



# DEMOCRATIC MECHANISM OF GOVERNANCE AND CHALLENGES TO MAINTAIN FEDERALISM IN CONTEMPORARY INDIA

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## Abstract

The Indian constitution was adopted on January 26, 1950. Today, it is known to be one of the most detailed and noteworthy documents in the history of India. It lays down several rights, duties, and framework for good governance of people and for promotion of Social justice. It uses a progressive approach, which ensures a system free from excessive influence of people at certain positions by imposing proper checks and balance.

One such way of ensuring this was "the Golden Triangle of Indian Constitution" which refers to the three pillars namely Article 14, 19 and 21 of the Indian Constitution. These are basically the roots of democracy made to protect the rights of the citizen, but this concept has been in debate for a long time now, subjected to various criticisms.

Federalism, in its basic sense means division of legislative and executive power between central government and regional governments so that each government can work independently in its own sphere. In a country like India the importance of federalism is vital because different people from different background and culture live together. Neither it would be possible for a single government to make laws for the whole country nor is it desirable in the interest of the people with diversified cultures, language and backgrounds. So, the Central government may make laws for the whole and any part of territory of India and the respective State governments may make and implement the laws according to social, economic and political conditions of the people living in different areas. Federalism in the modern age is a principle of reconciliation between two divergent tendencies, the widening range of common interests and the need for local autonomy. The paper will examine the democratic mechanism of government and concept of federalism as well as the changing dimensions of federalism in India.

**Keywords:** Democracy, Constitution, Federalism, State, India

## Introduction

In India all people have the right to equal protection under the law and equality before the law, according to Article 14. It forbids discrimination based on racial, ethnic, caste, sexual, or geographic origin. This implies that regardless of their social or economic background, all citizens are equal before the law and are entitled to the same rights and protections.

All citizens are guaranteed the following six freedoms under Article 19: freedom of speech and association, of assembly, of movement, of association, of domicile, and of profession. These liberties enable people to engage in public life and express their thoughts without fear of retaliation, which is crucial for a democratic society to function.

Article 21 guarantees everyone the right to life and personal freedom. This means that no one's life or freedom can be taken away from them unless a legal process is followed. The courts have given this clause a broad interpretation, encompassing the right to a fair trial, the right to privacy, and the prohibition against torture and other cruel treatment.

Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely, supremacy of the constitution<sup>1</sup>, division of power between the Union and the state governments,<sup>2</sup> existence of an independent judiciary and a rigid procedure for amendment of the constitution. It establishes a dual polity, with clearly defined sphere of authority between the Union and the states, to be exercised in fields assigned to them. There is an independent judiciary to determine the issues between the Union and the States, or between one state and another.<sup>3</sup> Andrew Heywood said: The federal systems give regional and local interests a constitutionally guaranteed political voice. The states exercise a range of autonomous powers and enjoy some measure of representation in central government through Council of States.<sup>4</sup> Every federal system requires division of powers between the Union and state governments. It is prescribed in our Constitution by part XI along with VII schedule.<sup>5</sup> While articles 245 to 255 deal with distribution of legislative powers, the distribution of administrative powers is dealt with in articles 256 to 261 of the Constitution.<sup>6</sup>

One of the fundamental elements of federalism is an independent judiciary; if any government exceeds the constitutionally mandated bounds, the Court has the authority to interpret every word. The Supreme Court has issued numerous rulings on federalism, but its position has fluctuated throughout time. In the *Automobile*

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<sup>1</sup> In Special Reference No.1 of 1964 UP Assembly Case, AIR 1965 SC 745. The court observed: The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity.

<sup>2</sup> Part XI deals with the Relations between the Union and the States; Ch. I of Part XI deals with Legislative Relations and distribution of Legislative Powers while Ch. II deals with Administrative Relations 'between the Union and the States. The distribution of powers between the Union and the States can be discerned from the various provisions of the constitution. A machinery is also provided for, for settling their disputes in the constitution

<sup>3</sup> Justice V. Dhanapal, Basic Structure of the Indian constitution - An Analysis 8 SCC (J) 2 (2014).

<sup>4</sup> Supra note 5 at 168.

<sup>5</sup> There is a three-fold distribution of legislative powers between the Union and the States, made by the three Lists (Union list, State list and Concurrent list) in the Seventh Schedule of the constitution

<sup>6</sup> Supra note 40.

*Transport v. State of Rajasthan*,<sup>7</sup> case, the seven-judge Supreme Court panel stated that the Indian Constitution is a federal constitution and made the following observations: A fundamental component of our constitution pertains to this distribution with the three legislative lists in the Seventh Schedule. The formation of a federal structure or a quasi-federal structure unavoidably necessitated a distribution of powers in the context of the then-prevailing conditions. India is a Union of States, according to Article 1 of the constitution, and when reading it, one must keep in mind the fundamental elements of a federal or quasi-federal constitution, namely, that the constituent parts of the Union enjoy the same rights and privileges as the Union itself.

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 both these concepts.

The decision of the Supreme Court in *S.R. Bommai* case<sup>8</sup> has further strengthened federalism by recognising it to be a part of the basic structure of the Constitution. By virtue of the same, the federal nature of the Constitution cannot be disturbed by a strong Central Executive. However, it appears that the States have not been diligent enough to protect their own autonomy under this structure. The introduction of Parts IX and IX-A is a clear indication that the States have willingly seceded a portion of their legislative authority to the Centre. Even in case of Part IX-B, it was not the States, but other stakeholders in the cooperative movement, who challenged the validity of the constitutional amendment. The decision of the Gujarat High Court, which is now before the Supreme Court, may culminate into another declaration of federal principles in contemporary Indian political system.

This conclusion was based on the idea that, unlike in Australia and the United States, where the States were the federation's constituent parts made up of the pre-federation colonies whose delegates crafted the constitution, the States were created by the Union. Because the court did not view the Indian Constitution as a federal constitution, the majority decision was unsatisfactory in terms of federalism. However, Justice Subba Rao argued that the Indian Constitution is a federal Constitution in his dissenting opinion. The Supreme Court has unequivocally ruled that the Indian Constitution is a federal constitution in later rulings.

The federal character of the constitution was viewed as a fundamental aspect of our constitution in *Keshavanada Bharti v. State of Kerala*<sup>9</sup> by Chief Justice Sikri and other members of the complete bench. As noted by Beg, J. in *State of Rajasthan v. Union of India*: The Indian Union is therefore, in a way, federal. However, the requirements of advancement and development of a nation that must be nationally united, politically and economically coordinated, and socially, intellectually, and spiritually elevated substantially dilute down the scope of federalism in it. In such a system, the States are powerless to obstruct the Central Government's plans for the lawful and well-planned development of the nation. The majority decision in *State*

<sup>7</sup> 1962 AIR 1406, 1963 SCR (1) 491

<sup>8</sup> Supra Note 30.

<sup>9</sup> Writ Petition (civil) 135 of 1970

*of Karnataka v. Union of India*<sup>10</sup> was not in favour of the federal arrangement as such, but Kailasam, J. (Minority View) held:

“It is obvious that there is a significant tilt in favour of the Union in the distribution of power. The Union may, under specific circumstances specified in the constitution, take control of the State Administration and therefore assume the functions of the State Government. However, the Union Government is not permitted to assert any authority that the constitution does not provide it. The Union Government does not have a veto power. Because the constitution is the source of power for both the Union and the State, and because the Union Government cannot assert any powers over the State that are not included in the constitution, it is unable to engage with the State Government in its capacity as its delegate.”

The court stated in *State Bank of India v. Santosh Gupta*,<sup>11</sup> that the Indian Constitution is a composite of experiences from many countries. Part XI, which is mostly derived from the Government of India Act, 1935, reflects the federal structure of this constitution in major part. This federal system includes the State of Jammu and Kashmir. It is a State that receives special consideration under the Indian Constitution due to historical reasons. By the Presidential decree of 2019, the court's conclusions in this ruling have been modified with regard to Jammu and Kashmir's unique status.

The court made a number of observations in *UCO Bank v. Dipak Debbarma*<sup>12</sup> regarding the federal nature of our constitution and the necessity of upholding the federal balance that has been envisioned in our constitution to prevent any takeover of authority by the centre or the states. With profit, we replicate the same:

The constitutional system's federal framework can also be used to overturn an incidental incursion by parliamentary legislation on a state law's domain when the state law is the more important piece of legislation. Ruma Pal, J.'s concurring opinion in *ITC Ltd. v. Agricultural Produce Market Committee*, which followed a citation of this Court's observations in the case of *S.R. Bommai v. Union of India*,<sup>13</sup> can be read as an attempt to maintain the aforementioned constitutional balance and give the doctrine of federal supremacy a limited application: The fact that the Center is granted more authority than the States under the terms of our constitution does not imply that the States are merely the Center's appendages. States rule supreme in their designated domain. Their authority cannot be altered by the Center. More specifically, the courts shouldn't take a stance or interpret the law in a way that reduces or tends to reduce the authority designated for the States. This ruling shows that, notwithstanding the idea of federal supremacy, states still enjoy some degree of autonomy. Within their designated realm, the state is supreme, and the centre lacks the power to overstep the bounds. If the centre agrees to do so, the court must interpret the entries by giving each entry the broadest interpretation available.

<sup>10</sup> 1978 AIR 68 1978 SCR (2) 1 1977 SCC (4) 608

<sup>11</sup> (2017) 2 SCC 538

<sup>12</sup> CIVIL APPEAL NO. 11247 OF 2016

<sup>13</sup> ([1994] 2 SCR 644 : AIR 1994 SC 1918 : (1994)3 SCC1)

## Federalism and the 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. After the Supreme Court's decision in *State of W.B. v. Union of India*<sup>14</sup>, it was understood that the unitary features in the Constitution are so many that the federal features almost disappear. In *State of Rajasthan v. Union of India*<sup>15</sup>, 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.<sup>16</sup>

In dealing with this question, it is necessary to bear in mind one fundamental feature of a Federal Constitution. In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features the principle of parliamentary sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognised by law of England as having a right to override or set aside the legislation of Parliament; and that the right or power of Parliament extends to every part of the Queen's dominions. On the other hand, the essential characteristic of federalism is the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other. The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreted of a scheme of distribution of powers. Nor is any change possible in the Constitution by the ordinary process of federal or State legislation....<sup>17</sup>

It must therefore be borne in mind that one of the important features of federalism has to be the existence of an independent judiciary which, in the face of growing 'unitarism', would not be afraid to exercise its power of judicial review to examine whether any action of the Centre adversely affects the federal balance between the Centre and the States.

The aforementioned decision of the Supreme Court of India in *State of W.B. v. Union of India* was one of the important pronouncements where the concept of federalism was discussed. A six-Judge Bench was called upon to decide a suit filed by the State of West Bengal against the Union of India in relation to the Coal Bearing Areas (Acquisition and Development) Act, 1957<sup>18</sup>. In the aforesaid context, the majority decision inter alia observed as under:

<sup>14</sup> (1964) 1 SCR 371

<sup>15</sup> (1977) 3 SCC 592

<sup>16</sup> Seervai H.M., Ch. V: Federalism in India, Constitutional Law of India, Fourth Edn. Vol. I, p. 283, Universal Law Publishing.

<sup>17</sup> Id., at para 39.

<sup>18</sup> Coal Bearing Areas (Acquisition and Development) Act, 1957.

“In some respects, a greater degree of economic unity was sought to be secured by transferring subjects having impact on matters of common interest into the Union List. A comparison of the Lists in Schedule 7 to the Constitution with Schedule 7 to the Government of India Act, 1935 discloses that the powers of the Union have been enlarged particularly in the field of economic unity, and this was done as it was felt that there should be centralised control and administration in certain fields if rapid economic and industrial progress had to be achieved by the nation.... The result was a Constitution which was not true to any traditional pattern of federation....”

In *State of Karnataka v. Union of India*<sup>19</sup> the Supreme Court of India observed that strictly speaking, the Indian Constitution is not of a federal character where separate, independent and sovereign States could be said to have joined to form a nation as in the United States of America or as may be the position in some other countries of the world. In this case, the Supreme Court reiterated that for the aforesaid reason, the Indian Constitution has been characterised as quasi-federal.<sup>20</sup>

Perhaps the authority on Indian Federalism is the nine-Judge Bench judgment of the Supreme Court of India in *S.R. Bommai v. Union of India*.<sup>21</sup> In *S.R. Bommai*<sup>22</sup> the incumbent Chief Minister of the State of Karnataka had questioned the proclamation of emergency declared under Article 356<sup>23</sup> of the Constitution of India. It was in the aforesaid context that the Constitution Bench was called upon to review the Proclamation under Article 356. The Bench expressed itself through six opinions. The authors of all six opinions principally referred to the aforementioned decisions in *State of West Bengal*<sup>24</sup> and *State of Rajasthan*<sup>25</sup> in the course of their judgments.

But for the present discussion, it may be sufficient to say that there was a clear majority to support the findings concerning federal characteristics of the Constitution of India. The Court observed that the Indian Constitution has in it, not only features of pragmatic federalism which, while distributing legislative powers and indicating spheres of governmental powers of State and Central Governments, is overlaid by strong unitary features, particularly exhibited by lodging in Parliament the residuary legislative powers, and in the Central Government, the executive power of appointing certain constitutional functionaries and issuing appropriate directions to the State Governments, and even displacing the State Legislatures and the Governments in emergency situations.<sup>26</sup> More significantly, the Court observed that democracy and federalism are the essential features of our Constitution and are part of its basic structure. The federal principle was observed to be dominant in the Constitution and the principle of federalism has not been watered down. Notwithstanding that there are many provisions in the Constitution where under the Centre has been given powers to override the States, the

<sup>19</sup> (1977) 4 SCC 608

<sup>20</sup> *Id.*, at pp. 716-717, para 220, per Untwalia, J.

<sup>21</sup> (1994) 3 SCC 1

<sup>22</sup> *Ibid.*

<sup>23</sup> Article 356, Constitution of India.

<sup>24</sup> *Supra* Note 3.

<sup>25</sup> *Supra* Note 4.

<sup>26</sup> *Supra* Note 20, per Ahmadi, J. at paras 19, 20 and 23.

Indian Constitution is federal in nature. The States have an independent constitutional existence and they have an important role to play in the life of the people of the Union.<sup>27</sup>

In *ITC Ltd. v. Agricultural Produce Market Committee*<sup>28</sup> the Supreme Court ruled that the Constitution of India deserves to be interpreted, language permitting, in a manner that does not whittle down the powers of the State Legislature and preserves the federalism while also upholding supremacy as contemplated by some of its articles.<sup>29</sup>

Another Constitution Bench consisting of five Judges was called upon to examine federalism under the Indian Constitution in *Kuldip Nayar v. Union of India*.<sup>30</sup> The aforesaid case came up before the Supreme Court of India in the form of a writ petition challenging the amendments made in the Representation of the People Act, 1951, whereby the requirement of domicile in the State concerned for getting elected to the Rajya Sabha was deleted. The fundamental basis of the petitioner's challenge was that the impugned amendment violated the principle of federalism, a basic feature of the Constitution. While adjudicating upon the aforementioned issue, the Supreme Court observed that the nature of federalism in the Indian Constitution is no longer res integra.<sup>31</sup>

The aforementioned decision in *Kuldip Nayar*<sup>32</sup> was reaffirmed by a nine-Judge Bench of the Supreme Court of India in *Jindal Stainless Ltd. v. State of Haryana*.<sup>33</sup> The issue before the Supreme Court was the validity of the laws enacted by different States in India providing for levy of tax on the entry of goods into local areas comprising the States. The majority opinion identified that the issue was of great concern not only because it dealt with the powers of the State Legislatures to levy taxes but also because any pronouncement would impact the federal character of polity and the Centre-State relationship in legislative and fiscal matters.<sup>34</sup> The Court observed that the legal position is fairly well settled that the Constitution provides for quasi-federal character with a strong bias towards the Centre.<sup>35</sup> A reference was made to the judgments which have been referred to hereinabove.

The latest decision on the issue is the five-Judge Bench decision of the Supreme Court in *State (NCT of Delhi) v. Union of India*.<sup>36</sup> The issue in the aforesaid matter related to the scope, ambit and interpretation of Article 239-AA<sup>37</sup> of the Constitution of India which makes certain special provisions with respect to Delhi. Relying upon *S.R. Bommai*<sup>38</sup> and *ITC Ltd.*<sup>39</sup>, the Court reiterated that democracy and federalism are firmly imbibed in constitutional ethos. Whatever be the nature of federalism present in the Indian Constitution, whether

<sup>27</sup> Id., per Sawant and Kuldip Singh, JJ. at paras 96 to 99.

<sup>28</sup> (2002) 9 SCC 232

<sup>29</sup> Id., at p. 266, para 59.

<sup>30</sup> 2006) 7 SCC 1

<sup>31</sup> Supra Note 30 at para 50, p. 49.

<sup>32</sup> Supra Note 30.

<sup>33</sup> (2017) 12 SCC 1

<sup>34</sup> Id., at para 1, p. 122, per T.S. Thakur, C.J.

<sup>35</sup> Id., at para 32, p. 141, per T.S. Thakur, C.J.

<sup>36</sup> (2018) 8 SCC 501

<sup>37</sup> Article 239-AA of the Constitution.

<sup>38</sup> Supra Note 20.

<sup>39</sup> Supra Note 28.

absolutely federal or quasi-federal, the fact of the matter is that federalism is a part of the basic structure of the Constitution.<sup>40</sup> The Court also discussed a novel concept of collaborative federalism. It observed that in a welfare State, there is a great necessity of collaborative federalism. The idea behind the concept of collaborative federalism is negotiation and coordination so as to iron out the differences which may arise between the Union and the State Governments in their respective pursuits of development.<sup>41</sup> Lastly, insofar as the federal structure under the Indian Constitution is concerned, the Court reiterated that the Constitution prescribes a federal structure which provides for division of powers between the States and the Centre, but with a slight tilt towards the Centre. However, it also provides for a federal balance between the powers of the Centre and the States so that there is no unwarranted or uncalled for interference by the Centre which would entail encroachment by the Centre into the powers of the States. The need is for federal balance which requires mutual respect and deference to actualise the workability of a constitutional provision.<sup>42</sup>

### **Relations between the Union and the States in the Indian Constitution**

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<sup>43</sup>, II<sup>44</sup> and III<sup>45</sup> of the Seventh Schedule; the authority to Parliament to legislate in a field covered by the State under Article 252<sup>46</sup> 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<sup>47</sup> and under Article 250<sup>48</sup> during emergency; vesting the President with the power under Article 258(1)<sup>49</sup> 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.<sup>50</sup>

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<sup>51</sup> 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

<sup>40</sup> Supra Note 38 at para 108, per Dipak Misra, C.J.

<sup>41</sup> Id., at para 119, per Dipak Misra, C.J.

<sup>42</sup> Id., at para 129, per Dipak Misra, C.J.

<sup>43</sup> Schedule 7, List I of Constitution.

<sup>44</sup> Schedule 7, List II of Constitution of India.

<sup>45</sup> Schedule 7, List III of Constitution of India.

<sup>46</sup> Article 252 of Constitution of India.

<sup>47</sup> Article 249, Constitution of India

<sup>48</sup> Article 250, Constitution of India.

<sup>49</sup> Article 258(1), Constitution of India

<sup>50</sup> Supra Note 30, per Sabharwal, C.J. at para 53.

<sup>51</sup> Article 246, Constitution of India.

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<sup>52</sup>. 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.

### **Encroachment upon the States' legislative arena by the Union**

Over the past three decades, it is being observed that Parliament appears to have encroached upon the legislative powers of the States.

The Constitution (73rd Amendment) Act, 1992<sup>53</sup> 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.

The introduction of Part IX to the Constitution was by way of the aforementioned Amendment under Article 368 of the Constitution. It sought to grant a constitutional status to local self-government institutions. The Supreme Court of India in *Gujarat Pradesh Panchayat Parishad v. State of Gujarat*<sup>54</sup> observed that in the light of the constitutional provisions in Part IX, a State Legislature cannot do away with the democratic bodies at the local level, nor can their normal tenure be curtailed otherwise than in accordance with law.

### **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<sup>55</sup> 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<sup>56</sup>, 303<sup>57</sup> and 304<sup>58</sup> 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

<sup>52</sup> Article 245, Constitution of India.

<sup>53</sup> Constitution (73rd Amendment) Act, 1992.

<sup>54</sup> (2007) 7 SCC 718 at para 24

<sup>55</sup> Article 301, Constitution of India.

<sup>56</sup> Article 302, Constitution of India.

<sup>57</sup> Article 303, Constitution of India.

<sup>58</sup> Article 304, Constitution of India.

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.<sup>59</sup> 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).

### **Goods and Services Tax: A New Era of Federalism**

The introduction of the Goods and Services Tax (GST) regime vide the Constitution (101st Amendment) Act, 2016<sup>60</sup>, 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 aforementioned Constitutional Amendment also amended the 7th Schedule to the Constitution. It substituted Entry 84 in List I. The substituted Entry 84 reads as under:

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.

<sup>59</sup> Video Electronics (P) Ltd. v. State of Punjab, (1990) 3 SCC 87.

<sup>60</sup> Constitution (101st Amendment) Act, 2016

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<sup>61</sup> 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.

### **Right to privacy**

In *K.S. Puttaswamy v. Union of India*<sup>62</sup> the Supreme Court of India was examining a wide array of arguments questioning the validity of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016<sup>63</sup>. One of the contentions raised before the Supreme Court of India was that the introduction of the Bill which culminated into Aadhar Act as a Money Bill was in contravention of the provisions of Article 110 of the Constitution. It was contended on behalf of the respondent Union that Section 7 of the aforementioned Act, which was the heart and soul of the Act fulfilled the requirements of a Money Bill as the expenditure of the subsidies, benefits and services is incurred from the Consolidated Fund of India.<sup>64</sup>

In the course of its judgment, the Court expressed its opinion through three views. The majority view observed that the Rajya Sabha is an important institution signifying constitutional federalism. It is precisely for this reason that to enact any statute, the Bill has to be passed by both the Houses. It is the constitutional mandate. The only exception to the aforesaid parliamentary norm is Article 110 of the Constitution of India. Having regard to this overall scheme of bicameralism enshrined in the Indian Constitution, strict interpretation has to be accorded to Article 110.<sup>65</sup>

### **Exercise of power**

In *State of West Bengal v. The Committee for Protection of Democratic Rights, West Bengal*<sup>66</sup>, 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

<sup>61</sup> Article 246-A, Constitution of India

<sup>62</sup> (2019) 1 SCC 1

<sup>63</sup> Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.

<sup>64</sup> Supra Note 124, at para 461, p. 453.

<sup>65</sup> Id., per majority at para 463, p. 455.

<sup>66</sup> AIR 2010 SC 1476.

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”.

### **Environment issues**

In *M.C. Mehta v. Union of India*<sup>67</sup>, 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 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 solved through a common minimum programme.

### **Violation of federal structure and centre and state relationship**

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:<sup>68</sup>

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.

<sup>67</sup> 5 (2015) SCC Online SC 1327.

<sup>68</sup> 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-briefchronology-of-the-tug-of-war-between-aap-govt-l-g/615084.html>.

The Constitution Bench of the Supreme Court in *Govt. (NCT of Delhi) v. Union of India*<sup>69</sup>, 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:<sup>70</sup>

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 both these concepts.

The bench further observed:<sup>71</sup>

“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<sup>72</sup> by displaying harmonious coexistence and interdependence so as to avoid any possible constitutional discord. Acceptance of pragmatic federalism<sup>73</sup> 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.”

This judgment is really very significant for centre and state relationship and it focused that cooperation and collaboration between two government is required, if we want to achieve constitutional enshrined in the preamble of the Constitution. The people should not suffer due to conflict between the two i.e. the Central government and the state governments.

## Conclusion

In India, democratic participation of constituent units in decision-making process and policy formulation within the party have been ensured the necessary conditions for effective development of political system at the state level. It has been seen that party members operating the governmental structure at the Central level are co-partisans of those operating the structure at the regional level. As a sequence, an inter-party relationship has gotten importance for the development and smooth functioning of the federal system. This type of federal

<sup>69</sup> (2018) 8 SCC 501. The court observed: constitutional statesmanship between the two levels of governance, the Centre and the Union Territory, ought to ensure that practical issues are resolved with a sense of political maturity and administrative experience.

<sup>70</sup> Id., para 284.7.

<sup>71</sup> Id., para 284.8

<sup>72</sup> 4 Id., para. 115

<sup>73</sup> Id., para. 127

coordination can possible only with the concurrence and cooperation of the respective Chief Minister. The long term stability of the federal system requires therefore the building up of a competent and dedicated leadership of both levels.

To overcome all this and the aforementioned demerits we need to strike a balance between both unitary and federal features of the country. States should be autonomous in their own sphere but they can't be wholly independent to avoid a state of tyranny in the nation. People of India need protection and security from such things and that is what the constitution of India with its special provisions provides. It establishes a state which is both a union and a federation at the same time and thus gives India a structure of a quasi-federal government which has united the diversity of India for past 75 years and will do the same for the centuries to come.

