

FEDERATIVE SYSTEM OF INDIA IN THE ERA OF POST-COLONIAL MODERNIZATION OF THE COUNTRY

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The relevance of the issue is determined by the fact that the federative system of the Republic of India is distinguished not only as a certain form of state-territorial organization, but also as a notion suggesting and involving a certain process of regulations of relations in the sphere of mutual relations of the constituent members of the federation with the heartland as well as in the solution of the main international and interethnic problems. The article is focused on studying the specific features of federative system of India in the era of post-colonial modernization of the country. The leading approach to the study of this issue is historical and comparative method, which on the basis of historical sources allows to compare the data about federative organization of Republic of India and USA, and to point out similarities and differences. The article presents the results indicating about the influence of political and economic processes, which took place in Republic of India at the stage of independence, when the federative principles require adaptation and realization without any negative impact on society. Republic of India presented a unique experience of federative organization, claiming the status of own model of federative organization. The analysis of the establishment of federative principles in the one of the most densely populated countries is interesting not only for historical studies, but also for political science and legal studies.

Keywords: history, federative system, Constitution, Republic of India, quasi-federation, communalism.

INTRODUCTION

There are 220 states and other territorial institutions around the world (Countries of the world, 2014). Most of them are the unitary states and ruled entirely from the heartland.

Some specialists also point out confederal union among the forms of state-territorial organizations. Confederal union is a form of union states preserving the sovereignty almost on a full scale, and is occurred comparatively seldom (Krutskih, 1999).

The importance of federalism is increasing day by day, and today up to 1/3 of the planets population live in states, which follow the federative principles of state organization to any extent, officially remaining unitary countries (Elazar, 1987). According to the authors, federative principles of organization in many aspects are vividly shown in Great Britain, Spain and Italy (Cressati, 1994; Laffin & Thomas, 1999). Moreover, we can mention about the formation of federation in federations, and about rapprochement of political, economic, financial and defense postures into one strong unit. The most vivid example of this is European Union. The

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strengthening of interdependence of the states and international integration of the European states is evident (Farukshin, 2003).

Indian federative system has short but very reach for events history. Independent India is a relatively young country. Its history starts from 1947, when the country got the status of dominion.

The main law of Republic of India became Constitution of 1949, which came to force on 26th January, 1950. This document is very interesting from the point of view of history, because its authors tried to concentrate all the best constitutional achievements of the other countries in the main document. Due to it, Indian constitution borrowed some of the constitutional acts from former mother country Great Britain, as well as from constitutions of USA, Canada and USSR.

The combination of such different political and juridical ideas was justified for India. J.Nehru, the first Prime Minister of India (1947-1964), stated that capitalist regime as it is couldn't be accepted in the traditional Indian society (Nehru, 1971).

The peculiar features of the formation of Indian federalism in many aspects predetermined its specific features. It became obvious; to preserve independence and unity of the country it was necessary to have a strong heartland. The solution of social and economic problems in the scale of the whole country with less developed economy and biased development of the regions had a goal of gradual transformation of economics of colonial type into modern social oriented model of development. All these could turn into reality only in the conditions of strong central administration; moreover India had only few decades to solve these problems.

METHODOLOGY

The research is based on the following principles: a) scientific character – to define the conclusions on the basis of the analysis of the full complex of documents and scientific literature, taking into consideration all the events and phenomena in them; b) fairness – characteristics of the studying events and phenomena of historic process, viewpoints of the leaders without any preferences on the part of the researchers; c) consistency – consideration of all variety of factors influencing the historical process, such as objective or subjective, internal and external political, local and global; d) historical method – reviewing the historical processes and phenomena in their constant development and modification.

The representation of the material was built on the thematic and chronological principle. The research requires complex approach to the development of the main material on the given issue.

The usage of comparative and historical method allowed to understand to what extend the reforms in the sphere of administrative changes and political development of India were demanded.

Historical and genetic method, used in the research, helped us to point out the general evolution of the processes. This method promoted caused to effect the links between major economic and political problems of Republic of India.

Concrete historical analysis allowed to consider the events and phenomena in the context of the related era, when the assessment to the events is given from the point of view of the definite historical situation. To study the history of India in the era of Indian National Congress leadership this method is fully used, as the events and phenomena were considered in the direct link with their historical necessity and importance.

Historical and system-based method was also used in the research. System-based character of the social and historical development means that all the events, situations and processes of this development are determined and cause to effect links, and connected with each other functionally. This method is usually used in the study of historical processes connected with the changes and amendments of the Constitution and their social adaptation in Republic of India.

RESULTS

Fundamental principles and peculiar features of the Constitution of Republic of India:

Most of the specialists studying federative principles of Indian Republic necessarily appeal to the Constitution of the country as it is the chronicle of political history of the independent country. The most interesting is the fact that all the following reforms of young country, as a rule, were reflected in the main document of the country.

The most important peculiar feature of Indian federative relations became the fast reaction to all the changes in the political and social spheres of the country, which were immediately reflected in the main document of the country. To the procedure of introduction of amendments to the Constitution, which was envisaged by its authors, is more relevant the characteristic given by J.Nehru, who told, that Constitution should not be so violent as it couldn't be adapted to the changing demands of the development of the country (Basu, 1969). The adoption of the simple procedure of the introduction of amendments, directed to clarification of the earlier accepted norms, was the basic principle of the authors of the Constitution. Dr. B.R. Ambedkar, one of the authors of the Constitution, who explained the presented proposals about the procedure of the introduction of amendments to the constituent assembly, claimed: "for those, who are not satisfied with the Constitution, there is the only way to strive for majority of two thirds, and if they can't get these two thirds of votes in the parliament, elected on the basis of universal adult suffrage, given to the adults, shouldn't be considered, that their dissatisfaction with the Constitution is shared by the population of the country" (Constitution Assembly Debate, 1950).

India is federation as it has the main features of federative state:

- 1) Dual system of ruling, in the unitary state there is only one government that is nation-wide, in the federative there are two – federal and the government of each federal subject;
- 2) Division of powers. One of the goals of the federation under formation is the division of powers between the government of federation and its subjects, although the methods of the power division might be different in various federal constitutions.
- 3) Supremacy of Constitution. Federative state is under an obligation to the accepted Constitution for its existence, as well as the corporation to its charter. All executive, legislative and judicial powers, no matter whether they belong to federation or its subjects, come from Constitution and are the subject to Constitution.
- 4) Judicial power. Judicial supremacy of Constitution is a characteristic feature of federative system. Here, it is important to preserve the power division only between independent from each other branches of government, but also between federal government and the government of states. This division is provided by the assignation of the final right to the courts to interpret Constitution and accepting the actions of the federal government and the government of states or any other organs, breaking the provisions of the main document of the country unconstitutional (Basu, 1986).

Alongside with that India is different from typical federations around the world by the way of formation and position of states and federation.

The first article of the Indian Constitution names the country “the union of states” (Constitution of India, 1956). Presenting the project to the constituent assembly, the chairman of the Editorial committee Dr. B.R. Ambedkar, called Constitution federal according to its structure. Committee used the term “Union” (Ambedkar, 1982) as the federation is a result of agreement between independent members of the organization, who can withdraw from federation, Indian union was not related to the one like that, because the states couldn’t withdraw from federation.

The position of states and union territories according to Constitution of Republic of India:

Apart from federative union of American type, formed on the basis of voluntary agreement, made between the range of sovereign and independent states to manage some deals within common interests, India was being created by the transformation of unitary state, which the British Raj was, into federative. The inclusion of the provinces of British Raj into it was obligatory, but principalities voluntarily.

Indian federation is different from many others by the positions of states in it. Constitution of India determined not only the organization of federation, but the

organization of states as well. In the US, for example, states generally preserved their own original constitutions. The concept of Indian Constitution envisages strong heartland and the states, which use real but not unlimited autonomy. Peculiar feature of Indian federation is that, the heartland doesn't consult with the states the issues of changes of the main part of Constitution. The exceptions are the issues concerning the federative structure itself.

As it was mentioned above, the authors of Indian Constitution endorsed the first provision. That's why the states of Indian union can't exercise the right to withdraw. Therefore it should be noted that the 16th amendment to the Constitution, accepted in 1963, clarified the issue that the address to withdraw from the Union can't use protection of Constitution, which declared freedom of speech (Constitution of India, 2012). On that ground, the right of Indian states on the issues of changes of the main document of the country is discriminated, apart from the USA. The essence of the doctrine, which is the basis of the federation of USA, is that, the states are constituent parts of the country and directly participate in development and changing Constitution, and this agreement can't be changed without the consent of the sides.

The law about reorganization of states of 1956 really demonstrated the power of articles of Constitution. In 6 years after the Constitution was accepted, the union parliament managed to reduce the number of states from 27 to 14, and created new ones on the more cultural, linguistic and fair basis.

One of the essential principles of American federation is constitutional equality of states, regardless of size and population. This principle was reflected in the equal representation of states in the upper chamber of federal congress (senate), which is intended to protect the status and the interests of the states within the federation. Apart from this, no state without its consent can't be deprived its equal representation in the senate.

Constitution of India clearly determines the number of representatives in the Union of states, and varies them according to the number of population in the state from 1 to 34 (Constitution of India, 2012). This fact allows to prevail the interests of larger states over the smaller subject of federation in Rajya Sabha (upper chamber of parliament).

DISCUSSION AND CONCLUSION

The changed signs of the federative organization, far from the classic principles, allowed some lawyers to call the constitutional system of India as "quasi-federal union" (Munshi, 1967). Canada was also rated as quasi-federal country, as the subjects of federation, mainly, like Indian union, didn't have proper complex of rights and powers.

One of the outspoken critics of the federative organization of Republic of India professor K. Wheare (1951) noted that Constitution supposes: "the system

of ruling, which is quasi-federative. India is a unitary country, that has instrumental features rather than federative country with the instrumental features”.

The notable Indian lawyer D.D. Basu can't agree with this point of view, he, in his “Comments to the Constitution of India”, noted: “the state organization of India is neither strict federative, nor strict unitary. It presents the combination of both of them. India is a union or composite state of new kind. It embodies the principle priority of national interests, despite the presence of federalism” (Basu, 1973).

As a matter of fact almost all the researchers of Indian constitution point to its “quasi-federativity”, even if this term is not used in their arguments, as well as the term federation is not used in the document of Indian Republic. Disagreements are in the fact that how far the federative principles prevail in political life of the country. It's even difficult to reject such statements as: “India in reality functioned as unitary country, though the Union and the states tried to function in the usual juridical sense as the federation” (Santhanam, 1960), as they have no sense. However, many specialists on History share the opinion about the special organization of classical views on the principles, either federative or unitary, in India in particular or in the entire East in general. Indeed, any researcher, studying thoroughly the main document of Republic of India, agrees with the opinions of the specialists admitting various versions of federation, can't say that it is “too federative” (Appleby, 1953) or totally unitary. Strictly speaking, any deviation from the classical federative norms, that is American federation, inevitably leads to the recognition of “quasi-federativity” of the new system.

According to our point of view, federative principles with strong positions of heartland became for India an essential necessity, as a new country, deeply involved into the struggle of communalist forces and the supporters of the language groups in the nationalists' interests, to preserve stability only due to concentration of absolute power in the heartland and not in the regions. The most convincing evidence of the federative system functioning is coexistence of non-Congress governments nowadays in the subjects of federation, formed not from New Delhi. The existence of federalism in India is seen from the events, connected with the formation of majority in the parliament, forces that are not linked with the Indian National Congress, moreover, recently the dominating party of the country at the beginning of the independent history of India is in opposition to the party, which was commonly called communalistic.

At the usual time the federative system functions in Republic of India. During the state of emergency Indian Constitution allows federal authorities to transform the federation into unitary country. At the usual time legislative power of the Union has the right to order the governments of states only on certain issues, but, when the state of emergency is brought to, this right of Union extends to all the issues that are in the competency of states (articles 353, 354, 357) (Constitution of India, 2012).

Even in the period of normal functioning the federation can take unitary features, when the union is given such powers, which in the other countries can be conferred only in the state of emergency. Emergency powers require the union parliament to exercise the functions, which are in the competency of states, gifted rights and freedom of Constitution. So, apart from periods, when the state of emergency is announced, the union parliament can issue the laws (although in temporary basis) on any issues, which are on the list of issues, related to the competency of states, if the Council of states (the second chamber of union parliament) takes the decision by two thirds of votes of their members, that is necessary “in national interests” (article 249) (Constitution of India, 2012).

These peculiarities of federative organization of Republic of India predetermined political, social and inter-confessional stability in the country.

Despite the fact that many analysts’ attitude to the achievements of Indian federalism is skeptical, most of them recognize that the existing scheme “heartland - states” proved its capability to gradually realize national development, with the central administration preserving certain “discretion” in solving the most complicated nation-wide problems.

Acknowledgments

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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