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Exploring Territorial Federalism to the Centralized British Federal Model in South-Asia

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Abstract

Federalism in south Asia is a contested issue in terms of its nature and origin. This article attempts to address both questions; how does nature of federalism remain before the establishment of British raj and to what extent it changed in the British era. It is recurrent debate about the origin of federalism in south Asia that whether the concept of federalism existed before the advent of Britain or it is the modern concept developed later only after the invasion of British government. Second question regarding the nature of federalism is also controversial that how the federalism has changed its form in historical different periods specially of the British period. What kind of federal model was introduced by Britain? Was it a centralized federal model or was it a decentralized model? What was the notion of shared authority in the respective domain of central and regional governments. This shared notion of authority is also sought out in South Asia in the governance system of the Mauryas, Delhi Sultanate and the Mughals that is termed as territorial federalism. British government introduced in the subcontinent a centralized federal model a deviated version of federalism that historically existed in the subcontinent. The British division of power started from British Councils Acts since 1850s to the detailed Government Act of India 1935. This article attempts to explore whether shared rule of sovereignty existed in the form of territorial federalism or the subcontinent encountered federalism only if with the arrival of the British empire. This article further tries to compare between both indigenous territorial federalisms which existed before the British and the British introduced federal model. These questions are attempted through qualitative study with published data on the theory of federalism.

Keywords: Federalism; Regional Autonomy; Centralization; Sub-continent; British India.

1. Introduction

An idea of federalism has a modern origin in consequence of the initiation of the modern state system. It begins from Europe and transitions to American society. However, in the ancient and medieval periods these ideas prevailed in very old fashions but after the beginning of the modern

age and declining of the medieval period, these ideas resurfaced in a more furnished and sophisticated manner. In the medieval period, Switzerland was first federation but with the emergence of modern nation state system, United States becomes the modern federal state. Later Canada joined it and then on the Australia, Germany. After the end of the Second World War, many federations emerged on the surface of globe. Amongst those federations India and Pakistan also adopted federal governance system after the partition. It is rightly said that every state has its own story of origin, nature of socio-political and economic and geographical distinctness. All these factors contribute to the shaping of each federation has. Owing to the specific conditions of each federation, the form and nature of federation remain unique. The Nature of US is different from the Canadian, Australian and any other federation. However, the nature of federation in South-Asia is different from the rest of other federations.

Advent of federalism in British India is a debated political idea. The first and foremost question about the development of federalism in the British India has taken into form of different interpretations by different social scientist of this arena. Reginald Coupland a celebrated historian deems that “there was ... no division of authority, no trace of the federal idea in the constitution of British India before 1919” conceded that in practice “superintendence and control” by the center were limited by distance and the sheer volume of work involved (Coupland, 1968, p. 10). He deems that the federalism roots in the British Parliamentary introduced, Indian Council Act of 1919 which is popularly known as Montague and Chelmsford Reforms. The special feature of the Act is a Diarchy which proposed the division of authority while categorizing the subjects into two lists: Reserved Subjects and Concurrent subjects at provincial level. Some other scholars on this subject varied their position and argued that federalism in India was introduced much earlier than this scheme of Montagu-Chelmsford. However, the federal idea was introduced in India in the form of first Indian Council Act of India in 1961. Some others believe that first time the idea of division of powers was developed in the Lucknow Pact signed between Muslim League and Congress in 1916. That pact had some sort of federal features.

Katharine (2007) does not make federal idea associate only with the advent of Britain in India, but She traces its history in the political system working before British colonialism in the empire of Mughals and She writes that federal idea may have prevailed in the earlier empires i.e., (Gupta Empire, Maurya Empire). The tactics of governance for maintaining consolidated wrist on the vast empire needed strategically a specific mode of territorial autonomy to the states. She does not argue that nature of federal form in pre-colonial societies was like the federations of modern age, but She finds de facto federalism in those societies on the basis extent of state of territorial autonomy given by the centralized authority of Mughals. However supreme power rests at central ruler. She finds the reason behind such a type of territorial autonomy because of the structure of the empire covering the large geographical distance, states possessing the cultural diversity, there had been a limited technology, and less sophisticated means of transport and communication.

2. Assessing Federalism in Pre-colonial

Asoka in this regard writing about origin of development of federal idea in the ancient consolidated and territorial autonomous states history of India has undergone from the process of integration and disintegration when the Consolidated empire in the subcontinent started to be emerged historically. The first consolidated empire in India was of Maurya Empire was established in consequence of destabilizing the influential governance system of Macedonian empire. The Mauryan empire was established on the ruins of Alexander's rule in India. In the process of expansionism by the Mauryan emperors' consolidation of centralizing process started while giving some sort of concessional

provincial autonomy to the conquered states. After the demise of the Mauryan empire, the subcontinent became the conglomeration of small and large states. Delhi sultans had some extent centralized the conquered territories. Mughals, however, established the large territorial empire with centralized authority and concessional territorial autonomous states (Chanda, 1965).

Asoke Chanda understands that it was inherent character because of the consolidation process of empires to concentrate power in the centralization of authority. ‘‘The very survival of the ruling dynasty depended on this centralization of authority and its concentration in a chosen and a trusted few. This was necessary to hold in check Fissiparous regional tendencies which, religious, racial, cultural dissimilarities inevitably generated’. This historic factor of centralization of authority from Mauryan to the Mughals and from Mughals to the British Rule remain important factor in administrating the large territorial empire of India. This factor of central power tendency is also presented in the Constitution of India. Consequently, adaptation of federal form of government in India was not like an alien concept in India but however the foundation of federalism in India are the result of the last eight decades of British rule in the subcontinent. Consequently, India became able to opt for the federal form of constitution. The development of federal idea remains in its evolution in India and among the British government and local political parties. Eventually it was accepted during the Round Table Conference held in London from 1930 to 1930. The idea of federalism was discussed and accepted by the major political parties during this conference. However, Congress did not participate in First Round Table conference, and it participate in Second Round Table conference and endorsed the idea of federalism of All-India Federation comprising of British India and Princely states. The political leaders of India were in opinion that the constitutional development in India like the introduction of policy decentralization after the major upheaval of 1857 and further introduction of policy of partial provincial autonomy provided in Mont-Ford Reforms 1919 were in the line with development of federalism in India. They were truly aware about territorial size and the diversity in India that Federal solution would be sustainable system of governance in India (Bombwall, 1967, p. 29).

Bombwall while writing on the diversified nature of subcontinent and its requirement to accommodate its diverse nature of different regions of India by the central authority become some sort of prerequisite for the functioning of such a gigantic territorial region. The structure of Mauryan empire writes that it provided the archetype of political organization for towards which India constantly, though not always successfully tended. He writes that the empire included some protectorates. and there were autonomous principalities within its bounds. The empire with respect to its organization was antithesis of centralized Roman empire. It was in fact a feudal- federal type in which the internal autonomy of the various regions was respected (Bombwall, 1967, p. 34). Provincial governors write Altekar ‘enjoyed considerable autonomy like the provincial governors of East India Company before The Regulating Act of 1773, we sometimes find them declaring their own wars and dictating their own peace’ (Altekar, 1955, p. 3)

3. Development of Federalism in British India

British introduced in India a centralized state system which was more proximate to the unitary form of governance rather than federal system. It was unitary form of governance followed by devolution of power through the local governance system. This model matches more likely Britain following devolution system at home. Irish Assembly, Scotland Parliament and Welsh Assemblies existed but under the domain of British Parliament following the devolved institutions. In early colonial India, there were three presidencies, and later provinces were formed consequential with its assemblies. But those assemblies had too limited scope of power. Local government institutions simultaneously work

in India. Most of the legislative and executive powers along with veto powers lie in the Governor General Executive Council. A very limited federal features are found in Council Act of 1919 and highly centrist federal modal was introduced in Government Act of India 1935. There were clear and strong political dynamics of India society that put a heavy pressure on the British government to orient such schemes to accommodate the demands of political parties Congress and Muslim League both. Lucknow pact was the earlier the precedent development before 1919 Act and constitutional demand proposed in the form of Nehru Report and Fourteen points of Jinnah were behind in the background for introduction of such constitutional Act 1935. The only charter of demands was not present in the form of Fourteen points and Nehru Report but there were political movements initiated simultaneously by both political parties for the implementation of these constitutional formulas.

British rule in India introduced the unitary form of government in till the introduction of 1935 act. This act, however, was federal only on paper, but it had exclusively the tendency of centrists. This was understood by the British official that it was an unprecedented in history to introduce a federalism in a not autonomous states of India. Federations are formed when the autonomous states come together and lose some part of their sovereignty by creating the common central government. The reason, I found behind the understanding of India by the Britain as like the political arrangement of unitary form. Therefore, they introduce unitary form of government to some extent with decentralized institutions. But here a question rises that before the advent of British, there existed a decentralized system of power sharing where provinces were autonomous during Mughal period. The states were further autonomous during the governance period of late Mughal. When British started to annex the Indian states, there were the autonomous states and British occupy each of state single handedly one by one. In initial years of British rule there were the autonomous presidencies of Bengal, Madras and Bombay. It was 1773 Regulating Act, since then the British government centralized the authority which was suitable to the imperial vested interest of Britain. This was mainly a reason that provinces though were not autonomous struggled for provincial autonomy and demanded for federal form of government on the pressure of provinces. Therefore, British introduced federal form of governance in Government Act of India 1935, but it was not genuinely a federal constitution in real of theory of federation and in practice. Nominally it suggested division of power between Centre and regional government, though Centre enjoys most of the powers. This autonomous condition of provinces left them in a feeble condition for demanding federalism in true and spirits. The autonomous provinces in real sense were not in favor British rule to extract resources from India. Therefore, Britain introduces in India a highly compromise condition of centrist federalism.

Advent of British in India was in a consequence of formation of a trading company East India Company by the merchants of London in the end of 1600 in order to search for profitable eastern markets (Chanda, 1965, p. 11). These were the ending years of Akbar's rule and the decade of beginning of Jahangir's rule. Britain initially earned profits from the exchange of trade of spices from subcontinent to European markets. They brought silver from England to get spices from the subcontinent. When British saw the weakening of Mughal power and territorial autonomous states started competing the central authority of Mughals and stood direct against the reigns of Mughals. At that time Britain had stabilized itself and started fortifying their possessions while constructing forts. They succeeded in the battle of Panipat, Battle of Plassey and Battle of Buxar. These successful British expeditions granted Britain the Deewani rights of Bengal, and their economy changed from trade of spices to tax collection on the land (Bose & Jalal, 1998). As for as the question of administration is concerned that initially the subcontinent was divided into three presidencies Bombay, Madras and Calcutta which was headed by each Governors who were directly answerable to the court of directors in London (Chanda, 1965). Each presidency had its own separate army working

autonomously under the East India Company rule. This was a diffusion of power in each and separate presidencies that does not suit the historically developed feature of centralization. This unnatural division of regionalization was brought into the centralization while bringing Regulating Act of 1773 in power and practice. This Act created the office of the Governor General. This act move centralized the English presidencies while entitle Governor of Bengal presidency the charge of remaining two other presidencies of Madras and Bombay (Chanda, 1965, p. 12). The Governor General was assisted by a nominated executive council which was granted a legislative power which were granted by the British Parliament. Hamid Khan is of the opinion that “The Act of 1773 granted the British Government powers to regulate the affairs of company in India. The Act endorses the appointment of Warren Hasting as the first Governor General of India along with four counsellors. The provisions were made for the establishment of a supreme court of judicature at Fort William and for its effective jurisdiction”. There were severe limitations of this act. It was an ambiguous and unclear about the division of powers between the British government and East India Company. Therefore, this Act did not remain effective for longer period as the political conditions were constantly changing in India. The Act remains a useless piece of legislation with changing circumstances (Khan, 2023, p. 5). Further the subsequent Acts of 1784, 1793, 1833 and 1853 moreover increased centralization by increasing the position and powers of Governor General in Council.

Provincial governors of East India Company in the subcontinent before the regulating Act of 1773, it can be found that they were as autonomous and could be substantiated from the historical events occurring during these times that local rulers sometimes dictated their own war and peace. It was some sort of respect given to the local autonomy. Altekar further explicates this idea has an analogy between the informal territorial federalism in ancient Indian polity and the India under the British rule had ideal of strong rule in united India with full autonomy for states. The evidence of existence of territorial federalism in pre-colonial era and development of modern federalism in British could be agreed and had different meanings of later part of statement. Development of modern federal idea could not necessarily be produced by the British original policy in the subcontinent. However, the ideas of division of powers stem out from nationalist movements in India. Congress and Muslim League earlier in the historic and annual session of Lucknow agreed on this scheme of division of powers and demanded from the British government to introduce such scheme in the forthcoming reforms. The demand was accepted, and division of powers were introduced at provincial level to address the apprehension of Congress and Muslim League. It was first time in British India, such policy of division of authority was introduced in 1919. The British motives behind the introduction of that scheme were not making India on the path of federation but it introduced diarchic scheme in Mont-Chelmsford Reforms to curtail the important demand of Self-Home rule. So, the idea federalism developed in British India but the factors behind it were developed in the socio-political movements in India and in addressing these issues. British government became lenient to introduce that division of power. Muntzra Nazir understands ‘British first introduced a system of devolution of powers from Centre to provinces, though the central government being a government of a colony, exercised overriding powers over provinces. Later, a federal modal was formally proposed in the Government of India Act 1935. However, it was a colonial administrative system, a genuine federal could not be created. The interest of Empire was supreme. The major aim of such measures was to maintain a stable rule while granting limited self-government to the natives to pacify the politically active elements’ (Nazir, 2008, p. 47).

Lawrence Saez understanding of development of administrative institutions having federal features after proposition of administrative schemes after the uprising of 1857. The major development happened after the 1857 that East India Company was abolished, and British Crown

assumed the duties and charges of it while taking over direct responsibility for India's protected states. Lord Canning was appointed first Viceroy and Governor General for the British Crown. Development of this period started policy of decentralization while reversing the tendencies of centralized administrative structure enunciated in Charter Act of 1833. These centralist tendencies were gradually reversed by the Indian Council Act 1861 (Saez, 2002, p. 22). The Charter Act of 1833 had centralized the administration of the country's finances in the hands of the Government of India (Bombwall, 1967, p. 529). The Act fully declares the authority of the Crown, restricting the trade monopoly of the company till 30 April 1854. The later subsequent Acts 1854 further decreased the powers of the Company by cutting the number of directors from twenty-four to eighteen and six nominees were introduced as the representative of British Government on the Board of Directors (Khan, 2023, p. 6).

Pitt's India Act of 1784 remained the legislative and constitutional document till 1858, and the Act was replaced by the secretary of state for India. The upheaval of 1857 provided some sort of right pretext for ending the company's rule in British India taken the full charge of British India and Princely states. However, the Pitt's India Act had introduced the dual system of Control which was ended on August 2, 1858. Thus, story of East India company's control completed in 1858. However, it completed its colonial project of conquest of India. All the territory of British India was under the control of East India Company and remaining part of India; Princely states were also under its control through the different types of treaties were signed between them. Eventually British Government formally took over the administration of India with the announcement of Proclamation by Queen Victoria on November 1, 1858. This proclamation made the new social contract with the Indian people by granting some 'fundamental rights like freedom of religion, Safeguards against discrimination on the basis of race, creed, or in services, equal and impartial law and protection of property rights inherited from ancestors.' After the subsequent development of 1858, British started to think of new administrative system with decentralized administrative institutions of India. The mutiny of 1857 has dramatic effects on British mindset about administration. Bombwall writes that mutiny was the eye opener for Britain (Bombwall, 1967, p. 7). British understood the need of an hour to implement a new administrative structure which somehow be efficient in management and administration. They therefore chose to introduce a decentralization for achieving the effective administrative goals. Hamid Khan is of the view that to incorporate the native population in the administration. The policy of decentralizations was necessary to implement in India. For these objects in minds, Indian Council Act 1861 was passed. (Khan, 2017). Katharine writes 'Every reform conceded more to British-educated Indians who were pressing for a say in their government and frequently citing the precedent established in the other colonies, specifically Canada and Australia'. The factor which played a role for British to think of policy of decentralization was the demand of India leaders for the presentation of locals in the administrative institutions. Saez is of the opinion that British introduced a unique administrative set up under the Council act of 1861 in accordance with the local needs. Though the council act was protean. With the introduction of this council act, the administrative structure gravitates around the trope of Viceroys executive council and imperial legislative Council. This act along with 1892 presented the loosely established centralized colonial authority (Saez, 2002, p. 23).

Bombwall's understanding about the introduction of Council Act of 1861 significant in analyzing the conditions of India before and after the adoption of that act. He deems this Act a watershed in the constitutional history of British India. This act is a consequence of flawed British policy of over centralization in the large and diverse territory of the subcontinent. The introduction of this act formally recognized that excessively British policy of centralization which was started after

the implementation of regulating act in 1773 and it reached its highest degree of centralization in 1833 with the passing of charter act of 1833. However, as far as the federal structure is concerned that the constitutional and administrative developments are concerned from the initiation of the charter Act to the inauguration of Montford Reforms in 1921, a significant measure of powers were devolved to the provincial governments it was about a period of sixty years constitutional and political history, no substantial change occurred in the nature of relations of Centre-provinces (Bombwall, 1967). There was no consistency in the policy of decentralization but sometimes it was made reversal especially during the viceroyship of Lord Curzon. Usually during the different periods 'no means systematic broadening of the sphere in which provincial governments could exercise some freedom of initiative and decision even though formally and constitutionally the authority of central government remains supreme and all embracing' 'No actual federal form of governance could be applied in British India because of the over-developed bureaucratic governance structure in the subcontinent (Bombwall, 1967, p. 57). Bombwall furthermore, mentions that one of the objectives put under considering passing the act was 'to make better provisions for the local governments of several presidencies and provinces of India'. The act did not have direct implications for federalizing the administrative structure of India. However, during that period there were no one except few radical willing to challenge the existing centralized administrative structure of India because it was perceived through this period that mutiny of 1857 requires to build a strong Centre. Therefore, it was not thought to dismantle the centralized machinery and unitary administration which British has built in India (Bombwall, 1967, p. 67). It could be concluded that the Act could be seemed to be 'a conscious step toward federalization'.

Asoke Chand looks at the political and constitutional developments after the 1773 regulating act that after the subsequent development of 150 years that no any fundamental change was brought into the basic administrative structure of Britain other than the enlargement of membership of imperial legislative council and provincial legislative assemblies by adding the more non-official members. Meanwhile, with the passing time, restricted role of members of imperial and provincial legislatures was increased by giving them permission to ask questions, give suggestions, to make discussions, criticism and the power to discuss the annual financial statements. Members were also given the right of appellation in a restricted manner. With these advancements in constitutional and administrative structure by enlargement of membership and in increasing the powers of members, imperial legislatures and provincial assemblies did not get the representative character. However, all the non-official members were elected by the British government (Chanda, 1965, p. 12). The Act assigned a governor general a unique power that the power of proclamation of emergency without his council and an ordinance would remain intact for the period of six months. This could be issued in an emergency when the legislative council was not in the session. In this act, powers of legislation were restored to governors in council of Madras, Bombay, which were taken away from them by the charter act of 1833. There was not any clear line of division of powers between the central and local legislatures. Dodwell writes in this way, 'no line of demarcation was drawn between subjects reserved for the central and those allotted to the local legislatures; but while local legislation in certain cases could not be undertaken without sanction from the governor-general, all acts of local legislatures required his subsequent assent as well as that of local governor and were subject to disallowance by the crown' (Dodwell, 1929, p. 36). Act 1861 formulate the Council of Governor General which was composed of five members. Three of its members were appointed by Secretary of states for India with the concurrence of majority of his council. The remaining two members were appointed by the Crown itself. One could be a barrister and other the commander in chief of the

Armed forces in India. There were other six to twelve additional members which were nominated by Governor General in his council for making laws and regulations.

Muntzra Nazir deems that the Act introduced the 'conflicting trends of establishing a centralized –colonial administration while granting some administrative and legislative powers to the constituent units of the state'. The act introduced 'some decentralization but it had no clearly cut demarcation of jurisdiction between the two sets of governments. Coupland writes, that 'The Indian Council Act of 1861 reinstate and expanded the legislative element in the Madras and Bombay councils, and the number of provincial legislative council was increased. Despite This, their powers were limited'. 'Contrary to their sister organizations in other parts of the British empire, they were not permitted to discuss taxation, and they were not sovereign legislative bodies' (Coupland, 1968, p. 13). The act established the nominated legislative councils in provinces under lieutenant governor. The new provincial legislative councils came into being. The council in Bengal came into existence in 1862, Legislative Council in North -Western Province in 1886, and Punjab in 1897. There were some legislative powers rest at provincial legislature, but the government of India had a concurrent power to control and supersede over the legislation of provinces. The major check on the relation between the central and local legislature was that governor general was empowered to veto provincial enactment. No bill could be valid unless he received his duly assent. Significant development with respect to empowering provinces at some extent happened in December 1970 When eight services which were decentralized from central administration to the administration of provinces. These services were labelled as, 'Jails, Registration, Police, Education, Roads, Civil Buildings, Medical services, Miscellaneous, Public improvements' (Kumar, 1985). Furthermore, in 1877 more services were decentralized to provinces, i.e. land revenue, stamps, excise, general administration and law and justice. For managing these services more heads of sources of revenues were granted to the provinces like excise, stamps and income tax. Moreover, decentralization occurred under the Lord Rippon government which introduced revised scheme in 1882.

4. Indian Council Act 1892

After the subsequent development of thirty years, a new The Indian Council Act of 1892 was introduced which was continuation of the 1861 Act. It did not drastically bring the changes in the 1892 Charter Act other than the enlargement of membership of Central and provincial legislature also increased their area of competence of provincial councils (Adeney, 2007). However, the act did not bring the real change in the constitutional and administrative structure of India introduced in the Charter Act of India 1861. The Changes in 1892 in the size of legislative Councils were made on the demand of 'limited but important section of India opinion' and in this regard also 'established the fact of elections to the councils by certain public bodies (Dodwell, 1929, p. 237). This did not significantly change the structure of Councils. The government did the nominations of majority of members of each council and by doing this it maintained its official majority in the councils that no measure for matters of public interest could be carried out in this setting of councils. The Act of 1892 did not bring any substantial change in the powers of Governor General in Council and the Act retained their powers. No change also occurred in the powers of provincial legislatures. The members of provincial legislatures were given right to ask limited questions about the provincial budget. However, matters which were in the domain of provinces, Government of India refrain from interfering and those were dealt by provincial authorities. Other than the administrative changes, Indian National Congress came on the surface to play its part in demanding the representing institutions. In one sense, Charter Act of 1892 was a consequence of demands of Congress. Though the Congress still not became the common voice of Indian people. It only represented only a limited

section of society. Congress still not started a politics of agitation till that time Coupland comments that there was no trace of anti-British feelings in the early sessions of Congress.

5. Minto-Morley Reforms 1909

With the promulgation of Act of 1892, the basic structure of constitution of India did not change. However, it sustained 'a loosely framed centralized colonial authority' (Saez, 2002, p. 22). With the turnover of 19th century and in the beginning of twentieth century bring some basic changes with regard to the demands of Indian for more representative institutions. Congress in the 2005 changed its policy and demanded from British Government to the right of self-rule in India (Nazir, 2008). However, All-India Muslim League another political party was established in 1906 which advocated representation of Muslims in government institutions. This political development changed the landscape of politics in British India. In this background of political events, Government was set up a decentralization Commission led by the secretary of state Morley. The purpose of the commission was 'to simplify relations between the central government and its subordinate and coordinate parts' (Dodwell, 1929, p. 241). The work out of the Morley's decentralization culminated into the new package of reforms called Minto-Morley Reforms 1909. This came in the form of Government India Act 1909 which did modest changes in the nature of relation with respect in the composition of the legislative Council and Provincial Legislatures. Katharine understands that by 1909, indirectly elected members were in a majority in the council of Bengal and had significantly increased in number in the other provincial councils. The process of democratization was introduced at the provincial level as a "safety valve" mechanism. Minto-Morley reforms were introduced in 1909 for the first time introducing the provision of elections in central and provincial legislatures. Though there was a specific number of seats of central and provincial legislative council were filled by the election. Asoke points out the weaknesses of the Council Act of 1909 that elected members in this act did not represent their constituencies as it is the norm of normal democracy, but they were to represent their communities and special interests. Another weakness of the act was that in the central legislature the number of official members was sustained, however, in the provincial legislative council elected and nominated members outnumbered the official members. This structure of central and provincial councils did make non-officials play their affective. Non officials were easily manipulated by the government in their favor when there was a division in the council on any matter of concern. Separate electorates were given constitutional recognition in the Indian Council Act of 1909. Muslim were accorded not only the right to elect their representatives by separate electorates but also right to vote in the general constituencies. In addition, they were also given weightage in representation.

Chaudhary Mohammad Ali writes about Minto-Morely reforms 'The Minto-Morley reforms of 1909 accepted the principle of election but maintained a majority of appointed members in the central legislature and in the provincial legislatures, except in Bengal, which had a slight majority of elected members. Election was to be held based on separate electorates for Muslims and non-Muslims' (Chaudhary, 1967). The act did no doubt change to constitutional history but as such it did not change the constitutional structure with reference to the Centre-province relationship. The limitations were continued in this Act of 1909 as were in the previous act on the legislative and administrative powers of provinces. As far as the powers of provincial legislatures are concerned, they were very restricted and no bill was introduced in the provincial legislatures without the prior approval of the government. The powers of central government were retained of superintendence, direction and control over the provincial governments. In real sense, there was no proper division of revenues between the Centre and provinces however, there were certain things which were given to provinces for running day to affairs. It could be finally said that provinces had no constitutional rights

and continued to be the agents of central government. The administrative and constitutional development in India carries different phases when we talk about the development of federal arrangements in British India. British in its initial phase dealt India separately as it was highly decentralized in the beginning of 1750s when the power of Mughals was declining. There were states which were woken up as autonomous i.e., Marathas, Bengal. Initially when East India Company conquered these states separately and administered them separately by bringing the Regulating Act of India 1773, later, in 1833, British started centralized policies till 1858. Administrative and constitutional development in India were not influenced by the demands of local people because there were not as such political platforms, from which the indigenous people raise their voices. After the establishment of Indian National Congress and a bit change occurred in the policies of British government. The government started to pay heed to the demands of local people and bring the constitutional schemes which suits India and to the local people concerned voices. The package of decentralization since 1861 is the result of that nature of political happenings in India. Since constitutional reforms packages from 1861 to 1909 had mere difference of more representative character in the decentralized Acts, while there does not seem a substantial difference in these schemes. These chartered Acts formed the provincial legislatures and allotted them some items on which they legislate but with prior approval from the Governor General in Council. There was some shared sovereignty but there was no such federal type of arrangement in these constitutional schemes till 1909.

But after the beginning of second decade twentieth century a much changed in the political landscape of India. Congress shifted its ideology of operation with British India to agitate for the more representative and responsible government. They make their demand for the self-government in India. New leadership in Muslim League also discarded the Sir Sayedan policy of loyalty to British India (Saeed, 1968). They started to demand more rights for the Muslims. This approach of change in the policy direction of both political parties brings them closer to each other. As there was leadership working in both political parties simultaneously in Congress and Muslim League like Mohammad Ali Jinnah. This development in background brings them on the single table at Lucknow 1916 which culminated into the common charter for political agitation in India. This pact of Lucknow breeds some glimpse of federal arrangements in India. Reginald Coupland seems no division of sovereignty in India before the introduction of Montford Reforms in British Schemes 1919. However, this division of sovereignty, he observes in Montford Scheme which was already demanded in Lucknow pact by both political parties. Congress and Muslim League.

Federal idea could be traced in British India other than British orchestrated the administrative reforms of India. that could be traced in the indigenous and nationalist movements of India led by the Congress and Muslim League. Nazir writes that 'Lucknow pact was a joint venture of Congress and Muslim League forwarded the scheme for providing greater provincial autonomy, accompanied by larger popular control'. The pact envisaged that 'the center should be given the control over defence, foreign affairs, customs, posts, telegraphs, mint, salt, opium, railways, for Indian states and the rest should be given to provinces. The pact suggests that the provincial legislatures 'should have full authority to deal with all matters affecting the internal administration of provinces, including the power to raise loans to impose and alter taxes and to vote on budget' (Prasad, 1941). The Lucknow pact was some sort of charter of demands which was agreed by both political parties Congress and Muslim League for future course of political actions. The politics of agitation started now. Both political parties demanded more responsible government and demanded for self-home rule for India. The joint struggle of both, Congress and Muslim League coined the demand for greater provincial autonomy. The narrative of allied powers in the WWI that the war is for encouraging the democracy

and against the dictatorial powers this put in India a sense for self- government in India of the allied powers government to introduce the reforms.

Parsad Bisheshkar differentiated the constitutional and political developments before Montagu-Chelmsford happened in the wake of the reforms. The earlier changes in the structure of government were made in order to facilitate 'administrative convenience'. It was not before the August 20, 1917, that goal of British rule was announced in the subcontinent, but it was announced by secretary of state of India in 'a response to the demand of political India' (Prasad, 1941, p. 343). Bisheshkar views that it was a 'momentous utterance' that made British government to introduce responsible government. It marked the 'end of one epoch and beginning of a new one' (Prasad, 1941, p. 339). Reginald Coupland finds division of principle of sovereignty in the Montagu-Chelmsford Reforms however, he never finds in India that concept of division of power before 1919 in India after the advent of British or before the period ahead of British. He writes 'there was no division of authority, no trace of federal idea in the constitution of British India before 1919. The provinces had no rights of their own. They were legally no more than administrative sections of British India and their governments no more than the agents of central government' (Coupland, 1968, p. 10). British government introduces the constitutional scheme which is known as Montague-Chelmsford Reforms in 1919. Saez is of the view that Montagu-Chelmsford Reforms 1919 did examine the working of those times central and provincial legislatures and finally introduced some significant changes in the existing relationships of Centre and province. Saez writes that it attempted to accelerate the advent of a limited parliamentary system in India. The Act of 1919 provided the division of legislative powers between the central and provincial governments. There were forty subjects allotted to the central government however rest of subjects were given to the provinces The division of subjects in the Act were made on the principle that the subjects which are primarily regarded as central, there was a need of uniformity in legislation for all of India or for more than one province. The subjects which were in the interest of province were put under the legislative domain of province.

One of the significant features of the Act was the introduction of principle of Dyarchy in the provinces. The subjects were devolved to the provinces were further bifurcated into two categories 'Reserved' and 'Transferred'. The reserved subjects were given under the power of Governor, and the transferred subjects were given to the elected members of the provincial governments. The numbers of reserved subjects which were handed over to the governor was thirty-six and which were important items like law and order, finance, land revenue, famine and relief. These subjects were given under the authority of provincial governor and his executive council, and the governor and his council were appointed by central government and therefore they were directly responsible to the government of British India. The 'transferred subjects which came into the domain of elected members of provincial government and were responsible before provincial legislature. Under this Act, there was a three-fold division of authority on the paper, Central, Reserved and Transferred lists of sharing of power. However, in the practice, the reserved subjects also belong to the central government because those were under the control of provincial governor who was an appointee of central government. The residuary powers were given to the Governor General in case of doubt whether a particular subject belongs to either provincial or central government (Nazir, 2008, p. 56). The other problem about the division of authority in the formulae of dyarchy was of the nature that the management of subjects were categorized in such a way that most of income generating subjects were given under the provincial governor and the subjects which require financial assistance to govern them were given provincial ministers. Mujawar Hussain Shah believed the reforms which were introduced in the Montagu-Chelmsford reforms were up to the wishes of the Congress and Muslim League. Both political parties stood for the responsible and self-home rule and had consensus on the federal

arrangement in India. The reforms were short of the expectations of Indian leaders and majority of the leaders oppose those reforms (Shah, 1994, p. 34). Mujawar Hussain understands the one of the basic idea of reforms, Dyarchy which was faulty because there was a confused and unclear distribution of departments between trio-authorities Executive, Councils and Ministers. The powers of administration were separated and there was a lack of coordination in the departments which left the act against the primary principle of political theory. State functions organically and there could have been coordination along with the allocated separated domains of authority, but the Act made different parts of state functioning independently and thus the act failed to satisfy the needs of the pluralistic society of India (Shah, 1994, p. 34). Muntzra Nazir believes that the introduction of the Act 1919 was an important step towards formation of All-India federation (Nazir, 2008, p. 58), but this act did not satisfy most political leaders either belonging to Congress and Muslim League.

The features of reforms were that the numbers of Indians in the Governor General's Executive Council increased to three, bicameral legislature was introduced in the scheme. The distribution of the subjects in lists was that Centre was given foreign affairs, defense customs, relations with Indian states, currency, railways and telephone. Provinces were allocated local government, public health, education, irrigation and agriculture. Diarchy was the distinct feature of the reforms. Provincial subjects were further divided into reserved and transferred subjects. Reserved subjects were given to governors and transferred to the ministers. Though the scheme of reforms introduced bicameralism and the principle of division of powers which constitute the essentials of federalism, it was a shallow scheme pertinent to the criterion of federalism. It provided very limited provincial autonomy. The reforms were quite unsatisfactory. The reforms did not allocate authority to the ministers but made them powerless, helpless due to the complicated distribution of powers and administration was divided into parts which are against the principle of diarchy.

The political and constitutional developments linger on after the committee named Simon Commission in 1927 was formed for investigating the failures and success of Mont-ford reforms consisting of all and only English members. There was no representation from Indians, given reason that with inclusion of Indian members in the committee, there could not be able to bring consensus in the formulating the future constitutional scheme by reevaluating reforms by revisiting the demands of Indian society. The commission was boycotted by most of the political parties and that development led into the formation of Nehru committee which published its report in 1928 and posed new difficulties in the subcontinent especially for Muslim League. Muslim league and it published its own draft of constitutional scheme known as fourteen points of Jinnah 1929. This development made created a large spasm between Congress and Muslim League. The government, to resolve the dissent, invited round table conference in London from 1930 to 1932. The conferences failed to bring out any solution between both political forces but dissolved to find that Muslim League and Congress support the federal constitution but their own version of federalism. Government failing in bringing the consensus between them introduced on their own a detailed constitutional act Government Act of India 1935.

Government of India Act 1935 suggested India a centralized federal structure with heavily loaded subjects rest at the Centre. The distribution of lists of subjects was arbitrarily made in such a way that Centre had a monopoly over the subjects. There were three lists of subjects Federal, Concurrent and provincial. The subjects mentioned in the federal list solely belong to federal government and subjects in the concurrent list were matter of common interests of both federal and provincial governments. But there was a provision to give favor to federal government in case of clash of interest between the Centre and federating units. Practically subjects of this list were in the domain of federal government. However, the subjects in the provincial list were under authority of

provincial government. It could be deduced from this nature of division of powers that the act introduced highly centrist federation of India. The principle of diarchy was also introduced at the Centre. That principle divided federal domain subjects into reserved and transferred subjects. Reserved subjects were administered by the secretaries and transferred subjects were given to the elected legislature. This is all about the theory but in practice the federal part of constitution was not implemented due to the breaking up of second world war.

Both political parties became not happy with introduction of This act but accepted as to resolve the deadlock emerged a decade before. The act not only impacted the subcontinent, but it had largely after the partition of subcontinent during the constitutional making process in India and Pakistan. largely the constitution of India and Pakistan are based on the structure of that Act. This act was foundational in bringing the federal form of government in India. Though the federal part of this act was not implemented. Constitutional and political arrangements after 1940 introduced by Britain were of scheme for withdrawing from India. Cripps Mission Plan and Congress Mission were schemes suggesting the constitutional and administrative solution of the subcontinent in the dominion and complete freedom of India. However, both Cripps and Cabinet proposed de-centrist federation of India. The Cabinet mission plan however suggested the administrative structure was a step ahead of federalism. It suggested the governance model which was nearer to the confederation. It had a very weak Centre and autonomous states in three groups A, B and C and were given the option of secession after spending ten years of year after implementing the program. Unfortunately, a highly de-centrist constitutional formula could not be able to prevent the partition of the subcontinent

6. Conclusion

It could be dissolved that federalism is an evolved concept with the emergence of a new modern nation state. United States become first to adopt that system of governance and created the inspiration for rest of others to adopt this political system which addresses the question of large territorial and diverse geographical territories and large populous groups with diversified their race, culture, language, ethnic and religious groups. There was additionally, the political arrangement in the medieval and ancient times which governed the relations between the Centre and the subordinated states. In India, we can find these models like federal in their own form and contexture different from the modern federation on the surface of the world. Though containing the division of authority based on the territorial states due to the communication obstacles, there was a less advancement of technology. So many scholars including Kathrine and Sharma and very recently Sarath Pillai believe that division of sovereignty which is called as territorial federalism existed in the subcontinent even before the advent of British period. The territorial federalism with highly decentralized division of authority can be observed from ancient empires of Mauryan dynasty to the Mughal dynastic periods. British maintained the similar form of decentralized political arrangement after their early conquest but later it gradually started to centralize administrative system for consolidating its control in the subcontinent.

Furthermore, Indian resisted the centralized administrative apparatus of British government and demanded for decentralization which has remain historically in India. Indian people demanded from the government to increase the number of members of executive and legislative members of assemblies to gain the representation in the governance structure. In the Lucknow pact Muslim league and Congress demanded Self-home rule and responsible government in India that had specific level of division of authority in the subcontinent. Looking at the political nature of Lucknow pact, it could be perceived that principle of division of authority was solely not introducing by the British government, but it was initially demanded by the Indian states stemming from the Lucknow pact.

British first time according to Coupland principle of shared sovereignty was introduced in the south-Asia in the Montagu-Chelmsford reforms 1919. While Kathrine disagreed with Coupland's point of view and she believes shared sovereignty in south-Asia existed long before the British invasion. Montagu-Chelmsford reforms also introduced in India a concept of shared authority, but it was in the embryonic stage and furthermore, Britian introduced in south-Asia a very centralized federal model. However, this act was introduced the in response to the demands of political parties of India, the Congress and Muslim league, they already included in their constitutional pact, the shared notion of powers between the central and regional government. The next constitutional act was introduced in 1935 which was federal, but it also suggested a strong centre. This was the culmination of political developments happening in the late 1920s. Nehru report and the Fourteen points suggested the more de-centrist federal form of government. Even though the British established strong centrist federation in India. Later development was the contestation between Muslim League and Congress on the form and nature federation in India. Therefore, British government in their withdrawal schemes Cripps scheme and Cabinet Mission Plan (CMP) were proposing a de-centrist federation. Although, this proposition of federal and more similar confederation failed to solve the deadlock between Congress and Muslim League and led to partitioning of the subcontinent. Looking at the above discussion, it can be concluded that notion like shared sovereignty in the from of territorial federalism existed in the south Asia long before the coming of Britishers and it was a more decentralized system of governance. However, Britian brought in the subcontinent a federal model which was dissimilar to the territorial federalism, and it was a centrist federalism where major powers rest in the centre but not in the provinces.

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