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# **SEPARATION OF POWERS BETWEEN THE CENTRE AND STATES IN INDIA: A CONSTITUTIONAL ANALYSIS OF FEDERAL BALANCE AND CENTRAL DOMINANCE**

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## **Abstract**

The Indian Constitution has set up federalism by dividing the legislative and executive powers between Union and the States. Concurrently, it empowers the Centre with greater control as this will help in maintaining national unity and administrative coordination as well as constitutional stability. There has been an ongoing discussion and controversy regarding the true nature of the division and delegation of powers in the Union and the States, especially in cases of legislative bickering, executive overreach, and abuse of emergency powers. The paper analyses the constitutional structure involving the separation of powers between the Centre and the States in terms of distribution of powers under the Seventh Schedule, executive relationship between Centre and States, position of the Governors and the role of the emergency provisions vis-à-vis State autonomy. It also discusses how Indian federalism became a reality in the courts, and how it has by sometimes heightened the privileges of the central government vis-à-vis the States, using the key judgments of *State of West Bengal v. Union of India*<sup>1</sup>, *S.R. Bommai v. Union of India*,<sup>2</sup> and *Government of NCT of Delhi v. Union of India*<sup>3</sup>. Modern constitutional law, however, are placing increasing emphasis on cooperative federalism and constitutional morality as constraints on unreasonable interference by the Union. The study finds that Indian federalism does not function according to the strictures of an idea of separation of powers but as a dynamic constitutional set-up which incorporates the determination of judicial interpretation for identifying the constitutional balance between Centre and States.

## **Introduction**

The Constitution of India establishes a federal system in the division of power between the Union and the States. This is because India being such a vast nation with diverse territory, language, regionality and administration needs this option. In between, the Indian constitution

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<sup>1</sup> *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241.

<sup>2</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

<sup>3</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

intentionally grants more powers for the Centre than it does the States to preserve political unity and stability even after independence and partition.<sup>4</sup>

One of the preeminent debates concerning the Indian Constitution is the problem of Centre-State relations. Legislative competence, executive control, President's rule and role of Governors in the State administration are among issues that cause conflicts. These conflicts involve constitutional issues on the issue of the "autonomy" of the States and constitutional restrictions on the powers of the Union. In the Seventh Schedule, the Constitution lays out the distribution of powers but empirical evidence shows that Indian federalism has a pronounced centralising tendency.<sup>5</sup> Generally, the separation of powers applies to the safeguarding of Governmental powers' spread-effectual between different parts of the state to prevent accumulation of power. In the Indian Federal context, however, the doctrine also gets a vertical dimension involving a distribution of powers between two levels of Government, legislative and executive, and judicial interpretation, and the Constitution conventions.<sup>6</sup> Constitution depends not only on the limitations by the legislature and the executive but also depends on the judicial interpretation and conventions of the Constitution.

In the past, the Supreme Court has been handing down decisions that have greatly shaped the federalism of the Constitution. Conventional understanding regarding powers of the legislature has been refined by judicial decisions and the concept of "cooperative federalism" remains in tension with the central government, as the federalism dimension has been part of the basic structure of the Constitution since its inception.<sup>7</sup> Constitutional practice reflects the tension between cooperative federalism and the central government, and the question has been raised whether the office of the Prime Minister is soon coming to an end.

The paper looks at the constitutional provisions for the separation of powers between the Centre and the States in the Indian Federation. It examines how legislative authority is distributed between levels, examines the Constitution for centralising aspects and discusses interpretation of federal balance in judiciary. The paper argues that although the Constitution establishes a federal structure, they have enhanced the power of the Union in its institutional design and practice. Nonetheless, the principles of "cooperative federalism" and "constitutional

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<sup>4</sup> India Const. arts. 245–246.

<sup>5</sup> M.P. Jain, *Indian Constitutional Law* 321 (8th ed. 2018).

<sup>6</sup> V.N. Shukla, *Constitution of India* 734 (13th ed. 2017).

<sup>7</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

accountability" are making a comeback in the field of constitutional theory.

### Concept of Federal Separation of Powers

Under federalism constitutional authority is given to both national and state governments, and there are no powers that one government has that the other does not have.<sup>8</sup> The main reason for federalism is to balance autonomy at the regional level with unity at the national level. The Indian Constitution does not describe India as a federation. This was not an expression which would indicate the kind of Indian Union that was envisioned by the Members of the Constituent Assembly.<sup>9</sup> Article 1 instead reads as "Union of States". The idea that the Indian Union is indestructible and cannot be conceived as an agreement between sovereign States got conveyed by the Members of the Constituent Assembly by using this term.<sup>10</sup> Dr. B.R. Ambedkar explained that the Constituent Assembly had deliberately used this term to emphasize that the Indian Union is indestructible and not a result of an agreement between sovereign States.<sup>11</sup>

Traditionally the doctrine of separation of powers is about how the legislative branch, the executive branch, and the judicial branch of government are separated. But in other federal constitutions, this separation of powers is also a vertical separation between various levels of government,<sup>12</sup> and in India this vertical separation is obtained by Article 245 and 246, as well as the Seventh Schedule, which partitions the subjects of legislation into three lists – the Union List, the State List, and the Concurrent List.<sup>13</sup>

Compare and contrast the Indian model of federalism to classical federations, like the United States of America. In particular, the Union holds a wide range of powers, specifically during emergencies, inter-State disputes and matters of national importance,<sup>14</sup> thus showing that the Constitution is supposed to be more enunciated for the Centre and still retains the federal characteristics as found in the American Constitution.<sup>15</sup> It is thus noted that the Constitution vested powers more favourably to the Centre than the American model where the power generally lies with the States and the Union has limited powers. Federalism has been referred

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<sup>8</sup> K.C. Wheare, *Federal Government* 10 (4th ed. 1963).

<sup>9</sup> India Const. art. 1.

<sup>10</sup> Constituent Assembly Debates, vol. IX, Nov. 4, 1948.

<sup>11</sup> Id.

<sup>12</sup> M.P. Singh, *Comparative Constitutional Law* 212 (2nd ed. 2011).

<sup>13</sup> India Const. art. 246 & sch. VII.

<sup>14</sup> India Const. arts. 249, 352, 356.

<sup>15</sup> India Const. art. 248.

to, several times, as part of the very nature of the Constitution by the Supreme Court. The judgment went on to mark a limitation on the arbitrary removal of State Governments from office under Article 356 of the Constitution in *Kesavananda Bharati v State of Kerala*.<sup>16</sup> The Court, in *S. R. Bommai v Union of India*, also made an explicit statement that the states are not mere administrative units of the Centre.<sup>17</sup>

Indian federalism is thus a hybrid federalism. Works within a very flexible constitutional framework; the Centre has more powers compared with others, but constitutional restraint and judicial review try to ensure institutional balance. The concept of cooperative federalism has also grown to foster a co-operative spirit and not confrontation between the Union and the States. Federalism, now, has overlaid its traditional character as the division of administration powers with a role as an important balancer to the direction of too much centralisation of powers.

### **Constitutional Distribution of Legislative and Executive Powers**

Indian federalism is based on distribution of powers given to the Union and the States in the Constitution of the Republic of India. The Constitution strives to balance institutional powers by clearly partitioning executive and legislative powers at various levels of government.<sup>18</sup> Meanwhile, the Constitution purposively gives more powers to the Union in issues of national importance, national security and coordination. This arrangement reflects of the framers' desire to create a federal system, a strong centre which can hold the nation together.

### **Distribution of Legislative Powers**

Articles 245 and 246 of the Constitution, along with the Seventh Schedule, form the basic framework of the relationship between the Union and State legislatures.<sup>19</sup> The territorial scope of legislation made by Parliament and State Legislatures is determined by Article 245 of the Constitution and the boundaries of legislative competence are distributed by Article 246 in three separate lists provided in Seventh Schedule. The Parliamentary functions in regard to these are exclusive, as indicated in list I, and these involve subjects of 'national importance', such as Defence, foreign affairs, Banking, Currency, Railways, Atomic energy,

<sup>16</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.

<sup>17</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

<sup>18</sup> H.M. Seervai, *Constitutional Law of India* vol. 1, 298 (4th ed. 1991).

<sup>19</sup> India Const. arts. 245–246 & sch. VII.

Communications etc.<sup>20</sup> The fact that these subjects are brought together under the wing of Parliament highlights the constitution's emphasis on a strong national government that ensures uniformity and sovereignty in crucial areas.

Local and regional matters like amendments to laws pertaining to police, public order, agriculture, public health and local government are covered by the State List in List II in the exclusive jurisdiction of the State Legislatures.<sup>21</sup> The activities in these subjects have immediate impact on local administration hence they remain primarily under State control. The ability that States have under this list is, however, not fully autonomous as the Union may intervene in certain conditions as stated in the Constitution.

Activities such as criminal law, marriage, education, forests, trade unions and electricity fall under this category of activities; these are included in the Concurrent List of List III.<sup>22</sup> Article 254 states that where the Union and the States legislated on similar subjects, the Union legislations have broader force of law, in case of conflict, than any State legislation.<sup>23</sup> This principle significantly enhances the power of Parliament vis-à-vis State legislatures – even in the field of concurrent legislations.

Under the Constitution, the residuary legislative power is vested in Parliament as well under Article 248 compared to classical federal systems like the United States, where the residuary powers normally reside with the States.<sup>24</sup> Residuary powers vested with the Parliament are the clear evidence of deliberate centralisation of Indian Constitution. In addition to the normal legislating power of Parliament, this is why the Constitution gives Parliament exceptional power to make laws on State subjects in exceptional circumstances. Article 249 permits Parliament to legislate on matters in the State List if the Rajya Sabha declares such legislation necessary in the national interest.<sup>25</sup> Similarly, Article 250 allows Parliament to legislate on State subjects during a national emergency.<sup>26</sup> Under Article 252, Parliament may legislate for two or more States if those States consent to such legislation.<sup>27</sup> Together these provisions expand the legislative authority of Parliament beyond ordinary constitutional distribution.

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<sup>20</sup> India Const. sch. VII, List I.

<sup>21</sup> India Const. sch. VII, List II.

<sup>22</sup> India Const. sch. VII, List III.

<sup>23</sup> India Const. art. 254.

<sup>24</sup> India Const. art. 248.

<sup>25</sup> India Const. art. 249.

<sup>26</sup> India Const. art. 250.

<sup>27</sup> India Const. art. 252.

The Court see till now that when it involves a National matter, Parliament is supreme and as far as the distribution of legislative authority is concerned, the Court gave a relief to the constitutionalist principle. The Court in *State of West Bengal v. Union of India* made it clear that the Indian federalism system is far from a traditional federation because of the greater power delegated to Parliament.<sup>28</sup>

### **Distribution of Executive Powers**

Article 73 of the Constitution provides for the administration of any matter on which Parliament has the power to make laws and Article 162 empowers the States similarly to administer anything included in the State List.<sup>29</sup> Aside from the specifics, both governments have separate domains within their constitutions that they have executive authority over.

However this formal distribution, the Constitution allows a wide range of supervisory powers over State in administration. The provisions of Article 256, which require States to obey the orders given by the Union by Parliamentary Act,<sup>30</sup> and Article 257 which enables the Union to issue directions to States on issues of national or military importance, create a significant potential for greater control of State executive activities from the Union.<sup>31</sup> This had even more complex implications for the Governor's office, with respect to Centre–State executive authority relations. The Governor is appointed by the President under Article 155 and is a constitutional head of the State,<sup>32</sup> but he operates in accordance with the advice and guidance of the State Council of Ministers, and in certain circumstances, has powers of discretion. Controversies usually emerge when there is a feeling that the Governors are favouring the Union government in government formation, during legislative deadlock or when advises Article 356.

The use of Article 356 is one of the most discussed dimension of the executive relationship between Centre and States.<sup>33</sup> Constitutionally, Article 356 provides the President with the authority to impose President's Rule, when the machinery of the government of a State appears to have broken down, but in fact, it has been used numerous times to replace opposition-led

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<sup>28</sup> *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241.

<sup>29</sup> India Const. arts. 73 & 162.

<sup>30</sup> India Const. art. 256.

<sup>31</sup> India Const. art. 257.

<sup>32</sup> India Const. arts. 153–155.

<sup>33</sup> India Const. art. 356.

State Governments for various reasons, including political disagreements.

In *S.R. Bommai v. Union of India*, the Supreme Court much curtailed arbitrary use of this power and said, the proclamation under the article 356 of the constitution could be subjected to judicial review and federalism was part of the basic structure of the Constitution.<sup>34</sup> The judgment came up with the following rules: that the State governments could not be dismissed merely because they were against the party's policies, and that the majority in the Legislature should be determined normally on the floor of the Assembly. In its recent response to the petitioners in *Government of NCT of Delhi v Union of India 2014*, the Supreme Court noted the requirement of balance between the three tiers of government, as well as ways to uphold the federal spirit of the Constitution.<sup>35</sup>

The separation of executive and legislative power therefore serves two purposes in the constitution. The Union and the states have different spheres of Government, as recognised by the Constitution. However, it provides for the Centre's over-riding powers where the national interest is involved, in case of constitutional emergency, and for administrative coordination. Indian federalism is thus the system of federalism, which does not rely on hard and fast separation of powers, but is rather flexible and centralised.

### **Centralising Features in the Indian Constitutional Structure**

The Indian Constitution being federal in structure in terms of the division of legislative and executive powers, there are some constitutional provisions which definitely made the Union stronger than the States. The framers designed an institutional framework where emphasis is placed on the autonomous status of the Centre, so as to leave areas of territory, administrative coordination, and political stability in the hands of the Centre. This means that Indian federalism is not the same as classical federalism as in exceptional situations and ordinary governance the balance of powers clearly tilts in favour of the central state.

Although Article 248 of the Constitution has an important centralising implication, the same right under a residuary clause is vested in the constituent States in many classical federations, such as the United States.<sup>36</sup> The constitution of India takes a diametrically opposite stance to

<sup>34</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

<sup>35</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

<sup>36</sup> India Const. art. 248.

this, assigning to Parliament powers over everything other than a specific item listed in either list. This is an extension of the power of the Union to legislate and it is consistent with constitutional sentiment for a federal authority to be supreme!

Elected representatives of Parliament have the power to enact laws on the subjects enumerated in the State List, too, highlights the centralising nature of the Constitution. This provision in detail introduces a Constitutional amendment, which gives Union the extraordinary power in respect of subjects of the Union to make laws deemed fit in the national interest by the Rajya Sabha under Article 249.<sup>37</sup> Likewise, during an Emergency under Article 352 the Parliament power to enact laws in regard to subjects relating to State can be placed in the Union government.<sup>38</sup> The most powerful means of constitutional centralisation are the emergency provisions. During the National Emergency, there is a virtual changeover of the federal character of the Government into the unitary form. Parliament gains power to make laws on the matters of the States, the executive departments of the States move under Union rules and a number of restrictions on the central control are lifted.<sup>39</sup> The Emergency between 1975-1977 highlighted how the federal system of government could be severely undermined by the centralization of power in the Union.

It is session 356, another avenue of centralism. The provision enables the President to provide for the suspension of the Constitutional machinery of government in a State under the name of President's Rule, after the proclamation, the executive power of the State is transferred to the Union and the legislative power of the State Legislature transferred to the Union parliament.<sup>40</sup> The provision was designed as an unusual constitutional protection but after independence was often abused politically. Article 356 of Indian Constitution was applicable from time to time to remove the opposition led State governments without real breakdown of the Constitution.

In *S.R. Bommai v. Union of India*, the Supreme Court ruled that federalism is embedded in the basic structure of the Indian Constitution, and that a proclamation invoking Article 356 was subject to judicial review.<sup>41</sup> In its decision, the Court made it clear that the use of Article 356 could not be based on the different political parties of federal and state governments. The judgment significantly restricted the discretion of the central government in the administration

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<sup>37</sup> India Const. art. 249

<sup>38</sup> India Const. art. 250.

<sup>39</sup> India Const. art. 352.

<sup>40</sup> India Const. art. 356.

<sup>41</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

of the States and adroitly enhanced the principle of federal power.

The Governor's office has also been an aggravator in the intergovernmental relations between the Centre and the State. Although the Constitution as it is conceived at the very least proposes a broad conception of the neutrality of the governors, issues of partisanship arise all too often in the formation of the government, deadlocks in parliament and reserving bills for presidential consideration.<sup>42</sup> Some critics have complained that in some states, Governors' discretionary powers have adversely affected proper governance and democracy.

Financial dependence increases the central domination over States. The States have constitutional power over various welfare and administrative matters but have limited power to generate direct taxes like income tax, corporation tax and customs.<sup>43</sup> Thus, States have largely relied on financial transfers or grants and centrally sponsored schemes handled by the Union government. In part, this financial system provides an indirect central influence on State policies and administration. The other important centralising aspect is the presence of All India Services like the Indian Administrative Service, Indian Police Service (under Article 312) which are recruited and regulated in significant part under the Union.<sup>44</sup> The framers believed that services are a necessity for maintaining administrative uniformity and national integration, but at the same time their functioning adds to the presence of the Central government in the State system of governance.

The Indian Constitution has thus been interpreted as having a strong federal character with its central features being admittedly part of the structure. In *State of West Bengal v. Union of India*, the Supreme Court noted that there could be no absolute sovereignty on the part of the States and the Union had a constitutionally superior position in several matters.<sup>45</sup> The Court rejected that argument that the States have rights similar to sovereign units in classical federations.

Cooperative federalism is also a growing priority in constitutional law in the quest for institutional balance. Ironically, the Supreme Court in the writ petition *Government of NCT of Delhi v. Union of India*, emphasized the significance of democratic accountability of

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<sup>42</sup> India Const. art. 155.

<sup>43</sup> M.P. Jain, *Indian Constitutional Law* 356 (8th ed. 2018).

<sup>44</sup> India Const. art. 312.

<sup>45</sup> *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241.

constitutional authorities and their co-operation in the context of federalism and stressed against "excessive central control".<sup>46</sup> It is thus clear that the centralizing tendencies of the Indian Constitution is an evidence of the constitutional contrivance rather than an inadvertent imbalancing. The framers of the Constitution emphasized the importance of national unity and administrative stability in a new Republic with multiple forms of difference. But over-centralisation has its dangers to democratic federalism, as it could have a negative impact on State autonomy and in the way that representation at all levels is maintained. The on-going dilemma that still remains in Indian constitutional jurisprudence is to strike a balance between the coordination of the nation and a creative federal decentralisation.

### **Judicial Interpretation of Federal Balance in India**

The Supreme Court of India has been instrumental in shaping the nature of the Centre–State relationship as per the Constitution. The durability of the constitutional text is federal and unitary, so the balance between State autonomy and Union supremacy is often to be found in judicial interpretation. The Court has tried to balance national unity and the maintenance of federal principles in its constitutional adjudications.

In the initial phase after Independence, judicial pronouncements were largely in favour of a strong Centre. It would be admitted that in the early post-Independent years, the interpretation was more favourable to a strong Centre. The Supreme Court noted that partition, communal violence and worried about territorial integrity are unique aspects of the times when the Constitution was framed. This meant that the Court applied and understood federalism in the spirit of constitutional unity - now, much more of a recognition of States' rights - than in States' rights terms.

One of the earliest and the most significant decisions on Centre-State relations was the case of *State of West Bengal v. Union of India* in which the State of West Bengal challenged the constitutional validity of the Coal Bearing Areas (Acquisition and Development) Act 1957 with the argument that any piece of land owned by the State cannot be compulsorily acquired by Parliament without the consent of the State.<sup>47</sup> The Supreme Court overruled the argument of the State, and ruled that the Indian Constitution does not recognize absolute sovereignty of the States. The Court stated that although the Constitution distributes powers between the Union

<sup>46</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

<sup>47</sup> *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241.

and the States, the Union occupies a stronger constitutional position, with the union having a strong constraint on the constitutional significance of the states of the Union, in the context of concerns to national interest.<sup>48</sup>

The judgment is significant as it has set the framework for Indian federalism to be distinct from the American federalism. The Court's ruling, which reinforced the power of Parliament, did not strike a balance in favour of the States in India, though some have complained that the balance shifted too clearly to the Centre.<sup>49</sup>

Later constitutional interpretations, however, provided a more even-handed approach to federalism. At this juncture then, the Supreme Court in *Kesavananda Bharati v. State of Kerala*<sup>50</sup> established the Basic Structure Doctrine which drew a significant support from its affirmation of federalism as a key feature of the Constitution that could not be amended through Article 368.<sup>51</sup>

Advent of misuse of article 356 was another major constitutional issue too which has needed judicial interventions. Indeed, the President's Rule was imposed on the States for political, not constitutional, reasons for several decades after Independence. The Union government did sack state governments where opposition parties were in charge. This practice significantly undermined federal democracy and promoted centralisation.

This was settled by Supreme Court in *S.R. Bommai vs the Union of India*.<sup>52</sup> This happened when some States' governments were dismissed under Article 356. The constitutionality of proclamations made under Article 356 was brought to the Supreme Court and the Court ruled that such proclamations can be challenged in court, and that federalism is an integral part of the Constitution, which means that whether or not there is a state or federal imbalance has to be judged not only on the basis of the Governor's report, but also on the floor of the legislative assembly.<sup>53,54</sup>

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<sup>48</sup> Id

<sup>49</sup> Id

<sup>50</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.

<sup>51</sup> Id

<sup>52</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

<sup>53</sup> Id

<sup>54</sup> Id

The Bommai judgement brought about a significant shift in the Centre–State relations in India. It restricted arbitrary use of President’s Rule and strengthened the constitutional restraints on executive power. It also had a positive impact on democratic accountability as elected State government cannot be ousted on the basis of political conflict with the Union government. The increased misuse of Article 356 was minimized after Bommai.

Further judicial discourse of federalism in the context of National Capital Territory of Delhi. A cooperative federalism issue was explored in the Supreme Court in *Government of NCT of Delhi v Union of India*, while the investigation of the constitutional position of Delhi, a full-fledged State, was looked at in light of democratic governance.<sup>55</sup>

The Court highlighted three constitutional ideals as fundamental principles: constitutional morality, representative democracy and cooperative federalism. It noted that constitutional mandates must be implemented in an “appliant fashion” within the limits of the constitutional powers allotted to them - rather than undercutting democratic process by unduly claiming constitutional powers.<sup>56</sup> The judgment was a modern constitutional concept that was in favor of institutional cooperation rather than strict central control.

Hence, the judiciary has begun to move away from the text-centred conception of the Constitution and acquire a more federalized interpretation of it. Though the courts have never abandoned the unity of the Constitution as a whole, they are increasingly recognising the importance of federalism as a constitutional "reminder" against the danger of power concentration. Judicial review has now become an important tool to ensure balance between the Centre and States.

But some constraints of judicial protection of federalism exist. The movement of political rights utilization in the use of the mechanisms of the constitution does not necessarily invoke the role of judges; in fact, the court usually steps in when constitutional crisis or conflict is created, and court remediation may thus not occur before political abuse of constitutional mechanisms. In addition, there is remarkable latitude in the constitution for the Union in terms of emergencies, national interest and executive supervision. While judges have a role to play in curbing abuse of these powers, they cannot eradicate the structural centralisation that is set up in the

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<sup>55</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

<sup>56</sup> *Id.*

constitution.

Despite the limitations, the constitutional adjudication has played a significant role in improving the federalism in India. In decisions like *Kesavananda Bharati*, *S.R. Bommai*, and *Government of NCT of Delhi*, the Supreme Court has been emphasizing the importance of federal balance as a crucial aspect of democratic governance, constitutional accountability and safeguarding of regional autonomy within the Indian Union.

### **Cooperative Federalism and Contemporary Challenges to State Autonomy**

Cooperative federalism as a constitutional doctrine has been observed in Indian federalism. In cooperative federalism, which emerged from the idea, a shift towards institutional coordination, consultation, and governance – rather than constitutional isolationism – is encouraged at the Centre and the State levels.<sup>57</sup> This principle has become more significant in India given the various demands of the present time – related to public health, environmental control, economic planning, disaster management, etc. – that necessitate a coordinated effort by the government.

The Constitution has strong unionizing provisions but also provides for mechanisms to help enhance State-union synergy. Institutions such as the Inter-State Council under Article 263, the Finance Commission under Article 280, and meetings between Chief Ministers and Union authorities are intended to encourage dialogue and coordination.<sup>58</sup> These provide opportunities and mechanisms for dialogue and coordination, and for minimizing constitutional conflict and facilitating efficiency in administration in the federal structure.

Judicial interpretation of constitutional provisions has also been increasingly guided by the principle of "cooperative federalism. The Supreme Court in *Government of NCT of Delhi v. Union of India*, noted that the spirit of constitutional activity must be identified not as one of separation but as one of mutual clues and constitutionalism.<sup>59</sup> Federalism in India is a system which does not involve complete separation but one which coordinates constitutional authorities in an efficient way.

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<sup>57</sup> Granville Austin, *Working a Democratic Constitution* 215 (1999).

<sup>58</sup> India Const. arts. 263 & 280.

<sup>59</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

In the same way, when a case is related to implementation of a national policy, courts have stated that it is necessary for there to be a cooperation of the Centre and the States for good governance. But cooperative federalism will not work if there is too great a centralization of power in the hands of the Federal government. A genuine collaboration demands respect for constitutional limits as well as for democratic control and accountability.

An important contemporary issue relating to the autonomy of the State is the growing extension of centrally sponsored schemes and policies for administration by the Union government. Some welfare schemes are established via State mechanisms, but the policy priorities and capacity to finance some arrangements are very much at the level of the Centre.<sup>60</sup> Critics have contended that these arrangements have negative consequences for the autonomy of States in policy making and result in administrative dependency on the Union institutions.

The constitutional role of Governors remains controversial in certain States of the Director of Constitutional Interpretation in certain States. An argument often crops up on the delays in assenting bills, summoning the legislative assemblies, appointment of the Chief Ministers, etc. and on the recommendations for President's Rule. Such charges of partisan appointment by a president often arise when the Union government and the State government are from different political parties, which undermines the constitutional trust and cooperative federalism.<sup>61</sup>

The other major issue is the use of administrative authority and investigative agencies by the Union in the State territories. Jurisdictional, consent and political neutrality conflicts have sometimes happened between State governments and central agencies. Parliament itself has constitutional jurisdiction over certain investigative bodies, which could lead to distortions of use and to the undermining of federal balance if too highly considered.

The Goods and Services Tax (GST) system added a new twist to the Centre–State relations. The Constitution (One Hundred and First Amendment) Act, 2016 created a shared taxation structure where both the Union and the States participate in indirect taxation through the GST Council.<sup>62</sup> The GST Council is an institutional model of cooperative federalism, as decisions are taken with a participatory federal fiscal framework between Centre and States in indirect

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<sup>60</sup> M.P. Jain, *Indian Constitutional Law* 389 (8th ed. 2018).

<sup>61</sup> V.N. Shukla, *Constitution of India* 812 (13th ed. 2017).

<sup>62</sup> Constitution (One Hundred and First Amendment) Act, 2016.

taxation. Meanwhile, issues have been raised on financial dependence of the States to the mechanisms for Union compensation and the degree of independent fiscal autonomy of the States post-GST.<sup>63</sup>

The Pandemic also brought tensions within Indian Federalism to the fore. While there was a need for coordinated efforts between the Union and the States in the context of disaster management, several issues arose, such as the lockdown policies, control of migrant labour, vaccine procuring, and distribution of financial support. The pandemic showed that cooperative federalism is a desired constitutional function more than just a constitutional structure; political consensus and institutional coordination are just as critical for cooperative federalism to be a success as the words of the Constitution.

Notwithstanding all these difficulties, the concept of cooperative federalism is still significant for maintaining the democratic balance in the constitution of India. The social, regional and multi-party political makeup of India demands active coordination between the various levels of government. Both over-centralisation and over-fragmentation could have negative effects on the representativeness of regions and democratic engagement and on the consistency and coverage of administration and unity of the nation, respectively.

The constitutional issue is thus with respect to maintaining parity between Union and State. The Indian Constitution is neither a strict federation nor a Federation completely based on a unitary power system. Rather, it leaves the federal system flexible with significant roles for cooperation, constitutional morality and judicial review to maintain institutional balance. The modern constitutional practice has indicated that the future of federalism in India is not just going to be restricted to the formal scheme of partitioning powers and responsibilities but the extent to which constitutional authorities are willing to show respect for the popular federalism in terms of governance.

States have to rely on the Union in terms of finance which reinforces central power even more. The constitutional jurisdiction of the States is wide on certain welfare and administrative matters but their revenue generation capabilities are not so substantial as that of the Union, which still retains significant constitutional power on subjects of customs, corporation and income tax.<sup>43</sup> States generally rely on financial transfers, grants, and Union government-

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<sup>63</sup> Nani A. Palkhivala, *We, the Nation: The Lost Decades* 144 (1994).

sponsored schemes, which are financed from this government. For this reason, States are largely relying on financial transfers, grants and schemes sponsored by the Union government. This financial arrangement allows for indirect central control of State policies and administration.

Another important centralising element is the provision of All India Services like the Indian Administrative Service and Indian Police Service under Article 312 which are recruited and regulated to a large extent under the control of the Union.<sup>44</sup> The framers felt that these services were required for promoting administrative uniformity and national integration, but if these services are organised in this way then obviously, they bring more of the central force into the State administration. With a strong central character of the Indian Constitution, there has been a general recognition by judiciary interpretation regarding its federal nature. In *State of West Bengal v. Union of India*, the Supreme Court has commented that the Constitution does not grant absolute sovereignty to States and that in a number of areas, the Union enjoys a constitutionally superior position.<sup>45</sup> It has refuted the argument that the States have rights equal with that of the sovereign states of classical federations.

Concurrently, constitutional law doctrine has been dedicated to gradually giving more prominence to cooperative federalism as a basis of institutional harmony. The Supreme Court's decision in *Government of NCT of Delhi v. Union of India* had underscored its efforts for bringing back a balance in the constitution among different governmental hierarchy, instead of a centrist approach. The features which are centralising in character of the Indian Constitution, therefore, showed a conscious choice of the Constitution of India rather than an inadvertent unbalance. The mere emphasis of the framers was on the national unity and administrative stability in a newly independent and diverse nation. However, over-centralisation poses threats to democratic federalism as it may undermine some of the basic elements of regional representation and State autonomy. The ongoing challenge in Indian constitution is thus underpinned with maintaining the balance between national coordination and genuine federal decentralisation.

### **Conclusion**

The Indian federal system is one that is unique in blending the distribution of powers, with a relatively strong federal government. The Articles 245 and 246, together with the Seventh Schedule of the Constitution establish distinct legislative and executive spheres for Union and States. Concurrently, a number of provisions enhance the constitutional role of the Centre like

residuary powers of Parliament, emergency clauses, executive directions to the States, Article 356 etc. Simultaneously, certain provisions give increased constitutional strength to the Centre, such as residuary powers of Parliament, emergency provisions, executive directions to States and Article 356 etc. That means the constitutional order of Indian federalism is not a fixed balance of powers, but it is a flexible constitutional order which is aimed at creating a balance between the preservation of national integrity and maintaining regional autonomy.

The Constitution has a structure that mirrors the pre-constitutional concerns of the Constitution's framers. In view of partition, communal differences, economic uncertainty and regional break up after independence, a strong Centre was deemed necessary by the framers. To this end, the Constitution purposefully introduced centralising measures which set it apart from classical federations like the United States.

*JUDICIAL INTERPRETATIONS* have played a significant role on the actual balance between the Centre and States. Early constitutional judgements tended to go in favor of the Union, especially when it came to procedures and powers of Parliament and national interest. But, later cases under the Constitution began to affirm the importance of federalism as an underlying constitutional principle. Judicial review thus became an important mechanism to protect against excess state interference in the States' Government, with the decisions in *Kesavananda Bharati v State of Kerala* and *S R Bommai v Union of India* introducing the concept of 'Federalism' in the basic structure of the Constitution and prohibiting the abuse of Article 356 by the Union of India.<sup>64</sup>

Cooperative federalism, constitutional “morality” and institutional coordination is becoming a major focus in recent constitutional debates. Despite all this, the implementation of constitutional authority is constrained by practical issues that still impact Centre–State relations.<sup>65</sup> Administrative intervention by the Union and Union's financial dependency have been sources of tension among the federal structure, as are the disputes concerning the role of Governors and financial dependence of States, and the centrally sponsored schemes.

Indian federalism is thus not a static one. The Constitution establishes a system of cooperation

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<sup>64</sup> *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225; *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

<sup>65</sup> *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501.

between the central authorities and the States in a flexible constitutional framework. Strong Union might be required for national stability and/or to avert fragmentation, but there is a danger of excessive unionisation leading to a weakening of democratic decentralisation and regional representation. The success of Indian federalism depends not only upon constitutional provisions but also upon responsible constitutional practice in the constitutional provisions but also in ongoing responsible constitutional practice as well as in judicial diligence and a spirit of mutual cooperative co-governance between Center and States.

In India separation of powers between the Centre and the States more often than not is a dynamic constitutional arrangement than a rigid constitutional formula. Indian model aims to integrate unity and diversity through a Federal and flexible political and social system. Maintaining this balance is critical to Constitution democracy; participatory governance; and safeguarding the pluralist constitutional identity of India.

