 years between 1950 and 1965. Apart from the frequency, the duration of President's rule has also increased; on 17 occasions the duration exceeds and on additional 4 occasions it extends 2-3 years. The duration of President's rule, according to Art.356, is for six months unless extended by the Parliament.

The nature of state demands and method of raising Centre-state issues had undergone drastic change. During the Nehru-Shastri period, state demands were confined to matters of fiscal relation and operational aspects of federalism, such as share in central transfers and the role of Planning Commission in relations to the Finance Commission. These demands basically pertain to reinforcing constitutional constraints on the national government were dealt within the Congress party.

State demands during Indira Gandhi have been directed toward bringing about structural changes in Indian federalism and they emanated from non-Congress (I) ruled states. The demands have four distinctive features. First, the Constitution should be changed so as to give the states a substantive measure of independent power and financial resources. Second, on matters that affect the states, constitutional arrangements should be provided to ensure a vital role of the states in decision making. Third, institutional checks should be put in place to prevent improper use of Article 356 by the national government.

The Rajmanner Committee Report

The outcome of 1967 election was the loss of Congress party's hold in eight states: U.P., Bihar, Orissa, Tami Nadu, Kerala, Rajasthan and Punjab. Not only the Congress party lost the state assembly elections, but also its strength was reduced at the Centre. The result was that Congress government at the Centre had to face serious challenging demands by several non-Congress governments, and a strong opposition for more autonomy to the state. The demand for more power to states assumed suddenly enlarged proportions. A new interpretation of Centre-State relations became necessary because the claim of Non-Congress State governments manifested the basic problem of Indian diversity, a completely new facade of ideological differentiation and political divergence between the Centre and the opposition ruled States.

The Tamil Nadu government led by DMK leader Karunanidhi, announced to set up a committee under justice Rajmanner to look into the Centre-state relations on September 22, 1969. The Committee was asked to examine the entire question regarding the

relationships that should exist between the Centre and states in a federal set up with special reference to the provision of the Constitution of India and to suggest suitable amendments to the constitution so as to secure to the states utmost autonomy.

The Rajmannar report in its submission observed that a theme of subordination of the states runs right through the constitution. The committee was of the view that the situation has materially changed since the framing of the constitution and the states were not prepared to be treated like school-boys by head-master. Hence, in order to ensure autonomy for the states, the Committee recommended certain drastic changes in the constitution. The recommendations includes, a review of the entries under Union List and Concurrent List in Seventh Schedule of the Constitution; vesting of residuary power of legislation and taxation in the state; equal representation of states in the Rajya Sabha; immediate establishment of inter-state council as provided under Article 263 of the Constitution; and changes in the assignments and revenue sharing to enhance financial autonomy of states etc. The report of Rajmannar Committee was ignored by the Central Government and it also did not attract much public attention.

The landslide victory of the Congress in 1971 mid-term election to the Lok Sabha and recapture of powers in major states in the 1972 states Assembly elections made Indira Gandhi the unquestioned leader of the party and the nation. Indira Gandhi had been observed to have ruled in a highly personalized and centralized manner by dictating on the organizational wing of the Congress party and handpicking persons loyal to her for state chief ministers. The period marked general decline in political institutions as the ruling regime increasingly rely on populist techniques of mass manipulation and had

become intolerant of old institutional restraints. These techniques of the Congress were emulated by other parties. “The overall consequence, according to Ray and Kincaid, has been a growing substitution of personal for institutional channels of communication and decision making⁶⁸ .



The centralize control and authoritarian approach of Indira Gandhi was or of an expression of insecurity rather than a command over the party and the national political process. In fact during the Emergency period spanning almost two years, India came under a unitary government. However, excesses on the part of central government generate strong political opposition driven partly by the sense of insecurity of the states on the existing safeguards and federal institutional mechanism provided in constitution. The method of centralization adopted by the Centre government has not achieved party

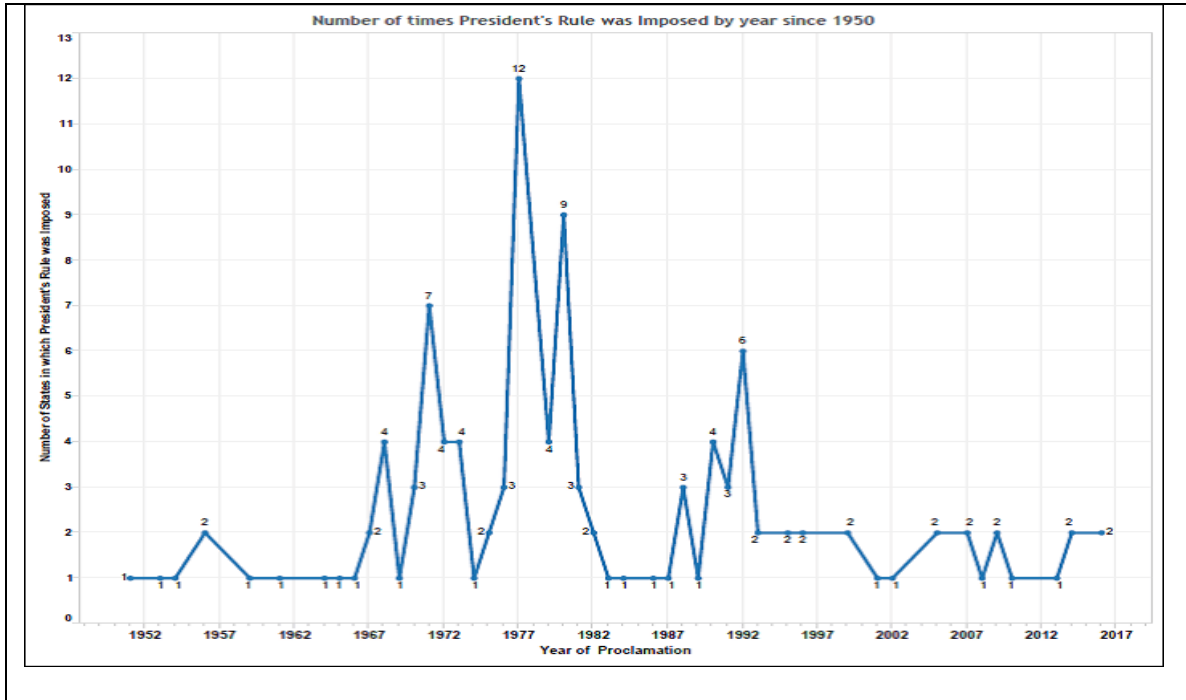
⁶⁸ Ray, Amal and John Kincaid (1988): Politics, economic development and second-generation strain in India's federal system, Publius: The Journal of Federalism, Vol.18, No.2 (Spring 1998)

centralization of the type propounded by Riker for centralized federalism, but resulted in increased assertion of regional parties and in some cases even violent regional movements.

Under the Janata Government, the demand of West Bengal to for changes in Centre-state relations came up for discussion in the Parliament at the end of February 1978, since some Chief Ministers had publicly supported for a national debate. The Janata Government however, categorically declared that it does not favour a review of constitutional provisions with regards to Centre-state relations because it considered them adequate. But the demands from state governments ruled by parties other than the party ruling in the centre persist such as the resurrection in 1982 of the 1973 Anandpur Sahib Resolution of the Akali Dal.

The early 1980s saw emergence of regional parties, ruling in major states of Punjab (Akali Dal), Jammu & Kashmir (National Conference), West Bengal (CPM) Tamil Nadu (AIADMK), Andhra Pradesh (Telugu Desam) and Karnataka (Janata). Chief Ministers of these states developed a kind of forum to discuss issues of Centre-state relations. A meeting held at Bangalore in 1983, attended by four Chief Ministers of the Southern states, demanded for formation of a commission, with adequate state representation, to review fiscal relations between the Centre and the states and to recommend remedial legislation and Constitutional changes. Later at Srinagar meeting the Chief Ministers came up with specific demands such as President's Rule was to be curbed; the states' power on State's Legislative List were to be supreme; residual powers were to be for the

states; removal of the provision for Central rule under financial instability (Art.360); and the contents of the legislative lists be reviewed.



Source: <https://factly.in/how-many-times-presidents-rule-imposed-so-far-india/>

As the demand for greater decentralization gained support base the Central Government in response constituted the Commission on Centre-State Relation, also called, the Sarkaria Commission in June 1983. The Commission did come out with voluminous report with recommendations on various issues such as the use Article 356; appointment of governor; on legislative matters; and for establishment of a permanent Inter-State Council. But most of its recommendations remained unimplemented. Significantly, the Inter-State Council, a forum for resolving inter-State issues contemplated in the Constitution was set-up in 1989 by a non-Congress coalition government headed by V.P. Singh.

Rajiv Gandhi's initial promise of a new, more conciliatory and cooperative political order faltered rather quickly in the face of mounting political conflict. His increasing intolerance to dissent and his desire for personal dominance in the party organisation led to a revival of the earlier practice of running the party through nominations from the top. This again led to mistrust on the part of the opposition parties. As Rajiv Gandhi faced more electoral reverses, he tried to revive his Indira Gandhi's centralised and authoritarian mode of political decision-making. Centre–state relation deteriorated further. He also tried to bypass the states and reach out to the local bodies through the 64th Constitutional Amendment Bill in 1989. Its objective was not to foster Panchayati Raj but to undermine the states (Narang, 2012)⁶⁹.

The era of coalition/minority government at the Centre since 1989 and the process of economic reforms since 1991 had, to a great extent, stimulated the process of economic decentralization. Industrial deregulation and foreign direct investment liberalization had opened up the scope for State Governments to pursue aggressive industrialization and investment policies, largely independent of the Central Government. This liberalized investment regime brought about horizontal competition among states trying their best to attract investment thereby creating convergence in policy discourses (Sinha, 2004). At the same time, coalition politics has also brought in a kind of vertical competition between the Central and State Governments which counteracted the decentralizing forces in the form of various national programmes by the Governments which came into power. In

⁶⁹ Narang, Amarjit Singh (2012): "Federalism in India during the Nehru and Post-Nehru Periods: Limitations and Challenges", *South Asian Survey*, 19(2) 189–205, 2012 ICSAC, SAGE Publications

politics, powerful regional parties playing pivotal role in coalition governments at the Centre had become common.

The Punchhi Commission report

The United Progressive Alliance (UPA), an alliance of Congress, Communist Parties and several other regional parties, constituted in 2005 a commission also called the Punchhi Commission “to look into the issues of Centre-State relations keeping in view the sea-changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago.” The terms of reference includes, apart from the usual issues of governor, administrative and financial relations, the need for setting up a Central Law Enforcement Agency empowered to take up *suo moto* investigation of crimes having inter-State and/or international ramifications with serious implications on national security and feasibility of a supporting legislation under Article 355 for the purpose of *suo moto* deployment of Central forces in the States.

The Commission submitted its recommendation in 2010 containing 273 recommendations on matters relating to communal violence, appointment of Chief Ministers, qualification for governors and appointment procedure, the rights of governors to have the right to sanction prosecution of a minister, internal security, National Integration Council, procedures for co-operation of the states in terror investigations entrusted to National Investigating Agency, administrative and financial relations,

environment etc. Deliberations were reportedly completed by the standing Committee in May, 2018 which would be will be placed before the Inter-State Council for decision⁷⁰.

The 2014 general elections restored a de facto one-party government as BJP won 282 seats and Congress was reduced to just 44 seats. The BJP which pledged to put “centre-state relations on an even keel through the process of consultation” talked in terms of “cooperative-competitive federalism” to strengthen collaboration through shared decision making. Commendable success has been achieved in the introduction of GST and working of the GST Council. However, Sharma and Swenden (2018)⁷¹ found that in political affairs centralizing tendency is apparent from the attempted application of President’s Rule, demonitisation, simultaneous centre and state elections and heavy handed approach in relation to Kashmir.

The nature of federal bargain in post-economic liberation coalition era

India’s economic reforms and liberalization of 1991 had opened up the scope for states to attract investments from domestic as well as foreign investors. The states have come to gain the liberty to pursue their own industrial and development policies and strategies largely independent of the Centre. This economic opportunity that has come with the reforms has changed the nature of federal relations from vertical intergovernmental cooperation toward inter-jurisdictional competition. The previous issues of states relating

⁷⁰ PIB, Release dated May 25, 2018; <http://www.pib.nic.in/Pressreleaseshare.aspx?PRID=1533493> accessed Feb 13, 2019

⁷¹ Sharma, Chanchal Kumar and Wilfried Swenden (2018): “Modi-fying Indian Federalism? Center–State Relations under Modi’s Tenure as Prime Minister”, Indian Politics & Policy • Vol.1, No.1 Spring 2018

to the federal constitutional design and provisions have lost their relative importance and instead, economic success and achievements have become the major concern of for states.

Another important factor contributing to the relative calm in vertical federal relations is the decline in party centralization and coalition politics. As one-party dominance came to an end, regional parties gained importance in the national politics and played crucial role in the formation of government in the Centre in return for their issues and concerns being incorporated in the Central policies. At times, regional parties are able to extract largesse from the Central Government with which they become partners⁷².

The increased assertiveness of institutions such as the Supreme Court and the Election Commission has further decentered the Indian federal polity. In a path-breaking judgment, the Supreme Court in March 1994 held that any proclamation of President's rule under Article 356 is subject to judicial review. In the words of Sinha (2004)⁷³, "This ruling has changed centre-state relations significantly, giving the federal compact a new institutional force."

The nature of federal bargain in the post-economic liberalization coalition era therefore shifted from the demand for institutional change and larger share in fiscal resources towards participation in the effort to expand the national resources through economic

⁷² During the NDA regime the Telegu Desam Party (TDP) was alleged to have extracted largesse from the Central Government for the Andhra Pradesh State in allocation of rice, fund for rural development and for creation of new airport etc. <http://www.rediff.com/news/2002/may/17spec.html>.

⁷³ Sinha, Aseema (2004): the changing political economy of federalism in India: A historical institutional approach

development. According to Sinha, not only did the nature of competition changed from vertical to horizontal, “this horizontal competition has become more symmetric, unleashing the processes of diffusion and leaning by copying across a larger number of states than before.”⁷⁴ Symmetry in horizontal competition further resulted in convergence of policy discourses across states ruled by parties of various ideologies. Market economy and private investments, foreign capitals have become acceptable across ideological spectrum while trade unionism is suppressed.

While vertical competition in the form of states competing each other for centrally determined resources has become less pronounced another form of vertical competition between the Centre and the states for electoral gains has remained important. This type of vertical competition is facilitated by absence of well defined legislative jurisdictions, e.g., subjects in the Concurrent List, and get particularly pronounced where different parties or party-coalition are ruling in the centre and the states. In the competition for between Centre and states for the same voters manifests in overlapping policies and social sector schemes such as health insurance scheme of the Centre operating alongside similar scheme of the state government. According to Migue⁷⁵, this type of competition in the absence of property rights results in waste through rent seeking and generates the tendency for all levels of government to over supply or over regulated.

While federal issues in the form of demand for change in constitutional design has subsided in recent years, vertical competition between the centre and states for electoral

⁷⁴ Sinha, Aseema, 2004

⁷⁵ Migue, Jean-Luc (1995/96): Federalism and individual sovereignty: comment on Buchanan, *Cato Journal*, Vol.15, No.2-3; Fall/Winter, 1995/96

gains remain highly relevant in India's multi-party polity. This, being a basically electoral politics, assumed particular importance when the party ruling in the centre and the party ruling in state are different.

The structure of party system

On the basis of Riker's first dimension of the structure of party system, viz., the degree of symmetry between the national and regional arenas of party competition, the era of single party dominance in India has seen electoral behaviour in the parliamentary significantly similar to the state elections. The period in which the Congress party dominated in parliamentary election are also marked by strong show in state legislative assembly elections. It is also observed that the short period of Janaty Party government in the Centre had also saw the party coming into power at several states. Though the coalition era has presented a growing trend of asymmetrical party competition, there remains certain degree of symmetry which might have prompted the proposition for holding the parliamentary and state elections simultaneously. On the second dimension viz., integration of party organizations, it is observed that the orgainsational structure of political parties in India are not only integrated, but are also highly centralized. The Central leadership consisting of an individual or few individuals called party high command exercise absolute control over the party and this structure is found to be common in all the political parties.

CHAPTER 5

PRESENT FEDERAL SCENARIO IN CONTEXT OF FEDERAL BARGAIN AND FUTURE STRATEGIES

In this study we examine the nature of federal bargain in the formation and operation of the Indian federalism using Riker's theory as the basis for defining the scope of the investigation and research questions. The general conclusion that can be drawn is that Riker's proposition regarding the condition for federal bargain in the origin of federalism is of minimal relevance in the formation of Indian federalism. At the same time, it has been observed that the process of integrating princely states with the union had began with a bargain on loose federation basis, although the ultimate outcome of the process was not a federal arrangement, but absorption of these states with the union. The ideological biases and self interests of key personalities too are found to have their imprints on the constitutional design of the Indian federalism.

The formation of India into a federal union has exhibit more of a supervised process of welding together of the British-Indian provinces and the princely states into a union rather than autonomous units coming together. The Congress hegemony in Indian political landscape has made the task of containing the provincial leaders in the Constituent Assembly and in integrating the semi-autonomous princely states with the union. Federal bargain in the formation of the India federalism was not a bargain between equal parties; instead it was a supervised one under a one-party dominated polity. Under

such circumstance, the preference for federal ordering, albeit with a strong centre, over a unitary constitution was, basically, a recognition accorded to the reality of territorial-based ethno-cultural diversity of India rather than a response to the internal and external threats, proposed by Riker. In fact, in the aftermath of Partition federalism was not seen as a device for striking and maintaining unity, but as an expression of fissiparous tendencies and threat to unity.

The structure of party system considered by Riker as the main variable for maintaining federal bargain has been observed to be quite significant in the Indian federalism. The political space of the initial post-independence period dominated by the Congress party as the single dominant national party, its highly centralised structure and towering leadership had played important role in the establishment of lasting nation-wide institutions and in dealing with peripheralizing tendencies. The organisational structure of the Congress party has been copied and emulated by other political parties thereby giving close similarities among various political parties. Within this highly centralised structure of political parties, federal bargain has been sustained by mutual accommodation rather than repression and coercion by the central leadership in the party as well as in the government.

Federal politics in India has come a long way from the concerns such as balkanisation and fissiparous tendencies common in political discourse during the Constituent Assembly and beyond. India has emerged into a confident economic powerhouse in this post-liberalisation coalition era and the nature of federal bargain has swung from the

demands for constitutional change and competition for share in centrally determined resources to horizontal competition between states for investment and development. Coalition governments in the Centre provide the opportunity for regional parties to play decisive role and sense of participation in the national politics thereby, reducing instances of confrontation with the centre.

The current political scenario in India is characterised by strong resistance against the prospect of one-party dominance emerging in the country. In this venture, regional parties can enter into alliance with major national parties, viz., the Congress or the BJP or even among traditional rivals to thwart the chance of a party emerging dominant in the national politics. However, contrary to Riker's proposition, this resistance against party centralisation does not necessary constitute peripheralisation of federal polity in India's post-liberation era.

Electoral competition between parties has its repercussions on federal relations which manifest in the form of protest against technicalities in the conduct of centre-state relations. A case in point is the protest of non-NDA governments of southern states on the terms of Reference of the Fifteen Finance Commission which prescribed the use of 2011 population figures as against 1971 population figures. While these states justified their grievance on the ground of being penalised for containing their population growth rates, equity consideration demands that latest population should determine horizontal distribution.

Coalition politics has kept in check the rise of popular regionalism because of the participation of regional parties in national government. As alliance partner in central government, regional parties are obligated to compromise their regionalism.

Development of strong economic integration through efficient communication infrastructure, regulatory and other institutional mechanism has assumed utmost importance in sustaining and improving federal bargain. The introduction and implementation of Goods and Service Tax is an example of cooperative federalism achieved through grand federal bargain.

The scope of this study has been restricted to federal bargain in the context of Riker's theory and in the process several important aspects of Indian federalism such as the constitutional scheme of division of powers between the Centre and states, administrative arrangements, fiscal federalism etc. have been left out. This is in keeping with the Rikerian tradition that "federalism a political phenomenon", without discounting the fact that other issues have, at times, significant political ramifications. A more detailed analysis of the self-interested nature of political actors both in the Constituent Assembly and in the post-constitution political parties would have yielded interesting results. Further, empirical study on the structure of party system in India based on the dimensions suggested from Riker's theory would add into the wealth of literature on Indian federalism.

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