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“CENSORIOUS AUGMENTATION OF FEDERALISM IN INDIA: CURRENT PROBLEMS AND PROSPECTS”

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ABSTRACT-

This research paper throws light on the progressive aspects of federalism and other facets. Federalism, in its most basic form, is the division of legislative and executive power between the central government and regional governments, allowing each government to operate independently in its own domain.

In a country like India, federalism is critical because different people from different backgrounds and cultures coexist. It is neither possible nor desirable for a single government to make laws for the entire country in the interests of people with diverse cultures, languages, and backgrounds. As a result, the Central government may make laws for the entire and any part of India's territory, and the respective State governments may make and implement laws based on the social, economic, and political conditions of the people living in various areas.

This research paper will analyse the augmenting aspect and the current loopholes in India's federal system, together with the positive solutions. This paper outlines the history of Indian federalism, and makes an assessment of how the regional interests and diverse political dynamics of the state-level actors have constantly challenged the centralising nature of the Indian polity since the birth of the Indian republic. The paper will divide the discussion in four phases: a.) One-party Federalism (1952-1967); b.) Expressive Federalism (1967-1989); c.) Multi-party Federalism (1989-2014); and d.) the return of Dominant Party Federalism (2014 onwards). It will analyse how political factors have facilitated the regional assertion despite the powerful position of the Union government. The other factors that have influenced federalism in India will not be discussed in this paper. The paper will focus on the political dimensions that have led to the regionalisation and federalisation of the Indian political landscape.

KEY WORDS: Federalism, Indian Constitution, Central Government, State Government.

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CHAPTER 01 : INTRODCUTION-

Federalism constitutes a complex governmental mechanism of a country and under this system there exist simultaneously a central, and state governments. Both the governments drive their power from the constitution¹. In a federal constitution, the powers are divided between Centre and State governments and the Central Government may make laws for the whole country and respective state governments may make for the whole of the state, in such a way, each government is legally independent within its own sphere. Each government has its own area of powers and exercises their powers without being controlled by other governments and in doing so neither is subordinate to the other but both are co-ordinate.²² Federal system of government is more common in the world than confederal systems. This system is based upon a compromise between unity and regional diversity, between the need for an effective central power and the need for checks or constrains on that power.

The English word 'Federation' derived from the Latin word "Foedus" which means 'treaties or agreement' (or referring to an alliance of individuals or groups to promote specific and common interests). Federal states are those states which developed by a treaty or an agreement. It is a system where sovereignty is divided between the core-centre and peripheral-states. On the point of division of powers, federalism can be classified as 'Centripetal' or 'Centrifugal'. But Indian federalism is not the result of any agreement or treaty. Federalism is not defined as such and it is true that there exists a certain vagueness and sometime confusion about its meaning.

Definitions of Federalism-

1. According to Livingstone³:The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces, economic, social, political, cultural – that have made the outward forms of federalism necessary. The essence of federalism lies not in the institutional or constitutional structure but in the society itself. Federal government is a device by which the federal qualities of the society are articulated and protected.
2. According to **Prof. Wheare**⁴: The systems of Government embody predominantly on division of powers between Centre and regional authority each of which in its own sphere is

¹ 3 Durga Das Basu, Comparative Federalism 5-6 (Wadhwa, Nagpur, 2008).

² K.C. Wheare, Modern Constitutions 19 (Oxford University Press, London, 1975).

³ Livingstone "A Note on the Nature of Federalism" 67 Political Science Quarterly 83-84 (1952), available at- <http://www.hcourt.gov.au/assets/publications/speeches/currentjustices/frenchcj/frenchcj03june09.pdf> (last visited on 05/03/2022).

⁴ K.C. Wheare, Federal Government 33 (Oxford University Press, London, 1963).

coordinating with the other independent as of them, and if so is that Government federal?

3. According to **Dacey**: Federalism means the distribution of force of the state among a number of co- ordinate bodies each originating in and controlled by the constitution.

Types of Federalism-

A federation is a political system that is formed through a treaty or agreement between its various constituent units.⁵ When few contiguous provincial units voluntarily come together to form a strong union, a federation is formed. The US is a classic example of a ‘federation of states.’ Apart from this model of provincial units “coming together” to form the federation, there is another type of federal model—where the geographically vast and culturally diverse state gives autonomy to its provinces for administrative convenience and for representing the regional interests. This model of federation is called the “holding together” federation.⁶ Indian federalism has been broadly designed based on the second model. The Indian Constitution laid down a political system which is federal in nature—i.e., there are two tiers of government: at the national level, and the state level. However, the Indian Constitution has structurally made the Union government more powerful than the states—therefore the seeming paradox of “centralised federalism.”

Hon’ble Supreme Court in the case of **S.R. Bommai v. Union of India**⁷, while throwing light upon the importance of federalism in India held that it as a basic feature of Constitution of India. Further the Supreme Court observed: “The fact that under the scheme of our Constitution, greater power is conferred upon the Centre vis-à-vis the states does not mean that the states are mere appendages of the Centre. The states have an independent constitutional existence. They are not satellites or agents of the centre, they are supreme within the sphere allotted to them.”

In fact, the federalism in India represents a compromiser between the following two conflicting considerations:⁸

- i. Normal division of powers under which states enjoy autonomy within their own spheres.
- ii. Need for national integrity and a strong Union Government under exceptional circumstances.

⁵ M. Laxmikant, *Indian Polity*. (New Delhi: McGraw Hill Education, 2013)

⁶ Alfred Stephan, “Federalism and democracy: Beyond the US model”. *Journal of Democracy* Vol 10(4), (1999):19–34.

⁷ ([1994] 2 SCR 6440.

⁸ Subash C. Kashyap : *Our Parliament*, Page 40, National Book Trust, 1999 Edition.

Dr B R Ambedkar assured the Constituent Assembly: “The Constitution is a Federal Constitution...The Union is not a league of states...nor is the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the Constitution, both derive their respective authority from the Constitution.”⁹

Federalism is a form of government that allows for more than one central entity to have power. What this means is that there is a federal government who is above all others, and smaller, more localized forms of governments that take control of local and regional issues. The idea behind this is to be able to better suit the needs of each area of the country, but some issues certainly arise.

Need of Federalism-

The evolution of the federal polity in India emerged out of the peculiarity of its society and culture, its state system and the nature of the Indian Constitution. In addition, Indian history shows that the Indian states were governed by the absolute or centralized bureaucratic, monarchic or feudal rulers in pre-independent India. It shows that some features of these states during that time, had certain traits that facilitated their transition into a federal polity.

Political scientist **Philip Mahwood**¹⁰ has argued that in culturally diverse developing countries such as India, federalism is chosen not only for administrative requirements but also for national survival. Although the framers of the Indian constitution were well aware of the multidimensionality of India's enormous diversity, they refrained from creating a fully federalized political system for India at independence, fearing disintegration and increasing separatist tendencies in a country that was already divided.

During the Constituent Assembly debates, the first prime minister, Jawaharlal Nehru cautioned that “it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of coordinating vital matters of common concern and of speaking effectively for the whole country in the international sphere.” Other prominent members of the assembly also demanded a stronger Union government necessary for India's survival and political stability, given its vast diversity based on religion, language, caste and ethnicity.¹¹

Federalism is the distribution of power within an organization or form of government where power does not belong solely to the central government but is shared or distributed among all the other

⁹ Constitutional Assembly Debates, Vol. VIII, 33.

¹⁰ Ambar Kumar Ghosh, The Paradox of ‘Centralised Federalism’: An Analysis of the Challenges to India's Federal Design, Observer Research Foundation, Paper No 272, September, 2020.

¹¹ Ibid.

units of government. In the Indian system, it indicates the relationship between the Union and the States. Thus, sovereignty is divided into two regional levels to ensure their independence and equal distribution of power. After the British left India, a constitution was promulgated to declare her independence and fulfil the aspirations of the people. The Constitution is not an original work but a beautiful patchwork inspired by countries such as the United States, the Soviet Union, Great Britain, Canada and Australia, it is not rigid but dynamic. years after the adoption of the Constitution, some changes were made in the form of amendments to remove all the social, economic and political obstacles that hindered the progress and development of the nation. There are many reasons why federalism was accepted in India. One of the most important factors was the great size and diversity of the nation. India is a diverse nation in many ways, be it religious, linguistic, regional or cultural. Thus, it would lead to great difficulties in the management and administration of the unitary government and eventually can lead to collapse. Thus, the requirement of the system was designed to create harmony and prevent the authorities from acting beyond the scope of the constitution, with a system of checks and balances.

It is important to note that there is no mention of federalism in the Indian constitution. It was a suggestion by the experts and founding fathers of India to establish a system of federalism with dual polity at the national and state level to suit the requirements of the nation. Article 1 of the constitution states that India is a 'union of states.' This proves that the states are what make the nation and thus, they are an equally integral part of it. But the states cannot secede from the Union, which also has the powers to change the name of a state, its territory and also to create a new state altogether.

Importance of Federalism-

1. **Decentralization of power:** Power in Indian administration flows from the centre to the local bodies i.e. Panchayat. Decentralisation is necessary so that central may not acquire all powers which will reflect in a unitary form of Government.
2. **Governance becomes easy:** This system helps the overburdened administration. There are three organs of government present in India. Executives sitting at the centre are unable to reach villages. Hence, the local Government help the executive to reach a lower level and also citizens to have active participation in democracy.
3. **Maintains supremacy of Constitution:** Constitution remains the supreme law of the land in a federal form of government unlike in unitary where supremacy lies with the Parliament and monarchy where the king is the supreme. Rule of law is strictly followed. In India also, supremacy lies over the Constitution

4. **Diversity is maintained:** India consists of the population from different races and religions. The government adopted a secular idea which was added in Preamble through the 42nd Amendment Act, 1976. India is a secular country which means India cannot promote one religion or race.

Features of Federalism-

1. Division of Powers: In a federal government the powers of administration are divided between the centre and the units. The powers may be distributed in two different ways. Either the constitution states what powers the federal authority shall have, and leaves the remainder to the federating units, or it states what powers the federating units shall possess and leaves the remainder to the federal authority. The remainder is generally known as residuary powers. The first method was employed in America and the second in Canada. The federal government in U.S.A., for example, is weak in relation to the states whereas the federal government in Canada is more powerful. In a federation both the federal and state governments are independent and autonomous in the spheres of their powers. 'One is not subordinate to the other. Both derive their powers from the constitution which is the supreme law of the land. The powers enjoyed by the units are, therefore, original and not delegated by the centre.

2. Separate Government: In a federal form of government both the centre and the units have their separate set of governmental apparatus. America is a federation of states. States have therefore separate legislatures and Separate executives.

3. Written Constitution: A federal government must have a written constitution. As a federation is a political partnership of various states and consequently there must be a written agreement in the form of a written constitution.

4. Rigid Constitution: The constitution of a federation should be more or less rigid. It is regarded as a sacred agreement, the spirit of which should not be easily violated. A flexible constitution allows a scope to the central government to curtail the autonomy of the federating states.

5. Special Judiciary: In a federation, there are possibilities of constitutional disputes arising between the federal centre and the units or between one unit and another. All these disputes are to be adjudicated in the light of the constitution. For this purpose a special judiciary with wide powers must be established. It should act as the custodian and guardian of the constitution. It should be vested with powers of declaring any law, national or local, ultra vires if it is at variance with the articles of the constitution. The constitution is thus the supreme law in a federation to which both

the centre and the state must adhere to. **6. A Better Understanding of Local Issues and Demands** – The central government has no true way to understand what issues, demands and changes need to be made in every area of the country. This is why federalism is such a great advantage. The smaller branches of the local governments are right in the middle of the local society. They are better suited to deal with the true things that need to be changed.

7. Increasing Citizen Participation – By not centralizing all power into the hands of a national government, but sharing that power with state governments, which are closer to the level of the common citizen, our founders actually increased a citizen's ability to affect their government, government policy, and law-making.

Therefore, federalism is not only just a matter of Centre-State relation but also it is a device to ensure participative role of the state in the decision-making process. The essence of a federalism is the existence of the Union and the states and the distribution of powers between them by the written constitution. The government at the Centre and the government in the states share, on an agreed basis, the totality of governmental power without sacrificing their own fundamental political integrity.

Federalism implies the sharing of constituent and political power, that is, the power to govern at two levels but there may be local governments also within a state. Every federal system requires division of powers between the Union and State Governments and both are independent in their own sphere and not subordinate to one another. To avoid the chaos and conflict between the two competing jurisdictions, the power has been divided between the centre and the States and division of power is one of the most important features of the federal constitutions. The constitution of India enumerates various items of legislation in three lists: Union List, Concurrent List and State List in the VII Schedule of the Constitution.¹² The three legislative lists respectively enumerated the powers vested in the Parliament, the state legislature and to both of them concurrently. However, if a matter was not covered by any of the three Lists that would be treated as a residuary power of the Parliament.¹³ The independent judiciary plays an important role as final interpreter of the Constitution in federal structure and uphold the constitutional values.

¹² M.P. Singh, V.N. Shukla's Constitution of India 794 (EBC, 2017).

¹³ Ibid.

CHAPTER 02: NATURE AND EVOLUTION OF INDIAN FEDERALISM

Federalism is a concept that describes the qualities of the society and keeps it articulated and protected. It is designed at both the regional and the national level to maintain unity among the states and the country. Federalism means different things to different people. It is a modernized concept, which is generally followed in countries like USA, Russia, Argentina, Canada, Brazil, and Switzerland.

Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features. The Constitution of India is neither a purely federal nor purely unitary but is a combination of both as a federal government is the one in which the powers are divided at the national and the regional level and both the levels operate independently. USA, Canada, Russia, Australia, Switzerland follows this system.

Unitary government is the government which is governed by a single power that is at the central level and the final decision is taken by the central only. Britain, France, Japan, China, Italy, Norway, Sweden, Spain follows this system.

Nature of Indian Federalism-

The Indian Constitution is a mixture of flexibility and rigidity, i.e., certain provisions in the constitution can be amended easily and for some amendments, the changes cannot be made easily. Indian Constitution is written, has two levels of government, has bicameral legislature, and the constitution is supreme. These are few features of a federal government borrowed by India. India follows single citizenship, more power with the centre, although bicameral legislature, but unequal representation, and mixture of flexibility and rigidity. These are few features of the unitary government.

India has a few characteristics of unitary government and some of them represent the federal government. Thus, since Indian Constitution is a blend of both federal and unitary, it has a quasi-federal character. Hence, the Indian constitution is of a quasi-federal nature, which is more inclined towards the Centre.

In a unitary form, the centre has the sole administrative and legislative powers, whereas the states have very little autonomy. On the other hand, in a federal set-up, states which are formed on a

linguistic or regional basis, have various powers like that of the central government. India doesn't follow a rigid form of the federal system. Truly unique in its nature, it is rather a blend of federal form and unitary form of government. However, it is important to note that even though the powers of the states are sovereign in nature along with the union, they do not coordinate with the centre. In other words, it follows what is known as quasi-federalism. Thus, the Indian federal system has established the paramountcy of the Union with that of the states. This can be proved by various judgments of the courts.

In the case of **State of West Bengal v. Union of India**¹⁴, the Hon'ble Supreme Court held that the Constitution of India is not truly Federal in character. The basis of the distribution of powers between the Union and States is that only those powers that are concerned with the regulation of local problems are vested in the States and the residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union.

Furthermore, Hon'ble Supreme Court in the case of **State of Rajasthan v. Union of India** held that in a sense, the Indian Union is federal. But the extent of federalism in it is largely watered-down by the needs of progress and development of the country which has to be nationally integrated, politically and economically coordinated and socially, intellectually and spiritually uplifted. With such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government.

It is claimed that the constitution does not embody the federal principle, because the Centre can in certain contingencies, encroach upon the field reserved for the States. The power of intervention given to the Centre, it is argued, is inconsistent with the federal system, for it places the States in subordinate position.

The fundamental postulates of a federal polity that the Central and State Governments functioning under it are co-ordinate authorities each independent within its own sphere is so greatly modified in the relationship between the Union and the States that the Indian Constitution is not entitled to be called a federal Constitution. **Dr. Wheare** holds that the Constitution of India established a system of Government which is at most quasi-federal, almost devolutionary in character; a Unitary State with subsidiary federal features rather than a Federal State with subsidiary features.¹⁵

The authority given to the Centre to enforce its administrative directions against a State which fails

¹⁴ 1964 SCR (1) 371.

¹⁵ Wheare, India's New Constitution Analysed, 48 All LJ 21.

to comply with them is intended to ensure harmony between the Union and the State. The executive authority of the State must be so exercised that it ensures compliance with Union laws and its administrative directions. Where a State so exercises its executive authority as to impede or obstruct the execution of Union laws or services, that State exhibits a definite attitude of hostility or revolt against the Central Government, and hence, to maintain the integrity of the country, it is right that the Union has been empowered to intervene¹⁶

It is true that the Indian Constitution is heavily biased towards the Union, but the bias was necessitated due to historical reasons and political expediency. Centre- State relations in a federalism is determined by the conditions which exist at the time of the framing of the Constitution. In Indian Constitution, there is a clear distribution of power between the Centre and the States, and hence there exists a fine balance between the two.

Evolution of Federalism-

1. First Phase: One Party Federalism (1952-1967)-

In this phase, the influence of the regional leaders within the “Congress System” and the rise of linguistic autonomy movement marked the regional assertion over the national politics which consolidated the federal spirit right from the time of Indian independence. The following paragraphs outline the political factors that enabled the decentralisation of Indian polity despite the dominance of the Congress party.

Political Clout of Regional Congress Leaders-

Following the general elections in 1952—the first after independence—the Indian National Congress (INC) party emerged as the most dominant party at the centre as well as the states. The Congress party would from thereon completely dominate Indian politics, until the 1967 elections when it faced a major electoral setback. The federal arrangement was such that the national political scene was presided over by Congress’s national leadership, led by the prime minister, Jawaharlal Nehru, while the regional Congress leaders had a mass base of their own and possessed considerable power and influence in their respective states. **Political scientists, Yogendra Yadav and Suhas Palshikar, have observed that Congress’s success was “a combination of its state level organization along with Nehru’s plebiscitary leadership and popular appeal.”¹⁷** The co-

¹⁶ MP Jain, Indian Constitutional Law, Page 987, Lexis Nexis, Eight Edition, 2020.

¹⁷ Yogendra Yadav and Suhas Palshikar. “From hegemony to convergence: Party system and electoral politics in

existence¹⁸ of national and state leadership in their respective realms of influence was a consensual model of inner party federalism that marked the era of Congress dominance. Even after the death of Nehru in 1964, the regional leaders continued to play an important role in national politics. The political decline of these notable regional leaders of Congress would happen eventually, after their electoral defeat in the 1967 national elections and following their power tussle with Indira Gandhi.

In Kerala, the dissolution of the Communist government led by E. M. S. Namboodiripad in 1959, by the Centre under Nehru's watch, was an exceptional case in federal relations. It showed early signs of how Indian federalism can deteriorate when the states come under the rule of the parties that are opposed to the national ruling party at the centre. Therefore, the limitations of the consensual federalism and the beginning of a more confrontationalist federal interaction had emerged, in a limited manner, in this phase of one-party dominance.

The Language Agitation-

The proposal by the Union government to declare Hindi the national language was met with strong opposition from non-Hindi speaking states. Despite the passage of the Official Language Act of 1963, which made Hindi the sole official language of India, the Centre recognised that such an imposition could spark resentment, which could lead to violence, endangering the country's stability. Such unrest would have opened up a slew of new ethnic and linguistic battlegrounds. The Union government decided to practise bilingualism, stating that English, along with Hindi, would be used for all official purposes of state communication in the country. According to analyst Paul Brass, the dominance of English in official communication was a victory for India's pluralism. It put the burden of language learning on both the Hindi as well as non-Hindi speakers. The fact that the regional languages are dominant in every state[r] reflects the spirit of a decentralised polity.

The Centre had to surrender, in some respect, to the popular pressure for cultural and political autonomy of the regional units.¹⁹ However, in this era of one-party dominance under Congress, the contentious questions of centre-state relations and the evolving federal dynamics were mostly addressed within the organisational fold of the Congress party itself, where most state governments belonged. Kerala was an important exception. It is only after the 1967 elections when Congress

Indian states". *Journal of Indian School of Political Economy*, 15(1-2), (2003):5-44.

¹⁸ Pranav Verma and Sugshosh Joshi, "Reaffirm Cooperative Federalism", *The Hindu*, May 13, 2020.

¹⁹ Ashutosh Varshney, "How has Indian Federalism done?", *Studies in Indian Politics I(I)*, (2013): 43-46.

dominance declined, and a more fragmented party system emerged in India. It is in that period that the centre-state relations took a more conflictual turn.

Second Phase: Expressive Federalism (1967-1989)-

When the Congress party's dominance was starting to weaken in many states, though still etched in national politics²⁰. The 1967 elections were important for Indian federalism as the dominant Congress party suffered a considerable electoral setback in the national as well as state elections. Many regional parties and anti-Congress coalitions formed governments in the states, marking the emergence of an era of "expressive" and more active and directly conflictual federal dynamics between the Congress-led centre and the opposition parties-led state governments. Another development was the power tussle within the Congress that led to the split of the party in 1969, and the centralisation of power in the hands of Congress leader Indira Gandhi after her massive victory in the national elections of 1971.²¹

The Rise of Centralising Tendencies-

The centralisation of the Congress party created an impact on India's federal dynamics in two ways: the erosion of Congress's political base, and the encroachment of regional autonomy.

The mass-based popular regional leaders of the Congress party were sidelined, resulting in the concentration of power in the Congress central leadership. Only those who were "loyalists" to Indira Gandhi were installed as state party leaders and chief ministers. As a result, the party was deprived of its organisational strength at the grassroots that earlier had been built with the support of the popular state-level leaders.²²

Over time, the Congress vote share started to decline. In 1971, the national elections were separated from the state elections. The Congress party fought the elections mainly based on national issues and Indira Gandhi's personal popularity. This gave Congress victories in three national elections in this period (except in 1977). The Congress also won the state elections in 1972 due to Prime Minister Indira Gandhi's electoral appeal. However, the social base of Congress's electoral support began to shrink gradually from this time due to organisational weakness at the local level and the absence of strong state leaders. This era also coincided with the political rise of many

²⁰ Yogendra Yadav and Suhas Palshikar. "From hegemony to convergence: Party system and electoral politics in Indian states", 5–44.

²¹ Paul. R Brass, *Ethnicity and Nationalism: Theory and Comparison*, (Sage Publication, 1991), 133.

²² James Manor. "India and After: The Decay of Party Organisation in India", *Round Table*, No. 272, (1978):315-324.

regional parties in a number of Indian states.²³

The ruling Congress faced dual challenges: the rise of regional political forces in states like Punjab, Andhra Pradesh, Tamil Nadu, West Bengal, Assam, Jammu and Kashmir and other states, and the shrinking organisational capacity of the Congress state units. Prime Minister Indira Gandhi dissolved state governments led by opposition parties by invoking Article 356, and installed Congress governments in those states. In 1977, when the Janata government came to power at the Centre, it also dissolved the Congress-ruled state governments to install Janata party-led governments in the states. This period witnessed a confrontational centre-states relation as the federal power positions were occupied by opposing political parties. The Congress party was at the Centre and anti-Congress political bloc—comprising of major regional parties—were in power in many states. The Centre frequently resorted to invoking Article 356 to tame the “recalcitrant” states. In this context, scholar **Bhagwan D. Dua**²⁴ argued that due to the “excessive use of president rule”, the “autonomy of states has been reduced to a farce”. Such excessive centralising tendencies gave rise to a conflictual nature of federalism.

2. Multiparty Federalism (1989-2014)-

In the late 1980s, a number of emerging political, economic and institutional factors led to the “reconfiguration of Indian politics”²⁵. **Yadav and Palshikar** observe that from this period, “the level of politics seemed to have changed from all-India to the states... These changes have been accompanied by the change in the idiom of politics. The rise of a number of regional parties brought a new era of multi-party system in India.

The End of Congress’s National Dominance-

The massive defeat of the Congress party in the 1989 national elections changed the country’s national political landscape. To begin with, no other political party had been able to garner a comfortable majority in parliament for forming the government at the centre.²⁶ The political shrinking of the Congress party and the inability of the Bharatiya Janata Party (BJP) to emerge as the national alternative (despite BJP’s relative political rise), created a political vacuum at the

²³ Iqbal Narain, (eds.) *State Politics in India*, (Meerut: Meenakshi Prakashan, (1976).

²⁴ Bhagwan D. Dua, *Presidential Rule in India (1950-1984): A Study in Crisis Politics*, 2nd Edition, (New: Delhi S. Chand & Company, 1985), 396.

²⁵ Yogendra Yadav, “Reconfiguration in Indian Politics: State Assembly 1996-1995”, *Economic and Political Weekly*, Vol 31 Nos. 2-3, (1996):13-20.

²⁶ Sanjay Ruparelia, *Divided We Govern: Coalition Politics in India*, (New York: Oxford University Press, 2015).

national level. This paved the way for the coalition of non-Congress parties comprising of some regional parties along with the outside support of the BJP and Communist Party of India (Marxist) to form the National Front Government at the Centre led by Prime Minister V.P. Singh. This marked the beginning of the era of coalition politics in India at the national level. It was a crucial moment of regionalisation of the national political discourse as the regional political outfits at the state level got the opportunity to share national political power in the coalition governments.²⁷ As the coalitions were comprised of various opposition and regional parties with different political ambitions, ideologies and policies, the governments were unstable and were frequently toppled by political manoeuvring. After a series of short-lived coalition governments, the National Democratic Alliance (NDA I) and United Progressive Alliance (UPA I & II)¹ marked the beginning of a stable phase of coalition politics at the national level from 1999 to 2014.

This era of coalition politics at the national level shaped the federal dynamics in two ways. First, the coalition governments in the early years led by non-Congress and non-BJP parties, many of which were regional outfits, tried to lead the country and provided decentralised governance. But such attempts appeared to be fragile and therefore short-lived. This suggests that the coalition of regional parties can only provide a stable political arrangement at the national level when they are united around a national political force, which is the Congress or the BJP. Such participation of the regional leaders and their parties in national politics played an instrumental role in deepening the country's federal design. The experience of national political power also reduced the confrontationalist approach of the powerful regional and state-level political forces towards the Centre. The regional actors found it preferable to support either of the national coalition groups to get more effective political representation and better access to the resources of power. That would benefit their respective states and increase their political power and influence in their states as well as give them national political recognition. The aspirations of the regional leaders to climb up the political ladder to national politics through coalition-making and alliance-building have also led them to define their regional demands not in opposition to but in the larger context of the national issues. This blended the national and regional political narratives and paved the way for a more decentralised and pluralist multi-party federalism in India.

Institutionalised Local Self- Government-

This phase also witnessed further decentralisation of Indian politics as the 73rd and 74th

²⁷ Subrata K. Mitra and Make Pehl, "Federalism", in *The Oxford Companion to Politics in India*, Niraja Gopal Jayal & Pratap Bhanu Mehta, (New Delhi: Oxford University Press, 2010), 43-55.

Amendments were passed in 1992 to strengthen the functioning of the third tier of Indian federalism in the Municipal and Panchayat level. This strengthened the ground for the empowerment the people at the grassroots.²⁸

This era of multi-party coalition in national politics witnessed new fronts of Centre- State tussle over national issues like foreign policy, national security decisions, and economic reforms. As the regional parties supported the national party in the coalition government, they wanted to influence the central government's decisions in all important aspects to protect their own administrative autonomy, regional interests as well as pursue their national political agendas. However, the regional political forces equally had high stakes of being in government at the national level in tune with their rising national political ambitions. This era therefore saw some convergence of interests between the Union government and the states in a multi-party federalism which led to national power-sharing.

3. The Return of Dominant Political Party System **(2014- Present)-**

The 2014 general elections challenged the era of coalition politics at the national level. The BJP gained a parliamentary majority on its own and formed the government at the Centre led by Prime Minister Narendra Modi. This phase marked the beginning of what is called the “renationalisation of Indian politics” with BJP as the new national political force. After its victory in the national elections, BJP as a major political party also went ahead to capture power in 21 states in India either on its own or with a strong regional ally. BJP's more impressive win in the 2019 elections strengthened its position as the new ‘dominant party’ in India. However, unlike in the first phase, the BJP is the most dominant national political force amongst other parties but faces substantial political opposition from the national opposition party (Congress party) and many regional parties at the state level.

The Promise of ‘Cooperative’ Federalism-

Modi as Chief Minister of Gujarat realised the need for empowering the states, and made ‘cooperative federalism’ a major electoral promise in his campaign in the 2014 national elections. After coming to power, the BJP government took some major steps in the direction of

²⁸ Peter Ronald deSouza, “The Struggle for Local Government: Indian Democracy's New Phase”, *Publius: The Journal of Federalism*, Vol 33, No. 4, (2003): 99-118.

strengthening the states. The centralised Planning Commission was replaced by the Niti Aayog which the Union government assured would have “active involvement of the states in the spirit of “co-operative” federalism.”¹ Second, the Goods and Services Tax (GST) by which the Centre and states would “become equal fiscal partners in sharing a common indirect tax base” was implemented. A GST Council was formed to create a consensus amongst the states regarding the decision.¹ Third, the Union government accepted the 14th Finance Commission recommendation to give the states 42-percent share of the funds from the central pool (from the previous 32 percent). However, how far Niti Aayog and the devolution of increased funds have a bearing on deepening of federalism in tangible proportions, has to be more closely examined with time as it has its own challenges.²⁹

Challenges-

The electoral strength of the BJP has increased manifold by its impressive victories in the two successive national elections (2014 & 2019) and several state elections. In 2014, the BJP was able to dent the Congress vote bank significantly but in 2019 it also made considerable inroads in the states where powerful regional parties are in power. Second, in states like Madhya Pradesh and Karnataka in which the BJP could not form the government by slender margins, defections of legislators helped it to capture power. Third, once again the role of the governor in opposition-ruled states became controversial. The proclamation of president rule in the states like Arunachal Pradesh, Uttarakhand and Jammu and Kashmir in this period once again revealed the centralising intentions of the strong Union government. The governor’s role in government formation in states like Goa, Manipur and Maharashtra raised questions about the governor’s preference for the ruling party at the Centre.

Fourth, the non-BJP states have also expressed concern regarding the Union government’s intervention in state administration by directly monitoring and political appropriating the Centrally Sponsored Schemes (CSS). Lastly, BJP has been successful in creating a dominant tacit consensus amongst most of the opposition parties regarding its major policy decisions in the name of national interest. Policies like demonetisation, abrogation of Article 370, and changing the political status of Kashmir and the passing of Citizenship Amendment Act (CAA) 2019 met with little resistance from the regional forces in opposition to the BJP, with few exceptions. The trend where the regional actors are largely rallying behind the nationalist policy decisions of the central

²⁹ K. R. Sudhamam, “Has Niti Aayog pushed fiscal federalism forward”, *Deccan Herald*, June 3, 2018.

government marks the beginning of 'national federalism in India.

Federal Governance During COVID -19-

The most important moment of federalism now is to reveal the important role of state governments in managing the COVID-19 crisis. After initial challenges, the Union government ceded enough space and autonomy to states to strengthen their health services, manage local lockdowns, and implement social security measures to mitigate the impact of the pandemic. As health remains a state domain, the states – despite their political parity with the Union government in most cases – have functioned as the primary providers of health and administrative services within their jurisdictions, with the Centre acting as the coordinator. At this stage, as the BJP is still the dominant party at the national level in India, the political opposition remains at the state and regional levels. But since the BJP came to power in many states, either alone or in coalition, regional opposition to the rule of the Union government was significantly weaker than in the previous phase. Despite dominating national political power, opposition from regional parties and regional leaders of the state congress party is crucial to their political survival as the INC is now being harassed at the national level. Unlike last time, with no alternative national force to align with, regional forces accepted the BJP's challenge in their own states. But the BJP is showing its ability to form 'rainbow alliances' or 'new social forces' by adapting and co-opting regional forces to share political power both in the states and in the Union government. This could significantly affect the nature of federalism in India. But as the trend suggests, even in the BJP's era of national political supremacy, it faced state competition and electoral challenges, albeit in a limited way. Although regional political parties cannot influence national politics in the same way as in the third stage, these regional forces are a challenge to the national ruling party in political competition at the national level. However, with the political rise of the BJP at this moment marking the beginning of a "new fourth party system"³⁰ in India, defending the union of states has its own challenges. As this phase shows an emphasis on the "politics of co-optation" of the BJP's regional parties, a new model of "national federalism" seems to be transforming Indian political discourse. In this context, it remains important to observe whether India's federal dynamics take a more "cooperative, adaptive" or "coercive" turn at this point.

³⁰ Milan Vaishnav and Jamie Hinton, "[India's New Fourth Party System](#)", *Carnegie Endowments for International Peace*, August 19, 2019.

CHAPTER 03: CONSTITUTIONAL PERSPECTIVE OF FEDERALISM-

A federal government is recognizable as a system of divided sovereignty. Most federal states are seen to have two common characteristics: first, they comprise a group of states or constituent units – which prior to the formation of the federation were closely connected by geographical proximity and a common political and cultural history. Secondly, the motivation behind these units forming a federal structure include a desire to unite as such – for a myriad possible reasons, ranging from security and administrative ease to unification for cultural and linguistic similarities. Though the basic premise of federalism rests upon a division of powers at two (or even multiple) levels, there is no single form that it can assume. Each recognized federal structure has its own distinguishing features as well but is similar as there is always an attempt made to carefully preserve the federal government's authority along with the regional governments.

Before going into the depth of constitutional perspective it is very essential to have a look over the theories of federalism, from which constitution of different nations have withdrawn their concept of federalism:

a. Classical Theory-

Proponents of this theory included Dicey, Wheare and Robert Garon. According to Wheare federalism was a system of government where power was divided between the general and regional governments, each of which was independent of and coordinate to the other. However, the simplistic elements involved in this theory have now become somewhat obsolete in the wake of wars and economic depression (for example) on the grounds of legal formalism¹¹. The term independent was also heavily criticized as it is believed that the central and regional government cannot exist in isolation from each other and there must necessarily be a level of dependence involved in such an arrangement. More neutral terms, like autonomy, are better preferred by modern theorists.³¹

b. Origin Theory-

This theory seeks to explain federalism based on the circumstances that warrant its creation and is further divided into the sociological, multiple-factor and political theories.³²

³¹ William S. Livingston, FEDERALISM AND CONSTITUTIONAL CHANGE, 9 (1956).

³² S. A. Palekar, Federalism: A Conceptual Analysis THE INDIAN JOURNAL OF POLITICAL SCIENCE 305 (2006).

c. Functional Theory-

The functional theory supplements the origin theory in that it explains how and why a federal structure prevails under changing circumstances.³³

Constitutional Perspective of United States of America-

The Founding Fathers described the American Constitution as ‘in strictness neither a national nor a federal constitution; but a composition of both’³⁴. At the time, the term ‘federal’ was understood to mean what we perceive of a ‘confederal’ today -a union that is a confederation of sovereign states³⁵. In the early days American federalism concerned itself with limiting the authority of the central government and giving as much power as was administratively possible to the constituent states. It was only later that these powers of the states were transferred to the centre.³⁶

What distinguished American federalism from the others is that it was conceived as an end and not a means to an end – for example, a federal structure for better governance of a large territory. It is based on federalism that the other distribution of powers takes place. American federalism modelled itself around three essential conditions – supremacy of the constitution, distribution of the government’s powers among different bodies thereof and the authority of the judiciary to interpret the constitution. Strangely enough, modified versions of these conditions are also found in other federal systems, like India for example. American federalism, from its conception, has allowed the states to take the forefront in certain matters and the judiciary thus seeks to restrict the Union’s powers if found to transgress into the realm of the states. Recently in **Printz v. United States**³⁷ and **New York v. United States**³⁸, the Supreme Court of the United States held that the federal government could directly control private parties directly, or ask for help from the states to this end, or even bargain with the states for help, but that it normally may not appropriate the states’ powers³⁶. This is also evident from **United States v. Lopez**³⁹, where the Supreme Court of the United States overturned a law because it believed that the Congress

³³ Ibid.

³⁴ James Madison, Federalist Rossiter (Ed.) THE FEDERALIST PAPERS 246 (1999).

³⁵ Martin Diamond, What the Framers Meant by Federalism (Robert Goldwin (ed.), A NATION OF STATES 25 (1974).

³⁶ Douglas V. Verney, Federalism, Federative Systems and Federations: The United States, Canada and India PUBLIUS 89 (1995).

³⁷ 521 US 898 (1997).

³⁸ 505 US 144 (1992).

³⁹ 514 U.S. 549 (1995).

had overstepped its power to control interstate commerce. A similar approach was taken in **United States v. Morrison**⁴⁰ where the judiciary restated its authority to regulate the seemingly unfettered powers of the Congress to protect the federal structure envisioned in the Constitution, even in the domain of common law crimes. Though not every constitutional challenge to the constitutionality of a federal statute has been favourably entertained by the judiciary, its spirit to safeguard the federal system is rather apparent.⁴¹

Constitutional Perspective of Germany-

As early as 1946, Germany saw established regional territories (Länder) with their own governing machinery – parliamentary governments in favor of democracy and headed by their own Prime Ministers. These Prime Ministers became instrumental in laying down the Basic Law or Grundgesetz of the unified Germany. The Prime Ministers were to set up a federal government – in the interest of the rights of the constituent states and also to provide for a central government that would ensure rights and freedoms of individuals. The proposed federation of states would be empowered to oversee the application of federal law, govern the fiscal sharing structure among other matters. The Basic Law, however, underwent several amendments during the unification of Germany but contained provisions to deal with the above. It identifies Germany as ‘a democratic and social federal state’. Germany describes itself as a Bundesstaat or federal state but has its own peculiarities like conferring most of the legislative power on the national government while the constituent states have the power and responsibility to administer state and federal laws. The Bundesrat, which represents the Länder was created to give the states adequate representation in domestic policymaking. To generalize, the Länder possess the authority to administer most laws unless, specifically excluded by the basic law⁴². Fiscal matters were to be controlled by the union and the Länder - independent of each other, where the role of the Bundesrat becomes that much more vital.

Constitutional Perspective of India-

Seldom is India considered to be completely federal; instead, it is thought to be federal in form but mostly unitary in substance⁴³. It is a ‘union of states’ where the state governments derive

⁴⁰ 529 U.S. 598 (2000).

⁴¹ Peter J. Henning, *Misguided Federalism* MISSOURI LAW REVIEW 391 (2003).

⁴² STUDIES IN COMPARATIVE FEDERALISM: AUSTRALIA, CANADA, THE UNITED STATES AND WEST GERMANY, ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS 35 (1981).

⁴³ Ibid.

their powers from the central government.⁴⁴ India's federal system found its origins in the Government of India Act, 1935 which provided for British India and the then Princely States to come together and form a federal Union⁴⁵. Many reasons contributed to the establishment of a federal structure in India

– its vast size, religious and linguistic diversity, etc. These reasons become important in other debates such as minority rights for certain religions or demarcation of state boundaries based on linguistic lines. India is referred to as quasi-federal for several reasons. On the legislative front, subjects on which the government may make laws are divided as per three lists: the Union List for the Union Parliament, the State List for the State Legislative Assemblies and the Concurrent List which gives residual powers to the Union (except in the exceptional case of Jammu and Kashmir where the residual powers vest in the State Legislative Assembly). Despite this clear division, the states may enact laws only when the same are not contradictory to a law made by the Centre. The same predominance is true in the case of the Union Executive over the State Governments and of the Supreme Court of India over subordinate courts. However, post-liberalisation, India's federal structure can be described as cooperative-cum-competitive, owing itself to regional political parties whose agenda include consolidating interests based on economic, minority, religious and caste rights.

– As per the Indian Constitution, the Union must protect every state against external aggression as well as from internal disturbance.⁴⁶ It is interesting to note that Article 356 of the Constitution virtually negates India's federal character. It gives the Union Executive

– the President of India – the power to bring under its control a particular state if it is satisfied that the state is unable to comply with the provisions of the Constitution. The position before 1977 was rather rigid where this power of the President was outside the purview of judicial review. In **S.R. Bommai v. Union of India**⁴⁷, the Supreme Court clarified that such a declaration of 'President's Rule' was not absolute and was subject to judicial review just as any other action of the Executive. India's disposition to a strong centre is time-tested and ties in closely with the judicial history surrounding the basic structure doctrine. Even though the Constitution contains provisions (like Article 3) that may be used to build a case against its federal structure, the Indian

⁴⁴ National Commission to Review the Working of the Constitution, Report, I, 8.1.2 (2002), at <http://lawmin.nic.in/ncrwc/finalreport/volume1.htm> (last visited on 05/03, 2023).

⁴⁵ S. P. Sathe, India: From Positivism to Structuralism (Jeffrey Goldsworthy (Ed.) *Interpreting Constitutions: A Comparative Study* 217 (2006).

⁴⁶ Article 355 of the Constitution of India, 1949.

⁴⁷ (1994) 3 SCC 1.

Constitution is basically a federal constitution – with certain exceptions⁴⁸. The federal character of the Indian Constitution is held to be one of its basic features. In 1967, the Supreme Court of India in **I.C. Golaknath & Ors. v. State of Punjab & Ors**⁴⁹. prohibited the legislature from making any such amendment to the Constitution that would ‘take away or abridge’ the Fundamental Rights contained in Part III of the Constitution. If made, such an amendment would be null and void. Six years later, in **Kesavananda Bharti v. State of Kerala**,⁵⁰ the Supreme Court overruled Golaknath and held that the Parliament was indeed competent to amend any part of the Constitution so long as it kept in mind that the ‘basic structure of the Constitution could not be abrogated even by a constitutional amendment’. Two years later, in a bid to restrict the judicial review of constitutional amendments (following from Kesavananda Bharti), the Parliament enacted the 42nd Amendment to the Constitution which, to sum briefly, sought to turn the Parliament’s limited powers to unlimited powers. Among other things, the amendment sought to prevent all constitutional amendments from being examined by the judiciary, thus giving itself unfettered power to amend the Constitution. The Supreme Court through its verdict in **Minerva Mills & Ors. v. Union of India & Ors**⁵¹., once again upheld the doctrine of basic structure – thus ensuring that the Union Parliament would never be able to compromise the federal structure of the Constitution. Even so, federalism seems to be part of the basic structure largely in thought and not in action. Over the years, India’s federal structure has been changed greatly, for example, with new states being created. Federalism as basic structure doctrine exists, perhaps, for a situation where an unconstitutional act by the State seeks to alter India’s federal character altogether.

⁴⁸ Durga Das Basu, COMMENTARY ON THE CONSTITUTION OF INDIA, (13TH EDN.) 18 (2000).

⁴⁹ AIR (1967) SC 1643.

⁵⁰ AIR 1973 SC 1461.

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CHAPTER 04: HIATUS AND CONFRONTING

ARENA OF INDIAN FEDERALISM-

The ever-increasing centralization of power within the Indian federal framework has gone so far as to make states more like subordinates than equals.

In India, there are some issues that have resulted in conflicts and tensions between the centre and the states, as well as among the states on several occasions.

Thus, it appears that Indian federalism must face several contemporary challenges in terms of changing policies and central government institutions in order to function properly.

However, the following are some aspects of India's federal problems which are:

1. The growing emergence of regional sensitivity among the federal units poses a menace in the federal as well as in the national spirit of India. It is also the role of political ideology that primarily focuses on the normative interest of the region and sub national entity. Put it differently, it can be said that, it is a good parameter of that region but remain a disturbing factor towards the very nature of Indian federalism.
2. The sharing of power between the centre and states is always vested an unequal basis in federal government of India. Thus, the union government would enjoy the power of supremacy as in compare to state. Even if, the units are exercised a limited sphere of influence in their connection. For instance, in case of conflict between them, the rule of centre is always prevailed as units are determined inferior thereof. Hence, the state has lost its power of autonomy and seeks to ask to demand for an equal sharing power instated the inferiority. For this, the federal imbalance gives raise the anti-federal nature of Indian federalism.
3. The little fact is that states are always centre-oriented. In financial matters, states are also dependable upon the centre. In fact, the constitution has not mentioned any specific fiscal autonomy provision of the state. Therefore, with regard to operating the institutional structure and day-to-day business, the states have widely relied upon the union. Along with this, a matter concerning taxes and revenue the state can't spend money without prior concern and approval of centre. This is how the federal crisis has taken place in India.
4. At present, the union of India consists of 28 States and 9 unions Territory. However, the states have common grievances is to fulfil their regional demands. But, due to unequal

representation on the basis of population and territory of the state may either lead to an inter-state inequality or anti-state disparities in the centre. Further, the central attitudes towards states are sometimes negligible because of party-politics representation from the states. So, each of states has faced both in term of privileged and unprivileged while representing states in front of the centre. As of it states interest is in danger and centre interests are becoming parochial day by day.

5. Unlike the destructible union of indestructible state in USA, Indestructible union of destructible States is the prime base of the Indian federalism. In India, there is no permanency in the nature of the state. It is the supreme power of the union to bifurcate the state on the requirement of the country. This character of the union government is a factor by which Indian federalism faces problem in its true functioning.

6. Issues of Religions are a burning example in the federal system of India. There are rigorous institutional conflicts between the different religions throughout the country. For instance, the conflict between the Muslims and Hindu on Babri Masjid & Ram Janma Bhoomi wherein conflicts began for the fulfilment of the specific interest of the religion. This is the biggest challenge for India so far as the true natures of the Indian federalism are concerned.

7. Despite the above challenges, there are some Contemporary issues and challenges to Indian Federalism.

Besides, the challenges as mentioned above, there are other challenges too, which are as follows:

1. Ineffective Functioning of Several Bodies-

The Planning Commission has been disbanded, the Inter-State Council has met only once in the last seven years, and the National Development Council has not met at all. These events have made it difficult to maintain the cooperative spirit between the Union and the states.

2. Issues in Tax Regime-

The misconceived Goods & Services Tax (GST) has already taken away much of the autonomy available to states and has **made the country's indirect tax regime unitary in nature**. During the pandemic, the Union government **repeatedly violated the** compensation to the States under GST regime. Delay in paying the States their due worsened the impact of the economic slowdown.

3. Encroachments Upon States' Autonomy in State Subjects:

Many important and politically sensitive decisions have been taken in the past few years, without

referenceto, and consultation with, the concerned states such as

- **Article 370** was removed without consulting the state legislature.
- Parliament legislated on “agriculture” in the state list, to **enact the three contentious farm laws**, overstepping its jurisdiction and imposing a law on the states.
- Additionally, the **BSF’s jurisdiction was extended** in Assam, West Bengal and Punjab **without any consultation** with the concerned states.
- **Impact of Covid-19:** The states were curtailed in aspects relating to Covid-19 management such as procurement of testing kits, vaccination, the use of the **Disaster Management Act, 2005**, and the **unplanned national lockdown**.
- Moreover, the ill-prepared government during the **Second Wave** countered criticism by claiming health as a ‘State subject’.

4. **Regionalism-**

- It is the most alarming challenge to Indian federalism which basically implies an inculcation of a strong sense of love and respect for one’s region, ethnicity, language, and culture.
- It is this love that makes regions fight for greater autonomy within the nation and directly putting the authenticity of Indian federalism in danger.
- Regionalism **establishes itself through demands for autonomy basically on the grounds of language** which are usually never silent methods of request, rather they tend to take major violent forms, disrupting the political and cultural environment of the nation as a whole.
- The nation thus faces the challenge of internal security in the form of insurgency and this causes upheavals in the basic notion of Indian federation
- **Regionalism started with the creation of the state of Andhra Pradesh** as a consequence of the death of Potti Sriramulu in 1953 demanding a separate state for Telegu speaking people.
- Subsequently, in 1954, the **States Reorganisation Committee headed by Fazal Ali recommended the formation of 16 new states and 3 union territories**.
- In 2000, three more states were formed on linguistic lines namely- Chhattisgarh, Jharkhand, and Uttarakhand.
- In 2014, the state of Telangana was declared as the 29th state of the Indian Union.

5. Governor's Office-

- The constitution of India provides the provision of a Governor for each state, who is chosen directly by the President of India and runs a tenure of 5 years.
- The President can dismiss the Governor according to his/her pleasure.
- The Governor of each state is vested with executive, judicial, legislative and financial powers.
- **Article 154:** The most important power of the Governor which sometimes comes in conflict with the federal structure of the country is the power vested upon him/her by Article 154 of the Indian Constitution which states that **all the executive powers of the state are held by the Governor.**
- The provision thus implies that the Governor can appoint the Chief Minister and the Advocate General of the State, and State Election Commissioners.
- Another executive power at his/her disposal that harms federalism is that **he can recommend the imposition of constitutional emergency in a state.**

6. Centralized Planning-

- The Concurrent list contains economic and social planning as one of the items which imply that economic and social planning should be taken collectively and with equal discretion by both the State and the Centre.
- But, the Central government tends to control the national and regional planning in India without any inhibitions at all. The **establishment of the erstwhile Planning Commission** is one of the examples of such a tendency of the Centre.
- **Hegemony over the financial planning of a country** makes the Centre go against the basic federal structure of India as it becomes quite clear that Centralized planning nullifies the primary rule of a federation and its requirement of the division of power between the Centre and the State.

7. Single Constitution and Citizenship-

- India functions only on one single constitution and the provisions as well as restrictions laid down by the articles in the constitution is applicable to each state and union territory of the country equally.
- It implies that **a person cannot hold dual citizenship and enjoy the rights of India as well as another country at the same time.**
- The quasi-federal structure of the Indian governments requires the administration to be

divided between the State and the Centre. But the inculcation of Single Citizenship and Single Constitution somewhere is in contrast to such a structure.

- The provision of Single Citizenship does not consider a citizen's identity as a member of a particular state and it indirectly establishes that the most integral of powers remains and shall always remain with the Centre alone.

8. Language-

The diversity in languages in India sometimes causes problems to the federal spirit of the Constitution. The tussle for the official language in India is still an issue of concern. For example, the southern states' opposition to Hindi as the official language of India has led to a deep-seated language crisis in India.

9. Centralised Amendment Power-

The power of constitutional amendment in India lies with the Centre **under Article 368** and other provisions whereas, in a typical federation, the power of amendment to the Federal Constitution lies on a shared basis between the federation and its units.

Even though ratification of half of the states is sought for in some limited areas, the states in the Indian Union have virtually no power in the amendment procedures.

10. Economic Incapabilities of the State-

The differences in economic standards, relative economic and fiscal incompatibilities, etc among the states pose a threat to a federation. Subsequently, demands for financial equality of a region creates problems in a federation.

- The **introduction of GST** has created an atmosphere of panic among states.
- The **central government is required to compensate states for any loss of revenue they incur due to GST.**
- The **Centre must pay this compensation on a bi-monthly basis**, but over the past year these payments have been delayed by several months due to lack of funds.
- The **COVID-19 pandemic and the consequent lockdown have amplified the issue manifold, with both centre and states facing a revenue shortfall**, limiting the ability of the Centre to meet states' compensation needs.

- As per the Ministry of Finance the GST compensation due for the period April 2020-March 2021 was 81,179 crore and Rs 55,345 crore, for the period April-May 2021. Compensation is due to all the States except Arunachal Pradesh, Manipur, Mizoram and Nagaland.

11. Recent Controversies-

- The recent **tussle between Governor and Chief Minister in West Bengal** highlighted the fragility of the Indian Federal Structure.
- The **protests for Gorkhaland and Bodoland for Statehood**.
- **Protests by people in Lakshadweep** against the draft legislation like Lakshadweep Prevention of Anti-Social Activities Regulation (Goonda Act), etc and the doings of Administrator of the Union Territory.
- The passing of **The Tamil Nadu Admission to Undergraduate Medical Degree Courses Bill, 2021** reveals that the legislation on subjects in the Concurrent List (Education) must be meet the aspirations of the states too.
- **Veto Power used by West Bengal Chief Minister in case of Teesta Pact**
- The Teesta River, the fourth largest transboundary river between India and Bangladesh, is **actually a tributary of the Brahmaputra which flows through the Indian state of Sikkim and West Bengal to enter Bangladesh**. The dispute regarding the sharing the water of the river during dry season assumed importance following the finalisation of the Ganga Water Treaty in 1996. **The two countries almost concluded a water-sharing treaty in 2011** under which India would get 42.5 per cent and Bangladesh around 37.5 per cent of the water during the dry season. But the proposed treaty was vetoed by the West Bengal Chief Minister as **water supply remains a state list subject in India**. The problem thus became a complicated one, given the involvement of an Indian state in the matter. **Since Bangladesh remains a key swing state in South Asia as far as the Chinese involvement in the region is concerned**, it is important for India to come up with a deal at the earliest.
- Recent tussle over the Government of Maharashtra i.e between Eknath Shinde Group and Uddhav Thackeray Group.

CHAPTER 05: ROLE OF LEGISLATURE IN PRESERVING THE SPIRIT OF FEDERALISM

In drafting the Constitution of India, the Constituent Assembly had many models to use, but it wisely chose to base its new constitution on the Government of India Act, 1935. The approval of the Government of India Act, 1935 as the basis of the new constitution had the great advantage that the transition of British rule to the new Republic of India took place without a break from the past. It ensured the uninterrupted validity of the old laws and constitutional provisions; and thus, secured for India the advantage of evolutionary change over a revolutionary break with the past. The most important political feature of the Federal Constitution is the division of legislative power between the Center and the States. When the Government of India Act of 1935 was drawn up, the British parliament had to resolve the demand of the Muslim minority that the provinces retain legislative power and the demand of the Hindu majority that the rest of the power be given to the Union.

Federalism and Indian Constitution-

The Constitution of India came into force on 26-1-1950. For many decades thereafter, the Supreme Court of India was called upon to grapple the issue about the nature of federalism under the Indian Constitution.

In **State of Rajasthan v. Union of India**⁵² **Beg, C.J.** observed that the extent of federalism in the Indian Constitution is largely watered down by the means of progress and development of a country which has to be nationally integrated, politically and economically coordinated and socially, intellectually and spiritually uplifted. **H.M. Seervai** in his treatise on the Indian Constitution observes that the aforementioned view of the Supreme Court “... is based on an imperfect study of our own and other Federal Constitutions.”⁵³

⁵² Ibid.

⁵³ Seervai H.M., Ch. V: Federalism in India, *Constitutional Law of India*, Fourth Edn. Vol. I, p. 283, Universal Law Publishing.

Furthermore, in **re Power, Privileges and Immunity of the State Legislature of States**⁵⁴, the Hon'ble Supreme Court discussed the federal feature of Indian Constitution in juxtaposition with that of Britain and held that- In considering this question, one of the main features of the Federal Constitution must be remembered. In England, Parliament is sovereign; and, in the words of Dicey, the three characteristic features of the principle of parliamentary sovereignty are that parliament has the power to make or repeal any law; that no person or body shall have power under the laws of England to repeal or set aside any Act of Parliament; and that the right or power of parliament extends to all parts of the queen's dominions. On the other hand, an important feature of federalism is the "limited distribution of executive, legislative and judicial powers between mutually coordinated and mutually independent bodies". Constitutional supremacy is essential to the existence of a federal state to prevent federal or state legislation from destroying or undermining the delicate balance of power that fulfils the special needs of states readily. of union, but not ready to combine their individuality with unity. This constitutional supremacy is protected by the authority of an independent legal body to interpret the system of separation of powers. Nor is it possible to amend the Constitution by ordinary federal or state legislation.”

Hon'ble Supreme Court in the case of **State of West Bengal v. Union of India**⁵⁵ observed that a truly Federal Constitution has four essential characteristics viz.:

- (a) an agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union, and retaining the residue of the authority in the constituent units;
- (b) supremacy of the Constitution which cannot be altered except by the component units;
- (c) distribution of powers between the Union and the regional units each in its sphere coordinate and independent of each other; and
- (d) supreme authority of the courts to interpret the Constitution and to invalidate action violative of the Constitution.

The Court observed that characteristic (d) is to be found in full force in the Indian Constitution, but characteristics (a) and (b) are absent. Insofar as characteristic (c) is concerned, there is undoubtedly

⁵⁴ (1965) 1 SCR 413.

⁵⁵ Ibid.

distribution of powers between the Union and the States in matters legislative and executive, but the distribution is not always an index of political sovereignty. The exercise of legislative and executive powers in the allotted fields is hedged in by numerous restrictions, so that the power of the States is not coordinated with the Union and is, in many respects, independent of the Union.

Relation between the Centre and States-

The Constitution of India incorporates the concept of federalism in various provisions. There are several such provisions to be found throughout the Constitution which relate to the idea of federalism, and particularly those which concern the relationship between States and Centre. These include inter alia division of legislative functions between them with sanction of the Constitution inter alia include **Lists I, II and III** of the Seventh Schedule; the authority to Parliament to legislate in a field covered by the State under **Article 252** only with the consent of two or more States, with provision for adoption of such legislation by any other State; competence of Parliament to legislate in matters pertaining to the State List in the national interest, for a limited period, under **Article 249 and under Article 250** during “emergency”; vesting the President with the power under **Article 258(1)** to entrust to a State Government, with consent of the Governor, functions in relation to matters to which executive power of the Union extends; etc.

Part XI of the Indian Constitution is titled “Relations between the Union and the States”. **Chapter I** thereof relates to legislative relations. An important provision in the aforesaid chapter is **Article 246** which provides for subject-matter of laws made by Parliament and by the State Legislatures. This article deals with distribution of legislative powers as between the Union and the State Legislatures, with reference to the different Lists in Schedule **VII**. The gist of the article is that Parliament has complete and exclusive power to legislate with respect to matters in List I, and also has the power to legislate with respect to matters in List

III. The State Legislature, on the other hand, has complete and exclusive power to legislate with respect to List II and has concurrent power with respect to matters included in **List III**. This provision provides for the distribution between the Union and the States, of the legislative power conferred by **Article 245**. The provisions of **Article 246** are to be read with the entries in the Union List, State List and the Concurrent List in Schedule VII.

The Constitution (73rd Amendment) Act, 1992 inserted Part IX titled “The Panchayats”. The 73rd Amendment was brought into force under the garb of giving effect to a directive principle of

State policy viz. Article 40 of the Constitution. **Article 40** provides that the State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

Part IX of the Constitution confers certain powers on local self-government. It promises duration of five years, free and fair elections, representation of Scheduled Castes and Scheduled Tribes in the administration of institutions of local self-government, “no interference” by other organs of the State, including judiciary, etc. To illustrate, Article **243-B** provides that there shall be constituted in every State, panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. Further, Article **243-C** provides for composition of panchayats. **Clause (1)** thereof provides that subject to the provisions of Part IX, the legislature of a State may, by law, make provisions with respect to the composition of panchayats. The particulars of the composition have also been prescribed by **Article 243-C**. **Article 243-D** provides that seats shall be reserved for the Scheduled Castes (SC) and the Scheduled Tribes (ST) in every panchayat. Furthermore, it provides that the number of seats so reserved shall be, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in the Panchayat as the population of the SC/ST in that panchayat area bears to the total population of that area. Not less than one-third of the seats reserved, are to be reserved for women belonging to SC/ST. Furthermore, not less than one-third of the total number of seats to be filled in by direct election in every Panchayat, shall be reserved for women. The provision also mandates reservation in the offices of the Chairpersons in the Panchayat. **Article 243-E** provides that every panchayat shall continue for five years from the date appointed for its first meeting and no longer. **Article 243-F** provides for disqualifications that a person may incur, for being a member of a Panchayat. The powers, authority and responsibilities of the Panchayats are provided for in **Article 243-G**. Much like many of the clauses, **Article 243-G** also provides that subject to the provisions of the Constitution, the legislature of a State may endow the Panchayats with such power and authority as may be necessary to enable them to function as institutions of self-government. The law framed by a State Legislature pursuant to **Article 243-G** is subject to the condition as may be specified therein, with respect to implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to matters listed in the **Eleventh Schedule**. **Article 243-H** enables the legislature of a State to authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits as the law may prescribe. **Article 243-K** provides for the elections to the Panchayat. **Clause**

(1) thereof provides that the superintendence and control of preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission. Furthermore, clause

(4) provides that the legislature of a State may, by law, make provision with respect to all matters relating to elections to the Panchayat. An important provision introduced by the **73rd Amendment is Article 243-N** which provides for continuance of existing laws and Panchayats. It starts with a *non obstante* clause, and provides that notwithstanding anything in **Part IX**, any provision of law relating to Panchayats in force in a State immediately before the commencement of the 73rd Amendment Act, which is inconsistent with the provisions of Part IX, shall continue to be in force until amended or repealed by a competent legislature or until the expiration of one year from such commencement, whichever is earlier. The 73rd Amendment was brought into force on **24-4-1993**. Therefore, in terms of the aforementioned article, any law relating to Panchayats in force in a State would continue to be in force only up to 24-4-1993, unless it was amended or repealed before that.

Like Part IX, is **Part IX-A**, comprising of **Articles 243-P to 243-ZG**. **Part IX-A was inserted into the Constitution by Constitution (74th Amendment) Act, 1992**. Part IX-A is titled “**The Municipalities**”. The object of introducing Part IX-A was that in many States the local bodies were not working properly, and timely elections were not being held and nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. The provisions introduced vide Part IX-A were intended to restore the local bodies to their rightful place in political governance. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. Much like Part IX, Part IX-A also provides for constitution of Municipalities (**Article 243-Q**), composition of Municipalities (**Article 243-R**), reservation of seats (**Article 243-T**), duration of Municipalities (**Article 243-U**), powers, authority and responsibilities of Municipalities (**Article 243-W**), powers to impose taxes by, and funds of the Municipalities (**Article 243-X**), audit of accounts of Municipalities (**Article 243-Z**). Further, the aforesaid part also introduces provisions relating to election (**Article 243-ZA**). The provisions of **Article 243-ZF** are *pari materia* to the provisions of **Article 243-N**, insofar as it provides that any provision of a law relating to Municipalities in a State immediately before the commencement of the **74th Amendment**, which is inconsistent with the provisions of Part IX-A shall continue to be in force until amended, repealed or until expiration of one year from

the date of commencement of the Amending Act.

But for the introduction of Parts IX and IX-A, the State Legislature had complete power to legislate upon matters relating to Panchayats and Municipalities. This power could be traced to Article 246 read with **Entry 5 of List II of Schedule VII. Entry 5** provides for “Local Government that is to say the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, Mining Settlement Authorities, and other local authorities for the purpose of local self-government or village administration”. Pursuant to the introduction of Parts IX and Part IX-A, it can be contended that Parliament has enacted provisions relating to a matter which clearly fell within the exclusive legislative domain of the States. As mentioned, the introduction of Parts IX and IX-A, make provisions in relation to certain aspects of the functioning of the Panchayats and the Municipalities respectively. By virtue of **Articles 243-N and 243-ZF**, the State Legislatures cannot make any statutes which are inconsistent with the provisions of Parts IX and IX-A. Perhaps, even in the absence of the aforementioned two articles, the States would have lost their power to make any statute which is inconsistent with the provisions of the aforementioned Parts by virtue of them being constitutional provisions. It is clear that the introduction of Parts IX and IX-A were made by using the power under **Article 368 of the Constitution viz. the power of Parliament to amend the Constitution. It may be said that but for Article 368, Parliament could not have made any statute in relation to institutions of local self-governance by virtue of them being within the exclusive domain of the State Legislature.** An attempt to usurp some domain from that which lies exclusively with the State Legislature will amount to be a colourable exercise of power by Parliament. In other words, using the power to amend the Constitution to enact provisions relating to local self-governments, Parliament has sought to do something indirectly, which it could not do directly.

This exercise was repeated by Parliament by introducing **Part IX-B by the Constitution (97th Amendment) Act, 2011**. This Part was titled “Cooperative Societies”. Part IX-B provided for incorporation of cooperative societies (**Article 243-ZI**), constitution of the board of cooperative societies (**Article 243-ZJ**), election of members of the board (**Article 243- ZK**), supersession and suspension of board (**Article 243-ZL**), etc. **The 97th Amendment Act** was challenged before various High Courts in the country.

Part XIII of the Constitution of India-

Part XIII of the Constitution is titled “Trade, commerce and intercourse within the territory of India”. **Article 301 of the Constitution of India** provides that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Article 301 is inspired by Section 92 of the Australian Constitution when it refers to freedom of trade and commerce. However, it is subject to the limitations and conditions in **Articles 302, 303 and 304** which are borrowed from the commerce clause under **Article I of the US Constitution. Part XIII of the Indian Constitution** is an amalgam of the United States’ and Australia’s Constitutions. It brings out the difference between regulatory and taxing powers.

Article 302 of the Constitution provides that Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another, or within any part of India as maybe required in the public interest. This provision is another instance of the Centre having wider powers as compared to States. Article 303 provides for restrictions on the legislative powers of the Union and of the States with regards to trade and commerce. Clause

(1) thereof, provides that notwithstanding anything in Article 302, neither Parliament nor the legislature of a State shall have power to make any law giving, or authorising the giving of any preference to one State over another, or making, or authorising the making of any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the **Lists in the 7th Schedule**. Discrimination means an intentional and purposeful differentiation creating economic barriers with an element of unfavourable bias. Furthermore, **Clause (2)** thereof carves out an exception to Clause (1) by providing that nothing therein shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. This exception carved out by **Article 303(2)**, is another instance where a wider discretion has been given to Parliament to make certain laws for the benefit of the Union, albeit in a specific situation.

Article 304 provides for restrictions on trade, commerce and intercourse among States. It inter alia provides that notwithstanding anything in **Article 301 or Article 303**, the legislature of a State may, by law, impose a tax on goods imported from other States which are similar to goods manufactured or produced in that State. Further, it also provides that the legislature of a State, may by law, impose

such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in public interest. The proviso to Article 304 requires the previous sanction of the President for introduction of any Bill or amendment for the purposes of **Article 304 clause (b)**.

Federalism as reflected in Temporary, Transitional and Special Provisions-

Part XXI of the Constitution is entitled Temporary, Transitional and Special Provisions. The provisions contained in Part XXI again indicate the unitary leaning of the Indian Constitution. For instance, under **Article 371 of the Constitution**, the President may by order made with respect to the State of Maharashtra or Gujarat, provide for any special responsibility of the Governor for –

- The establishment of separate development boards for Vidarbha, Marathwada, and the rest of Maharashtra or, as the case may be, Saurashtra, Kutch and the rest of Gujarat with the provision that a report on the working of each of these boards will be placed each year before the State Legislative Assembly;
- The equitable allocation of funds for developmental expenditure over the said areas, subject to the requirements of the State as a whole; and
- An equitable arrangement providing adequate facilities for technical education and vocational training, and adequate opportunities for employment in services under the control of the State Government in respect of all the said areas, subject to the requirements of the State as a whole.

A provision akin to **Article 371** is an inroad for the Central Executive viz. the President into certain affairs of the State. The scope of the power is clearly spelt out and has to be exercised in the manner specified therein. A similar provision is made in **Article 371-D** for the State of Andhra Pradesh or the State of Telangana where under the President may by order, for either of the States, provide, having regard to the requirement of each State, for equitable opportunities and facilities for the people belonging to different parts of such State, in the matter of public employment and in the matter of education, and different provisions may be made for various parts of the States.

The provisions of Part XXI make special provisions in relation to certain States in the country. The President has been granted the power to make orders in respect of the subjects mentioned therein, or appoint development boards in accordance with the provisions to ensure a comprehensive

development of the State. Much like the provisions, these provisions are an inroad for the Centre into the arena – legislative or executive, which otherwise would have legitimately been within the purview of the State.

Goods and Sales Tax-

The introduction of the **Goods and Services Tax (GST) regime vide the Constitution (101st Amendment) Act, 2016**, was a major step in revamping the tax structure. The 101st Amendment introduced Article 246-A in the Constitution making special provisions with respect to goods and services tax. **Article 246-A(1)** provides that notwithstanding anything contained in **Articles 246 and 254**, Parliament and subject to **clause (2)**, the legislature of every State shall have power to make laws with respect to goods and services tax imposed by the Union or by such State. **Clause (2)** provides that Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

The Constitutional Amendment also amended the **7th Schedule to the Constitution**.

It substituted Entry 84 in List I. The substituted Entry 84 reads as under:

84. Duties of excise on the following goods manufactured or produced in India, namely:

- petroleum crude;
- high speed diesel;
- motor spirit (commonly known as petrol);
- natural gas;
- aviation turbine fuel; and
- tobacco and tobacco products.

Further, it also deleted Entries 92 and 92-C from the Union List. Insofar as the State List is concerned, the 101st Amendment deleted **Entry 52** viz. taxes on the entry of goods into a local area for consumption, use or sale therein, and **Entry 55** viz. taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television. **Entry 54 of the State List was substituted and so was Entry 62.**

Introduction of **Article 246-A** meant that the power of levying GST was given to the Union and the States. Prior to the aforementioned constitutional amendment, the power to legislate upon matters relating to taxation was distributed between the Union and the States on the basis of the nature of transaction. With the introduction of Article 246-A, the classification based on the nature of transaction has been done away with. The Union and the States now share the revenue on all transactions.

The Amendment also introduced Article 269-A which provides for levy and collection of GST in course of inter-State trade or commerce. **Article 269-A(1)** provides that GST on supplies in the course of inter-State trade and commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendation of the GST Council. Introduction of this article is also a blow to the concept of federalism under the Constitution. It may be rational to grant the power to levy and collect the GST to the Government of India, but to determine the apportionment between the Union and the States by a law made by Parliament on the recommendation of the GST Council leans in favour of the Centre. Not only is the amount being collected by the Centre, but the manner in which it is to be distributed between the Union and the States is also to be decided by the Central Legislature viz. Parliament. The structure and functioning of the GST Council also favour the Centre than the States.

The Amendment also introduced **Article 279-A** which provides for constitution of a GST Council. **Clause (4)** thereof, inter alia provides that the Council shall make recommendations to the Union and the States on the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the Goods and Services Tax, and any other matter relating to GST. It is true that the GST Council consists of members from the Union as well as the States. However, a bare reading of the aforementioned article makes it abundantly clear that the voting power of the members from the Union is higher than that of the members from the States. This itself is a severe blow to the nature of Indian Federalism. Under Article 279-A, the GST Council has been given wide powers to make recommendations to the Union and States on the taxes, cesses and surcharges to be levied by the Union and States, the goods and services that may be subjected to or exempted from the GST, the model GST law, the rates of GST and many other issues. The Council consists of the Union Finance Minister, the Union Minister of State in charge of Revenue or Finance, the Minister in charge of Finance or Taxation or any other minister nominated by each State Government. **Clause (9) of Article**

279-A provides that every decision of the GST Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles viz.:

- The vote of the Central Government shall have a weightage of one-third of the total votes cast; and
- The votes of the State Governments taken together shall have weightage of two-thirds of the total votes cast in that meeting.

Prior to the introduction of the GST regime, the taxation power was distributed between the Centre and the States. Now with GST being a part of the constitutional framework, and the GST Council playing a very important role in the operation of that regime, the bias that Indian Federalism had towards the Centre appears to have magnified further.

Role of Rajya Sabha in preserving the spirit of federalism-

That bills passed in the Lok Sabha lapse during their pendency in the Council of States is indicative of the significant role played by the upper house, which acts as a safety valve of our federal constitution.

The Lok Sabha is often characterised as the embodiment of the will of the people, as against the indirectly elected Rajya Sabha – which has been criticised as an impediment to democratic expression. Some of these arguments can be found in constituent assembly debates as well, and post-Independence, there have been multiple resolutions and private member bills moved in the Lok Sabha seeking to abolish the Rajya Sabha altogether.

This view, however, proceeds from a skewed understanding of the constitution, which attempts a fine balance between elected majorities in the lower house and federal interests through proportional representation in the upper house.

The choices implicit in constitutional design-

The design of the constitution contains many instances where a balance is sought to be struck between equally significant, but often competing values. While some of these design elements are apparent in the text itself, almost 70 years of constitutional practice has brought certain structural features to the fore.

The Rajya Sabha is one example of such a structural design choice. From the discussions in the constituent assembly, it emerges that the Rajya Sabha was intended to play certain roles as a permanent house (one-third of its members retire every two years). These included providing a forum for more experienced legislators, reconsidering bills passed by the Lok Sabha and offering a degree of continuity in the underlying policies of laws passed by parliament.

Most importantly, however, it was conceived as a means to institutionalise the federal principle of power-sharing between the Centre and states.

As explained by **Dr. B.R. Ambedkar in the constituent assembly**, a federation envisages a dual polity or two levels of government. The government at the Centre and the states are co-equal, in the sense that they derive their legitimacy and authority from a common source – the constitution itself. The upper house in parliament, fashioned as a Council of States, can be understood as an institutional arrangement through which constituent units become part of the decision-making process at the central level itself.⁵⁶

The Rajya Sabha thus represents a crucial component of the constitutional checks and balance scheme, in addition to the commonly identified examples of responsible government and judicial review. While checks and balances usually operate between the executive, legislature and judiciary, the Council of States acts as a safety valve within the legislature itself, easing federal tensions.

This feature is also the most fundamental difference between the Rajya Sabha and the House of Lords, the British equivalent of an upper house. The United Kingdom, being a unitary country, and not a federal one, means that its upper house plays a very different and more limited role.

⁵⁶ Constitutional Assembly Debates, p.258, Para XXIV.

Comparatively, the Rajya Sabha is more analogous to the upper houses of the American and Australian legislatures, since these are federal countries. In fact, these countries institutionalise the principle of federalism more strongly than India, by providing equal representation to all states in their upper houses. This is in contrast with the Rajya Sabha, where states are represented proportional to their relative populations.

The Rajya Sabha in practice -

Until the state legislative assembly elections of 1967, the Congress was the singular dominant force in Indian politics – both at the Centre and state levels.

However, this changed with the emergence of regional parties, which formed governments in several states including Kerala, erstwhile Madras and West Bengal. For the first time, opposition parties had significant representation in the upper house. This trend has continued ever since.

An example of how the Rajya Sabha has operated as a safety valve can be illustrated by the fate of a local self-government bill passed by the Rajiv Gandhi government in the Lok Sabha in 1988. It was defeated in the Rajya Sabha due in part to the fact that the opposition (non- Congress) parties in the upper house saw it as an attempt to create a direct connection between the Central and local governments by bypassing state Governments.

Leaving aside the question of whether or not this particular intervention was desirable (the 73rd and 74th amendments gave constitutional recognition to local self-government in the 1990s), the incident highlights how the upper house can operate as an effective tool for articulating state interests at the heart of central decision-making.

The Citizenship (Amendment) Bill, for instance, was widely condemned by political parties in the Northeast, and the possibility of it passing through parliament had sparked protests across the region.

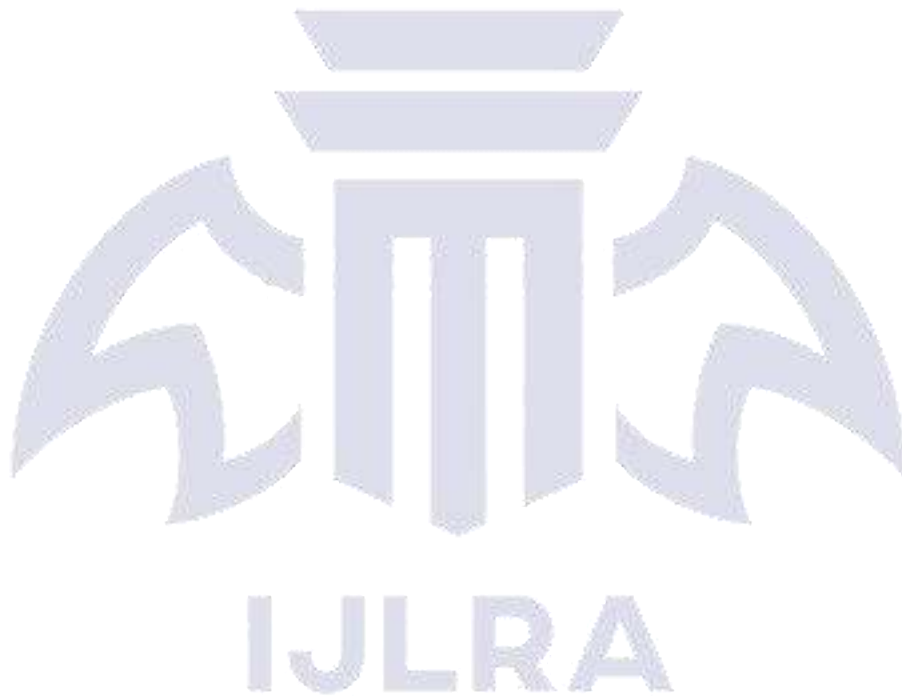
Concerns surrounding the grant of citizenship to refugees touch upon core issues of safeguarding local identities and maintaining the delicate demographic balance in an area with a long history of violence and insurgency. Even the local units of the ruling party at the Centre had protested against the bill, underlining the deeply divisive nature of the proposal.

While it was perhaps possible that, even if passed, the law may have been subject to judicial review,

it is significant that it did not reach that stage at all. Instead, a checks and balances role was played within parliament itself, through the upper house.

This demonstrates the accuracy of the following observation made in the Punchhi Commission Report (2010): “the principle of equality and equal representation in institutions of governance is as much relevant to States as to individuals in a multi-party, diverse polity”.

The importance of the Rajya Sabha as a federal safety valve – a carefully framed constitutional design choice – thus cannot be overstated.



CHAPTER 06: JUDICIAL FACEAT OF INDIAN

FEDERALISM

Independent judiciary is one the essential feature of federalism, if any government transgresses its limit assigned by the constitution, the Court has the power to interpret every word. The Supreme Court has delivered many judgments on federalism, but its stand on federalism has been inconsistent.

In the **Automobile Transport v. State of Rajasthan**⁵⁷ case while the seven judges' bench of Supreme Court interpreted the impact of article 301 of the Constitution said that Indian constitution is a federal constitution and observed: "The evolution of a federal structure or a quasi-federal structure necessarily involved, in the context of the conditions then prevailing, a distribution of powers and a basic part of our constitution relates to that distribution with the three legislative lists in the Seventh Schedule. The constitution itself says by Art. 1 that India is a Union of States and in interpreting the constitution one must keep in view the essential structure of a federal or quasi-federal constitution, namely, that the units of the Union have also certain powers as has the Union itself."⁵⁸

In **State of West Bengal v. Union of India**⁵⁹ the Union Government enacted the Coal Bearing Areas (Acquisition and Development) Act, 1957 and acquired certain coal mines which vested in the state. The state government challenged the law in the court on the ground that Parliament is not competent to make law and to authorise the Union to acquire land which is vested in a state. The state contended that: (i) Indian constitution is federal, (ii) state shared sovereignty with the centre and (iii) centre has no power to acquire state properties. The majority of the Supreme Court rejected all three contentions and held that the Union was entitled to acquire the coal mines vested in the state of West Bengal. The Chief Justice Sinha said that: A truly federal form of Government envisages a compact or agreement between independent and sovereign units to surrender partially their authority in their common interest and vesting it in a Union and retaining the residue of the authority in the constituent units. Ordinarily each constituent unit has its separate constitution by which it is governed in all matters except those surrendered to the Union, and the constitution of the Union primarily operates upon the administration of the units. Our constitution was not the result of any such compact or

⁵⁷ AIR 1962 SC 1406.

⁵⁸ Ibid.

⁵⁹ AIR 1963 SC 1241.

agreement: Units constituting a unitary State which were non- sovereign were transformed by abdication of power into a Union.⁶⁰

States do not have the right to secede from the Union in India. That conclusion rested on the proposition that the States were created by the Union, as distinct from the position in Australia and the United States where the States were the federation's constituent elements formed out of the pre-federation colonies whose delegates drafted the constitution.”⁶¹

In **Keshavanada Bharti v. State of Kerala**⁶² **Sikri C.J.** and other judges of the full bench considered the federal character of the constitution as a basic feature of our constitution **Beg, J.** observed:⁶³ In a sense, therefore, the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to be nationally integrated, politically and economically coordinated, and socially, intellectually and spiritually uplifted. In such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government.

In **S.R. Bommai v. Union of India**⁶⁴ a nine-judge bench has clearly enunciated that Indian Constitution is federal. The court held that: **“The constitution provide the more power to Central government but the state is also supreme within its spheres”...The constitution of India is differently described, more appropriately as ‘quasi- federal’ because it is a mixture of the federal and unitary elements, leaning more towards the latter but then what is there in a name, what is important to bear in mind is the thrust and implications of the various provisions of the constitution bearing on the controversy in regard to scope and ambit of the Presidential power under Article 356 and related provisions.”**⁶⁵

In the same sequence, Hon’ble Supreme Court in the case of In **Kuldip Nayar v. Union of India**⁶⁶, the Parliament in 2003 amended the Representative of People Act, 1951 wherein it deleted the requirement of “domicile” in the State concerned for getting elected to the Council of States. The issue

⁶⁰ Ibid.

⁶¹ Federalism: Comparative Perspectives from India and Australia, 284-285 (1999).

⁶² AIR (1973) SC 1461.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ AIR 2006 SC 3127.

in this case was: Whether 2003 amendment Act violated the principle of Federalism, a basic structure of the constitution? The petitioner contended that the impugned amendment to section 3 of the Representative of People Act 1951 offended the principle of federalism.⁶¹ The court rejected the petitioner's contention and held: **"India is a federal state of its kind and it is no part of federal principle that representatives of state must belong to that state. Hence, if Indian Parliament in its wisdom had chosen not to require residential qualification, it would definitely not violate basic feature of federalism."**

In **State of West Bengal v. The Committee for Protection of Democratic Rights, West Bengal**⁶⁷, in this case in exercise of power under article 226 of the constitution, the high court handed over the investigation to CBI. Feeling aggrieved by this order, state government filed SLP in Supreme Court. The state questioned the jurisdiction of high court, the counsel appeared on behalf of the state argued that it is violation of federal structure because CBI is a central agency and cannot investigate without the consent of state. The question before the apex court was, "whether the High Court, in exercise of its jurisdiction under article 226 of the Constitution of India, can direct the Central Bureau of Investigation (CBI), established under the Delhi Special Police Establishment Act, 1946, to investigate a cognizable offence, which is alleged to have taken place within the territorial jurisdiction of a State, without the consent of the State Government"? But the contention of state was not accepted and the court held that: **"Any direction issued by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the constitution and maintain the rule of law cannot violate the federal structure. Being protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the constitution in particular, zealously and vigilantly."**

In **M.C. Mehta v. Union of India**,⁶⁸ the Supreme Court while hearing a petition with respect to hardship which the people living in Delhi undergo having regard to the high pollution in the city, **T.S Thakur, CJI., A.K. Sikri and R. Banumathi, JJ.** directed various measures to be undertaken by the government and local bodies concerned. The Supreme Court asked the Central Pollution Control Board to work in cooperation with other authorities to set up sufficient number of control rooms in

⁶⁷ AIR 2010 SC 1476.

⁶⁸ (2015) SCC Online SC 1327.

the capital to monitor the air and take action. The court has been repeatedly asking the Centre and Kejriwal government to keep aside their differences and devise a “**common minimum programme**” at least for taking steps to deal with the pollution menace. This decision clearly indicates that both the government at centre and state level must work for saving the life of the people by taking proper steps for controlling pollution. It can only be possible when both governments will work in co-operation and collaboration with each other along with municipal corporation. The problems of increasing pollution are common and should be resolved through a common minimum programme.⁶⁹

Since the AAP (Aam Admi Party) came to power in Delhi, the confrontation with the centre started. Kejriwal alleged that LG is not allowing elected government to work and interfering in day to day affairs, which is a violation of federal structure. The tension between L-G and the elected government reached to the court. The High Court of Delhi held that:⁷⁰ **“The L-G being the administrative head of the National Capital Territory Delhi exercised complete control of all matters regarding (NCT) of Delhi. The appellant was before the Supreme Court, challenging the decision passed by the High Court of Delhi on August 4, 2016.”**

The Constitution Bench of the Supreme Court in **Govt. (NCT of Delhi) v. Union of India**⁷¹, held that “the Lieutenant-General of the Delhi had to act as per the aid and advise of the Council of Ministers of Delhi Government except in matters of land, police and public order.” The court further held that, “the LG cannot interfere in each and every decision of the Delhi Government, there is no need for the Delhi Government to seek the permission of Lt. Governor in all matters. Although decisions of the Government have to be communicated to the LG.” The court also said that “Delhi was not a 'State', and occupied a special status under the constitution.” **The Five- Judge Constitution Bench comprising of CJ Dipak Misra, A.K Sikri J., A.M Khanwilkar J., DY Chandrachud J. and Ashok Bhushan J.**, pronounced separate concurring judgments and held: “Our constitution contemplates a meaningful orchestration of federalism and democracy to put in place an egalitarian social order, a classical unity in a contemporaneous diversity and a pluralistic milieu in eventual cohesiveness without losing identity. Sincere attempts should be made to give full-fledged effect to

⁶⁹ Ibid.

⁷⁰ The High Court of Delhi said that “it is mandatory under the constitutional scheme to communicate the decision of the Council of Ministers to the Lt Governor even in relation to the matters in respect of which power to make laws has been conferred on the Legislative Assembly of NCTD and an order thereon can be issued only where the Lt Governor does not take a different view”, available at <https://www.tribuneindia.com/news/nation/here-s-a-brief-chronology-of-the-tug-of-war-between-aap-govt-l-g/615084.html> (last visited on 03/03, 2023.)

⁷¹ (2018) 8 SCC 501.

both these concepts.”⁷²

The bench further observed:⁷³ “The constitutional vision beckons both the Central and the State Governments alike with the aim to have a holistic edifice. Thus, the Union and the State Governments must embrace a collaborative federal architecture by displaying harmonious coexistence and interdependence so as to avoid any possible constitutional discord. Acceptance of pragmatic federalism and achieving federal balance has become a necessity requiring disciplined wisdom on the part of the Union and the State Governments by demonstrating a pragmatic orientation.”



⁷² Ibid.

⁷³ Para 284.

CHAPTER 07: CONCLUSIONS AND SUGGESTION-

Based on the foregoing discussion, it can be concluded that Indian constitution has all the features of federal constitution, the centre and states are independent to make laws in their respective field assigned by the constitution. However, the centre has supremacy in certain situations that is also mentioned in the Constitution itself. If either government tries to transgresses the limits an independent judiciary plays an important role as the apex court is considered the protector and guarantor of the Constitution. The concept of federalism in India keeps changing since the commencement of the Constitution. With the change in the political system i.e. from dominance of one-party rule to the era of coalition government. Following the rise of regional parties and fragile coalition governments, the federation has to grow more flexible and conciliatory, particularly in its financial aspects. The GST is an example where States equally has power to impose tax so that they can enjoy autonomy, which is a big tax reform in fiscal history of India. Both centre and state governments supposed to work in co-operation and coordination with each other instead of being involved in conflict. Recently, the Supreme Court emphasised in the NCT of (Delhi) case on the concept of collaborative federalism, where both the Centre and the state governments should express their readiness to achieve the common objective and they have to move on the path of harmonious co-existence and interdependence irrespective of their differences. If both governments involve in any kind of conflict, the ultimate sufferer will be the people. Both the governments operate simultaneously on the same people and in the same territory, so in modern time they must perform functions with understanding and cooperation. But some time due to different political ideology, conflict arises between the Centre and state governments. In the present era, the way of governance should be according to the need of the common people, because it will not be possible that all 28 states are being ruled by same party and it is obvious that other party ruling in the state has its own ideology may be different from the party ruling at centre, in this regard both the governments before taking any decision have to collaborate with each other. No policy and programme can be implemented effectively unless both the governments will work together for achieving the constitutional goal. It is need of the times that in India we have to adhere to the principle of co-operative/collaborated federalism. The people elected government at three levels and government at each level is accountable to their respective electorates and it is the constitutional obligation of each government to work for the welfare of the people. So, keeping in view the changes i.e. globalization, technological advancement and paradigm shift in economic policy, it is necessary that the Union and states government must co-

operate and collaborate with each other along with local bodies to address the common needs of the people.

From the above discussion, it can be said that Indian federalism is not static rather than a dynamic one that keeps changing with the situation and needs as per its behaviour. Similarly, it also looks into the account for theoretical as well as practical concerns of contemporary federalism. From this practical point of view, it is imperative that Indian federalism is closely based on the inter-governmental setting, sharing power at an equal level and ensuring cooperation with each unit of the government machinery. However, we cannot deny the assertion is that federalism is sometimes conflictual and holds contradictory inspiration through its working process. But, the latest concern can be recognized here only after how far federalism is congenially stable with its contemporary challenges that raised out mostly in its visible form. At the outset, the controversial issue of CAA is opposed by the people around the territories and subsequently by the political leader of non-BJP- states. It is only because of the fact that CAA has relied on the anti-constitutional character. If there is no such thing happening, but possibly making centre-state relation disputed. The Kerala government particularly takes this matter into reality while Punjab, Rajasthan, and West Bengal draw the picture more seriously after its depth analysis for negative impact. Another notable issue of Indian federalism is raising demand for new states. From a developmental point of view, the smaller states are fully utilizing their efficiency to remain autonomous and have shown independence without being dependent on central financial funds every time. On the other hand, the larger units of the Indian federal system do not get that much power to accomplish each and every action without the help of central financial resources. Having this imperative and systematic nature by dependent and independent units within a federal structure, it may be noted in the mind that a good balance should be maintained between centre & states and amongst the states for the smooth functioning of federal governance. In the field of Inter-State River water disputes, it may be taken into consideration that the states involved in inter-state river water disputes require to construct inter-state cooperation and should keep an open door for talking instead of fighting the issue at the tribunal level or politicising the water issue. The Mahanadi River is the helping hand of both Odisha and Chhattisgarh. In this matter, both riparian states have to form a joint strategic action for the appropriate management of the water of the Mahanadi River. The water of Mahanadi is essential both for the agriculture and industrial purpose of both states. The state government of Odisha and Chhattisgarh along with the Union Government should work properly at any cost on the cardinal principles of Federalism to save the life of the

Mahanadi River. The central government with CWC must take this issue as the top priority and should establish a real-time framework for data sharing information to improve and restructure the system of governance and to provide justice to the riparian state. In the Indian federal system, inter-state water disputes among the states need to be depoliticized and should respect the federal sense of behaviour of the Indian political system. To resolve the inter-state River dispute in India, the Government of India should give much priority to the Inter-state River Water Disputes (Amendment) Bill Act, 2017 which has the constitutional provision of the formation of a single Tribunal, resolution of the disputes in a timely manner, official data collection of the disputes. This provision of the Act of 2017 should be implemented properly to triumph over the lacunas of the Inter-state River water dispute Act, 1956.

Possible Suggestions-

In order to strengthen the federal governance in a country like India, the following suggestion may be taken into consideration.

1. For the smooth functioning of the federal polity, it is noteworthy to mention that, Inter-State Council, being one of the federal institutions, shall play a significant role primarily in drawing the matter of harmonising the relationship between centre states. As such, there should be also a greater institutional consultation between them in their operation towards the federal system of governance. The **Article 263** also provided such constitutional provision. In such way, the Inter-State council should be formed by undertaking both demands of the centre as well as the state in any specific matter of dispute. Further, it would like to provide a framework so that the existing problems between them can be easily settled down.

2. In other way, the arising conflict that most of the time takes place in between centre-state lead to a line of its acute management. Hence, the council, as a multi member body should need to be appointed for that reason. This council is primarily set up to investigate relating to their common subject's matter. It also seeks to take some necessary condition to the result of disputes. Therefore, flowing of 'federal spirit' to be becoming main task to this council. Again, it tends to uphold the constitutional guidance that prevent overlapping consensus. Of these, some constitutional recommendations and adaptation in form of resources should be channelized. Moreover, it guaranteed the federal faith as such.

3. In case of COVID-19 Pandemic, both centre and state government should play a vibrant role with hand to hand to overcome such major crisis without making the help of previous arrangement. But, in turn there is actually a need of institutional federal machinery. Probably, it is a set of equipment that makes enable to maintain the sense of cooperative federalism, inter-governmental bargaining and inter-state conflict resolution and so on. However, public health and sanitation is becoming a list of state subject. Thus, it is the responsibility of central government to take prior summon from the states with regards to health matter before taking whole health system under their control. There also a little financial autonomy should be given to the respective states for the maintenance of the spirit of cooperative federalism. It would be very helpful to deal with coming economic crisis and health problem on their areas of importance.
4. To maintain the sense of cooperative federalism, inter- state disputes should be resolved as per the constitutional provision of India. Inter-state bargaining should be taken place to make viable and effective of the state units. Cooperation and inter-state-relationship must be maintained to make feasible and dynamic its working atmosphere.
5. The National Development Council is no longer effective and the Inter-State Council, having been made a part of union home ministry, is not an independent institution. The states do not have a remedy when the union government simply abrogates the agreement to pay compensation for the loss of revenue from GST. The states have to simply take orders when the centre invokes the Disaster Management Act to deal with events like COVID-19 and when the centre treats the states not as partners but as agents.
6. Having created a precedence of imposing conditions for borrowing, the union government will now use the instrument to further its agenda by imposing conditions irrespective of whether or not they are in the interest of the states. In fact, in a situation of asymmetric power distribution and in the absence of an independent institution to oversee bargaining, coordinate actions and resolve conflicts, excessive centralisation is a natural outcome. This could lead to disharmony and divisions according to political allegiances and does not bode well either for democracy or for federalism.
7. The Finance Commission under article 280 of the Indian constitution should be work properly for the fiscal distribution between centre and the states.

8. The disputant states of the Inter-state River waters should respect the river water as national assets, not as their private property. Article 262 of the Indian constitution should function properly for the formation of a Water Tribunal to resolve the disputes speedily with the institutional coordination and political space between centre and the states.

9. National Development Council should work for the development of the country with developmental plan and programmes

It can be concluded that " Federalism is an aspect of Constitutionalism ". As Constitutionalism means limited government or limitations on government. Federalism is a philosophy which says power should be divided between the governments and there shall be no monopoly of power, and in India power is divided between The Union and The States. But according to Article 254 i.e Doctrine of Repugnancy which says that in case of conflict between the sub matters of the lists (union list, state list, concurrent list), the union prevails over the state. But the interpretation of the lists as said by the supreme court is done by keeping in mind these principles:

- A. Doctrine of colorable legislation.
- B. Principle of pith and substance.
- C. Principles of harmonious construction.

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