

Chapter - III

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LATER THOUGHTS OF DR. B. R. AMBEDKAR ON FEDERAL FINANCE

3.1 LATER THOUGHTS ON FEDERAL FINANCE

In this chapter, we examine Dr. B. R. Ambedkar's later thoughts on Federal Finance.

In the year 1928, Dr. B. R. Ambedkar submitted a report to the Indian Statutory Commission on the constitution of the Government of Bombay Presidency in which he supported the idea of provincial autonomy. He was of the opinion that the national Government should be independent and should possess capabilities of serving long irrespective of what happens to the provincial Government. He denied the sphere of influence of both the Centre and the units in the following ways –

1. All the residuary powers must be with the Central Government.
2. There must be a specific grant of power to the Central Government to force a defying authority, province acting in a manner prejudicial to the interests of the country.
3. All powers given to the provincial Government in case of its non functioning shall return to the Central Government.

4. The election to the Central legislature shall be direct.¹

In 1930, in Sub-Committee No. II (Provincial Constitution) of the Round Table Conference, London, Dr. Ambedkar expressed the view that it was not possible to give complete autonomy to provinces because certain subjects have both provincial and national characters. Dr. Ambedkar illustrated his point in the following way. He would like to draw an illustration from labour legislation, legislation affecting tenants, and affecting agriculture. In a country like India, there is no doubt that these must be provincial subjects. He did not think they could be viewed entirely from such a regional compass. They cannot be regarded as entirely provincial and without an All India character. The Central Government must have some legal authority over subjects of this character, notwithstanding that it is cutting across provincial autonomy. While expressing the views on giving autonomy to the provinces Dr. Ambedkar said that such powers must be left with the Central Government. Further he stated that the reservation of powers in the Central Government cannot affect the autonomy of the provinces.²

3.2 DR. AMBEDKAR'S DEFINITION OF FEDERATION

In 1939, Dr. Ambedkar defined Federation as follows –

Federation means the powers of the Central Government as well as of the Local Government are derived by the law of the constitution which neither the Local Government nor the Central

Government can alter by its own Act. Both derive their powers from the law of the constitution and each is required by the constitution to confine itself to the powers given to it. Not only does the constitution fix the powers of each but the constitution established a judiciary to declare any act whether of the Local or the Central Government as void if it by the constitution. 8

According to Dr. Ambedkar, the essential features of the federation are as follows –

1. Divisions of powers between centre and units.
2. Division of powers is constitutional.
3. Neither Centre nor units, can change their powers.
4. A separate tribunal (Judiciary) to change these powers.³

3.3. DR. AMBEDKAR MENTIONED THREE CATEGORIES OF LEGISLATIVE POWERS OF THE FEDERATION

1. Federal List

First category includes those subjects on which Federal Legislature has exclusive right to legislate.

2. Provincial List

This category includes subjects, the exclusive right to legislate upon which is given to the provincial legislature.

3. Concurrent List

This category includes the subjects over which both federal as well as the provincial legislature have a right to legislate.⁴

3.4 EXECUTIVE POWERS

Dr. Ambedkar was of the view that when a field is covered by Federal Legislation that field also becomes the field of Executive Authority of the Federation. Further, he stated that the administrative powers of the Federation follow upon the Executive powers of the Federation follow upon the legislative powers of the Federation.⁵

3.5 FINANCIAL POWERS

According to Dr. Ambedkar, the sources of revenue of the Federation are made divisible by the constitution and by the Federal Law. Federal Government has the right to tax, it also can make distinction between the power to levy the tax, and the right to collect it and even where it gives the power to levy tax, it does not give the right to collect it. This means that the Federation has also financial powers within the federation. The federation can levy the tax on state subjects but cannot collect it directly by its own agency.⁶

3.6 CHARACTERISTICS OF THE FEDERATION

Dr. Ambedkar held the view that the Indian Federation is not a perpetual union and that the Indian States have a right to secede.

This was concerned to the Federation, which emerged from the Government of India Act 1935. He criticised that what is a perpetual union and what is only a compact was nowhere made clear. His view that the Indian Federation has none of the marks of a union but on the other hand, it has all the marks of a compact is beyond dispute.

Dr. Ambedkar clearly stated that the Federal Government would become a Government for the State only when each state adopts it by its instrument of increase. To Dr. Ambedkar, the subjection of the states to the Federal Government is not to be for all times. It is clear that in the opinion of Dr. Ambedkar the Indian Federation at that time was a compact and not a union.⁷

3.7 RELATIONSHIP OF THE UNITS TO THE FEDERAL GOVERNMENT

While taking into account the legislative, executive, administrative and financial relationship of units to the Federal Government, Dr. Ambedkar stated that each separate unit should have almost the same or equal political rights as a general feature of federations. Equality of status among the different units is a federal necessity. To make them unequal in status is to give units the power to become administrative partners.⁸

3.8 RELATIONSHIP OF THE PEOPLE UNDER THE FEDERATION

In the opinion of Dr. Ambedkar, there is no distinction of a fundamental character between a State and a Society. It is true that the plenary powers of the State operate through the sanction

of law while society depends upon religious and social sanctions for the enforcement of its plenary powers. He stated that the fact, however, remains that both have plenary powers to coerce. As such, there is no contrast between State and Society.⁹

Dr. Ambedkar was of the view that a British Indian will continue to be a foreigner in every Indian State even though it is a Federal State after the Federation, as he was before the Federation. Similarly, a subject of a Federated Indian State will be a foreigner in every British Indian province after the Federation as he was before Federation. There is no common nationality. The whole principle of the Federation is that the ruler of a Federated State shall remain the ruler of the State and his subjects shall remain his subjects and the crown as the chief of the Federated Provinces shall remain the ruler of the provinces and his subjects shall remain his subjects. Besides this, Dr. Ambedkar viewed that there shall be direct relationship between the Government and the people. In his opinion the machinery of the national Government ramifies over the whole union as the nerves do over the whole body, placing every point in direct connection with the Central Executive.¹⁰

3.9 BENEFITS OF THE FEDERAL SCHEME

Dr. Ambedkar stated that to have a common system of law, a common system of administration and a feeling of oneness are some of the essentials of good life. However, they are all the results, which

follow from a common life led under a common system of Government. He further stated that, a federation as a common system of Government for the whole of India should be welcome. It is possible only when other things are equal. Dr. Ambedkar wanted federal scheme to Indian States for its democratisation. However, this was possible only when it had power to influence the States. He even wanted executives responsible in the Federation where there were some Princely States as its units.¹¹

Dr. Ambedkar did not favour the Federal Scheme because he thought that it will, instead of building up Indian unity, encourage separatist tendencies and involve the States in internal and external conflicts.

According to Dr. Ambedkar, British India had no responsible government. Its right to responsible government at Centre was denied and was made dependent upon the entry of the States. "No States No Responsibility" was the position of the British India. Therefore, Dr. Ambedkar observed that, there was the necessity to ask for a Federation and responsibility confined to British India. He believed that, the path for an All India Federation on the basis of freedom and good government all round would become possible.

In the matter of autonomy of provinces, Dr. Ambedkar stated that the creation of autonomous provinces did not require the creation of a Central Government for the whole of India. He said, "Autonomy

of the provinces means that their powers are defined and vested in them. To make provincial autonomy real the powers of the Central Government must also be limited, otherwise it would be in a position to enter for the purpose of conquering the domain of the provinces.¹²

Dr. Ambedkar had clear views regarding the Federal Form of Government in India. He was not opposed to a Federal form of Government. He confessed a partiality for a unitary form of Government. He thought that India needed a unitary government. However, he also realised that a Federal Form of Government was inevitable if there was to be some provincial autonomy. But, he was in dead horror of the Federal Scheme contained in the Government of India Act. He further stated that he was convinced that without real responsibility at the Centre, provincial autonomy is an empty shell.

To Dr. Ambedkar, "Federation means the establishment of a Dual Polity".¹³ By Dual Polity he meant the Union at Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution. He was of the opinion that to this extent the American Federation and Indian Federation have similar features. However, they differ from each other in regard with the citizenship in their Federations. In U. S. A., the dual Polity has a dual Citizenship. Citizenship of the U. S. A. and the Citizenship of a State, whereas the Indian Federation has a single citizenship. There is only one citizenship for the whole of India.

Every Indian has the same right of citizenship no matter in what State he resides.

The other distinguishing factor between the two Federations stated by Dr. Ambedkar was that in U. S. A. the constitutions of the Federal and the State Government were closely connected. In India, there is only one Federal constitution and States do not have the right to frame its own constitution.¹⁴

Besides this, Dr. Ambedkar pointed out that all other federations are placed in a tight mould of Federalism, for they cannot change their form and shape in any circumstances. The Indian Constitution, according to the requirements of time and circumstances allows some flexibility. He further said, "In normal times, it is framed to work as a federal system. However, in the times of war it is so designed as to make it work as though it was a unitary system."¹⁵

3.10 CENTRE-STATE RELATIONS

In connection with the Centre-State relations, Dr. Ambedkar maintained that the basic principle of Federalism is that the legislature and Executive authority is partitioned between the Centre and the States not by any law to be made by the Centre but by the constitution itself. This is what the constitution does. The States under our constitution are in no way dependent upon the Centre for their legislature or Executive. The Centre and the States are co-equal in this matter.

3.11 FEDERAL FINANCE SUB-COMMITTEE

Dr. Ambedkar as a Member of Round Table Conference in the Federal Structure committee, discussed the Report of the Federal Finance Sub-Committee.

Dr. Ambedkar stated that the division of Financial Resources between the Federation and its units was based on the assumption that the welfare functions are largely provincial and the provinces must get expanding sources of revenue. Of course he thought that provincial governments were denied by the Federal Government both adequacy and elasticity in their fiscal system.¹⁶

3.11 (A) Revenues of Federal Government

The first source of revenue for the Federal Government was customs revenue. Dr. Ambedkar said that it was an important source and it would be dependent upon the trade prosperity or trade depression. Its revenue was totally dependent upon the position of trade prosperity. In times of depression exports would be reduced reducing also the consuming power and to that extent imports would also be reduced and a direct reduction in the customs revenue. Secondly, this source of revenue was largely dependent upon the particular kind of trade policy will be pursued in times to come.

If a political party in power at Federal Government believes in free trade policy and no protection that again will make the customs revenue a very bare and slender source for the Federal Government to depend on.¹⁷

3.11.(B) Second Source of Revenue – Opium

Dr. Ambedkar stated that the Government of India thought that all revenue on opium exports will be lost although it still retained a small sum of 10 or 15 lakhs from the sale of medical opium.¹⁸

3.11 (C) Corporation Tax

Another source of revenue was Corporation tax, which as suggested by the Sub-Committee was a source of revenue for the Federal Government. Dr. Ambedkar informed that its yield was somewhere about 3 crores in pre-independence period so at that time obviously it was a source of very small dimensions. It seemed to him that if we agree that industrialisation was a very important thing for the prosperity of India and if it was further agreed that for industrialisation, the incorporation of capital was also necessary then he was afraid that we could not increase this tax to any very large extent, for fear of penalising incorporation.¹⁹

However, it should be noted that in the post independence period, corporation tax has proved to be a very productive revenue source.

3.11 (D) Income Tax

Dr. Ambedkar suggested another source of revenue – Income Tax. It was to be treated as a common source of revenue both for the Federal Government and for the provincial Government. Dr. Ambedkar made certain observations as to the method of sharing this income tax. In the British India, Dr. Ambedkar wanted that the provincial finance should not ^{be} a dependent system, dependent upon doles or upon contributions. He believed that provincial system of finance would not be destructive of that sense of responsibility, which every Executive must feel towards its legislative.

Dr. Ambedkar would not agree to a division of the income tax as would permit the Federal Government to fix the rate of taxation and to divide the yield between the provinces and itself. He would allocate the net revenue on the basis of taxation, one base to the Federal Government, and another to the provincial Government. He wanted the system recommended by the Taxation Enquiry Committee introduced so far as the division of the Income tax was concerned. He wanted “personal income tax to the provinces and the rest of it to the Federal Government, and the rate on “personal income” to be fixed by each province, and not by the Federal Government, according to its own necessity.”²⁰

Dr. Ambedkar examined the position of the States in Federal Finance as suggested by the report. When Dr. Ambedkar turned to this part of the Report of the Sub-Committee, the first thing Dr. Ambedkar tried to find out was what head of revenue had the Federal Government gained from the States as an addition its financial resources. Dr. Ambedkar found that there is no additional resource given to the Federal Government by the States.²¹

3.12 4th NOVEMBER 1948

Dr. Ambedkar as a member of the Assembly of India delivered his speech on the Draft Constitution of India on 4th November 1948.

The Draft Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935 should be followed.²²

Dr. Ambedkar explained the form of Government under the Draft Constitution.

Two principal forms of the Constitution are known to history – one is called Unitary and the other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central polity and (2) the absence of subsidiary sovereign polities. Contrarywise a Federal Constitution is marked : (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a Dual polity. The Draft Constitution was a Federal Constitution in as much as it established what may be called a Dual polity. This dual polity resembled the American Constitution. The American polity is also a dual polity, one of it is known as the Federal Government and the other States, which correspond, respectively to the Union Government and the States Governments of the Draft Constitution. Under the American Constitution, the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way, the Indian Union proposed in the Draft Constitution was not a league of States nor were the States administrative units or agencies of the Union Government. Dr. Ambedkar mentioned that have the similarities between the Indian and the American Constitution come to an end. According to Dr. Ambedkar, the differences that distinguish

them are more fundamental and glaring than the similarities between the two.²³

Dr. Ambedkar maintained that the differences between the American Federation and the Indian Federation are mainly two. In the U. S. A., this dual polity is followed by a dual citizenship. In the U. S. A., there is a citizenship of the U. S. A. However, there is also a citizenship of the State.

Dr. Ambedkar said that each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus, wild game and fish in a sense belong to the State, and it is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.²⁴

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differed from the dual polity of the U. S. A. in another respect. In the U. S. A. the Constitutions of the Federal Government and of the States are loosely connected.

Dr. Ambedkar drew attention to the differences between the American Federation and the proposed Indian Federation. But there were some other special features of the proposed Indian federation which mark it off not only from the American Federation but from all other Federations. All Federal systems including the American were placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, the Draft Constitution of India could be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system.²⁵

Once the President issues a proclamation, which he is authorised to do under the provisions of Article 275, the whole becomes transformed into a unitary State. The Union can claim if it wants –

1. the power to legislate upon any subject even though it may be in the State list,
2. the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge,
3. the power to vest authority for any purpose in any officer,
and

4. The power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations.²⁶

Dr. Ambedkar explained that this is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an ^(in ?) effective form of government. There are two weaknesses from which it is alleged to suffer one is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal system can not but be a written constitution and a written constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and vice-versa is a breach of the Constitution and (2) such breach is a justiceable matter to be determined by the Judiciary only. This being the nature of federalism, a federal constitution cannot escape from the charge of legalism. These faults of a federal constitution have been found in a pronounced form in the constitution of the United State of America.²⁷

Dr. Ambedkar explained that the Indian Federation would not suffer from the faults of rigidity of legalism. Its distinguishing feature is that it is a flexible federation.

Dr. Ambedkar pointed out another special feature of the proposed Indian Federation, which distinguished it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Dr. Ambedkar said that upto a certain point this diversity does not matter. But this very diversity, when it goes beyond a certain point, is capable of producing confusion in many federal states. One has only to imagine twenty different laws if there are twenty States in the Union of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and method of administration. Such a State of affairs not only weakens ^{the} ~~the~~ State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters, which are essential to maintain the unity of the country.²⁸

Dr. Ambedkar explained, three means adopted by the Constitution to achieve this aim –

1. a single judiciary,
2. uniformity in fundamental laws; civil and criminal, and
3. a common All India Civil service to man important posts.

A dual judiciary, a duality of legal codes and logical consequences of a dual polity, which is inherent in a federation, is not appropriate for a stable federation.

The Indian Federation though a dual polity has no dual judiciary. The High Courts and the Supreme Court form one single integrated judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure.

Dr. Ambedkar explained that the great codes of civil and criminal laws, such as the civil procedure code penal code, the criminal procedure code, the Evidence Act, Transfer of property Act, Law of Marriage and divorce, are placed in the concurrent list so that the necessary uniformity can always be preserved without impairing the federal system.

Dr. Ambedkar stated that the dual polity, which is inherent in a federal system, is followed in all federations by a dual service. In all federations, there is a Federal Civil Service and a State Civil

Service. The Indian Federation though a dual polity does have a Dual Service but with one exception. It is recognised that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration.²⁹

Such are the special features of the proposed Federation. Now, we will turn to what the critics have to say about it.

It is said that there is nothing new in the Draft Constitution. About half of it has been copied out of the Government of India Act of 1935 and that the rest of it has been borrowed from the constitutions of other countries. Very little of it can claim originality.

The Draft Constitution is criticized for the reason that no part of it represents the ancient polity of India. It is said that the new constitution should have been drafted on the ancient Hindu Model and that instead of incorporating Western theories the new constitution should have been raised from and built upon Village Panchayats and District Panchayats. There are others who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many Village Governments.³⁰

Some critics have said that the Centre is too strong. Others have said that it ought to be made stronger. The Draft Constitution had struck a balance. However, much you deny powers to the Centre it is difficult to prevent the Centre from becoming strong. It cannot chew

more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution was criticised for having one sort of constitutional relations between the Centre and the provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those, which come under Defence, Foreign Affairs and Communications. They were not bound to accept subjects included in the concurrent list. They were ~~to~~ bound to accept the State List contained in the Draft Constitution. They were free to create their own Constituent Assemblies and to frame their own Constitutions. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by a war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy.³¹

Dr. Ambedkar was not at all happy over this matter. He wished very much that there was uniformity between provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, he could do nothing to improve matters.

On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken some

of them as Centrally Administered Areas, there have remained some 20/30 States as viable States. This is a very rapid action, Dr. Ambedkar appealed to those States to fall in ^{line} ~~lien~~ with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They would thereby give the Indian Union the strength it needs. Dr. Ambedkar felt hopeful that ^{his/its?} ~~is~~ appeal will not go in vain and that before the constitution was passed, it would be possible to wipe off the differences between the provinces and the Indian States.³²

Dr. Ambedkar explained why the Drafting Committee had used the word 'Union'. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Drafting Committee [†]though that it was better to make it clear at the outset rather than to leave it to speculation or dispute.³³

Dr. Ambedkar stated that the Draft Constitution was discussed in some of the Provincial Assemblies of India i. e. Bombay, Bihar, Bengal, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions

of the Constitution and in Madras to particularly Article 226. But excepting this there was no serious objection taken to the Articles of the Constitution.

Dr. Ambedkar maintained that no constitution was ever perfect. The Drafting Committee itself was suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies gave him courage to say that the constitution as finalised by the Draft Committee was good enough to make a start with.

Dr. Ambedkar felt that the Draft Constitution was workable, flexible and strong enough to hold the country together both in peace time and in war time. Indeed, [✕]if he thought that if things ever went wrong under the new constitution, the reason would not be that it was bad constitution, but that the Man was vile.³⁴

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