

# **THE CONSTITUTIONS OF FEDERATING UNITS.**

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# The Constitution of Federating Units

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The needs of special regions and the special position of states would call for a variety of devices and degrees of devolution within the boundary of a Federating Unit. The Federating Unit in the proposed Union is the nuclear and the most important Unit and may be composed of either provincial or state territory or a combination of the two. The Federating Unit gives up control over the specified subjects to the Union. All the remaining powers are held by itself. If Groups are formed the Federating Unit may in turn cede some powers to the Group Government. Initially, however, it is the Federating Unit that possesses the plenitude of power. A Federating Unit may cover large areas in which a variety of economic or geographical conditions may be present. To meet the needs of regions with any special characteristics or those of large city units included in the province appropriate constitutional provisions must be made.

In Russia there is a graded set of political units. The autonomous republics form the U. S. S. R. by federating together; but within each autonomous republic are also included autonomous regions and autonomous districts. In Germany within each State-Länder-special provision had been made for the self-government of large rural areas and the big cities. In France before the war claims of regionalism were being pressed insistently and in Britain there was the demand for Home Rule in Scotland and Wales. The authors of the Montford Report were aware of similar problems in India on account of the large size of some of the provinces. They, therefore, contemplated the possibility of creating a sub-province, with a considerable element of autonomy, within a province.

Before considering the possible gradations in the Indian Union with their appropriate scope and functions we might first indicate the essential requisite powers and characteristics of a Federating Unit,

if it is to maintain its integrity. There is an essential constitutional difference between the status of a Federating Unit in a Federation and the status of a sub-province or any other local authority. The Federating Unit would have powers and functions in its own right derived, not from any superior constitutional authority but, from the written constitution itself. The powers and functions of a sub-province or other Unit would be conferred on it by the legislature of the Federating Unit. For the whole province or Federating Unit, a single legislature exercising certain rights and powers including those of creating the autonomous Units and endowing them with powers must of course, exist. An executive for the whole province goes with the provincial legislature. It would also be necessary that recruitment to superior services, akin to the All-India Services of the present day, should also take place for the province as a whole. There would be similarly a single supreme court for the whole province and the highly specialised and research services and institutes would be provincial. In the legislative sphere, it is clear, that the all-province legislature must have powers of a general and overriding character in all matters, economic and social. The Civil and criminal law would be uniform for the whole province as also industrial and commercial legislation. The province would have to have the necessary powers for economic planning, including crop planning. It would maintain the major social services and lay down the main lines of social legislation.

After reserving all these powers for the provincial legislature the measure of autonomy of a sub-province may vary according to the needs of the situation. It would be possible to have sub-provinces endowed with powers almost equal to those of the powers of the Indian provinces under the government of India act of 1919. Such provinces could control their system of Land Revenue administration and might even have control over administration of justice up to the stage of the jurisdiction of the Supreme Court. In most economic matters such as agriculture, forest, fisheries, and industry, small and large, they could enjoy concurrent powers of legislation subject to the overall supervisory, directive and coordinating powers vesting in the all-province legislature. Such a constitution for a sub-province would be suitable where a province or other federating unit was composed of two or more equally important sub-units which differed considerably from each other in economic or other circumstance.

In the large majority of instances however, a sub-province with these large powers would not be called for. For most regions provincial powers such as those enjoyed by provincial councils under the constitution of, say, South Africa would be sufficient. The main heads of powers here are (1) specified tax sources (2) borrowing powers with the consent of the superior government. (3) local self-government institutions. (4) local works and undertakings. (5) agriculture, forests, fisheries etc. (6) Public health, including hospitals and charitable institutions. (7) education other than higher education. With these powers will also be associated the right to the establishment, tenure, appointment and payment of officers and the holding of public lands and other property.

We might also consider the scheme of Home Rule put forward in connection with Scottish and other demands. For example, the scheme of devolution suggested for Scotland and other areas by Prof. Ramsey Muir contemplated the transfer of mainly the following subjects: Police and prisons, agriculture and fisheries, public health, education, relief of poverty, regulation and organisation of local government. It will be seen that this list is very similar to the list furnished above on the analogy of the powers of the South African provinces. Prof. Muir's list contains Police and Prisons as an additional subject and he evidently would not qualify the control over education by the omission of higher education from it. He also points out that even after devolution the central parliament could not divest itself of its reserve powers of over-riding legislation. The constitution of a sub-province enjoying such powers would evidently meet the needs of the situation wherever there are large important areas whose economic conditions are materially different from those of the bulk of the province.

There might, however, be other instances where the main difficulty is not that of variety of conditions or of any cleavage of interests, but arises out of fear of neglect because of the distance from the centre of political power. In this case the appropriate method might be not that of creating a sub-province but, on the analogy of Scotland, creating a special ministerial office and resorting to departmental devolution. The existing arrangements for Scotland in the British Government are as follows. There is a Scottish Office at the head of which is the Secretary for Scotland. This is a principal Secretaryship with a seat in the Cabinet; there is also a Lord Advocate and a

Solicitor General for Scotland who are members of Government but not of the Cabinet. Scotland has since old times its own system of laws and separate courts with a distinctive procedure etc. and separate bills have to be passed for Scotland on many subjects. These are, by an established convention, always referred to a Select Committee consisting of all Scottish members. The Secretary of State for Scotland deals with all special Scottish Departments and has thus a diversity of subjects under him. There are a number of Scottish departments each with its permanent Secretary and office in Edinburgh. There are, for example, a Scottish Board of health, a Scottish Education Department, the Board of Agriculture for Scotland, a fishery Board for Scotland etc. In the hands of strong Secretaries of State and under pressure for demand for Home Rule this system seems to have yielded fairly satisfactory results during the last two decades. The special responsibility cast on a member of Cabinet rank who is invariably a Scotchman with special departments to look after Scottish affairs has undoubtedly retrieved Scottish interests from neglect. In all those provinces where the homogeneity in social and economic structure and interest is considerable but where because of the widespread extent of the area of the province certain regions might be inevitably left away from centres of main political government, the Scottish device would seem to be the most appropriate.

✓The problem of large cities is in a class by itself. A suggestion has been made that the largest cities should be cut apart from their hinterlands and should be constituted into separate and independent Federating Units. The suggestion is obviously based on a misunderstanding of the nature of the Federating Unit. The life of a large city is highly one-sided and the lack of appropriate coordination with its hinterland is even more harmful to itself than it would be to the hinterland. The city by its political or economic constitution is not fitted to be the well-nigh omnipotent and self-sufficient Federating Unit contemplated in the Indian Union. This is apart from the great injustice involved in divorcing the concentrated resources of an urban centre from the province in which it is situated. Such a divorce would cripple the intellectual and social life of a province and would rob it of its natural centre of all important activities. It would create great difficulties in the way of internal economic coordination and it would cut into the financial resources of most provinces to a disastrous extent. Such a divorce would

necessarily have the reaction of the provincial units deprived of their natural centre seeking, to create rival centres within their own area. Therefore, a step which leads to the cutting off of large cities from the provinces or regions in which they lie would in every way be harmful. At the same time the problems of these large cities with their mixed populations would need special attention and these could only be met by creating semi-autonomous regional authorities on the lines of large city corporations elsewhere. These city Corporations would be endowed with powers over public health, roads, bridges and other similar works, elementary and secondary education including vocational and technical education, building and housing, town planning, the undertaking of trading and industrial enterprises with large planning powers and powers to undertake all types of social welfare and cultural activities. An active city corporation armed with such an amplitude of power would be able to deal adequately with all problems raised in the administration of these big cities.

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