INDIAN FEDERALISM AN ANALYSIS OF CONTEMPORARY ISSUES

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INDIA AS A FEDERAL STATE

Article 1 of the Constitution of India says, India i.e. Bharat shall be a Union of States. It is also stipulated in the Constitution that India i.e. Bharat shall be a Union of States and the territories and such other territories as may be acquired. The Constitution thus, postulates India as a Union of States and consequently, the existence of the federal structure of governance for this Union of States becomes a basic structure of the Constitution of India. All the provisions made in this Constitution are, therefore, liable to be interpreted as will protect, if not enhance, and certainly not destroy the basic structure namely federal structure of the Union of India.

Existence of the coordinate authorities independent of each other is the gist of the federal principle. The classic definition of Federalism is of a constitutional structure, which contemplates and provides sharing of power between different entities within one territorial unit, with different areas of governance and with specified purposes. A Constitution which embodies a federal system has normally the Distribution of powers between the federal government and State government, Supremecy of the Constitution, Written Constitution, Rigidity of the Constitution and Authority of Courts to prevent the federal and State Governments to encroach upon each other’s powers and declare laws made by them ultra vires on the ground of excess of power.

According to Prof. Garner “Federalism is a political system in which all the administrative powers are divided between the central and state governments by the constitution”. In India this statement is only partly true.

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2 Art 1 (3) (a).
3 Art 1 (3) (c).
4 Abhilasha Kumbhat, Judicial Federalism in India.
6 Somnath Chatterjee, Address at the Fourth International Conference on Federalism, New Delhi, 5 November 2007.
First, we may have a glimpse of mind on the federal polity of India. A major characteristic of the Indian polity is that the states are units not of a federation but of a Union aptly styled a quasi-federation.\textsuperscript{7} Means Indian polity is federal in structure but unitary in spirit. When we elaborate upon the essential feature of federalism that the specialists in the field offer, it is noted that they all seem to contain the following basis points:

In a federation the political authority is territorially divided between two autonomous sets of separate jurisdictions, one national and other provincial, which both operate directly from the people. Second, the existence of a single, indivisible but yet composite federal nation is simultaneously asserted. In this regard Prof. Wheare made an important observation that for the existence of a federal principle, it is important that the power of governance is divided between co-ordinate and independent authorities. He also stated that “\textit{any definition of federal government which failed to include the United States would be thereby condemned as unreal.”\textsuperscript{8} Therefore, we need to see the condition prevailing in the U.S., the basic principles of federalism, and then in its light analyze the provisions of our Constitution.

Further, an examination of the U. S. Constitution shows that the principle of organization upon which it is based, (the federal principle) is that the field of government is divided between a general authority and regional authorities which are not subordinate to one another. It is also said that in order to be called ‘federal’, it is not necessary that the Constitution should adopt the federal principle completely. It is enough if the federal principle is the predominant principle in the Constitution.

In India, we say that the federal principle is dominant in our Constitution. Keeping this framework of ‘federalism’ in mind, we next move to state that there are three basic organs of governance, they being: Executive, Legislature and Judiciary. Now when we say that a country has federal features of governance, it must be understood that the federal principle is present in all these three organs of the government. If it be not so then in actual practice the principle of

\textsuperscript{7} Yumnam Chaoba Singh, “What is federalism?”
federalism will be watered down. This is because if the component units themselves do not follow the mandates of the Constitution, then the entire federal structure would lose its significance or rather would not even qualify to be called as federal in nature.\textsuperscript{9}

India is having a Union Government at the Centre and State Governments at each of the States. The essential characteristics of a federal Constitution, i.e., distribution of powers, supremacy of the Constitution, written Constitution, rigidity and authority of courts, are present in the Indian Constitution. The duel polity consists of the Union at the Centre and States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The powers of the Union and States are clearly demarcated. The Constitution is written and is supreme. Enactments in excess of its powers of the Union or States are invalid. Moreover, no amendment which makes any changes in the status or powers of the Centre or the units is possible without the concurrence of the Union and of majority of the States. Finally, the Constitution establishes a Supreme Court to decide disputes between the Union and the States, or the State \textit{inter se} and to interpret finally the provisions of the Constitution\textsuperscript{10} with the amendment to the Constitution in 1992, the local governments in rural and urban areas too have been accorded constitutional recognition. Besides ensuring law and order, the states have a predominant role in the provision of social services such as education, health, housing, and family welfare.\textsuperscript{11}

The foundations of federalism were laid down on the grounds of concern for the unity and integrity of a culturally diverse nation. In view of historical experiences of disruptive and disintegrative sectarian forces and the political context of partition prevailing at the time of independence, the founding fathers of the Indian Constitution wanted to strengthen the Union against possible disintegrative pressures. Introducing the draft Constitution in the Constituent Assembly, Dr Ambedkar said:

\begin{quote}
\textit{“Though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation. Not being a result of an}\end{quote}

\textsuperscript{9} Abhilasha Kumbhat, Judicial Federalism in India.
\textsuperscript{11} M.Govinda Rao, Fiscal federalism in India: Emerging Challenges.
agreement, no state has the right to secede from it. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source... The Drafting Committee thought it was better to make [this] clear at the outset rather than leave it to speculation”

Thus the perceived basis of structuring the federation was "administrative convenience." Unlike the American and the (erstwhile) Soviet constitutions, the states had no inherent, not even notional, right to secede from the Union or demand self-determination. In fact the Union in India was empowered to frustrate any such separatist or secessionist pressures if and when they arose.

The Commission Constituted to Reorganize States in the Indian Federation nonetheless continued to emphasize that "it is the Union of India that is the basis of our nationality." Explaining the criterion of language as the basis for constituting a state, it said: “Linguistic homogeneity provides the only rational basis for reconstituting the state, for it reflects the social and cultural pattern of living obtaining in well-defined regions of the country.”

The process of linguistic reorganization of states initiated in 1953 has been carried forward under the recommendations of the States Reorganization Commission since 1956 and was broadly completed by the end of the 1960s. This was a major development towards incorporating cultural identities into political and administrative units.

The federal devolution of power strengthened this expression of cultural diversity. The devolution of powers between the Union (and the center) and the states was laid down in separate lists prepared for this purpose. Accordingly, the list of the states' "exclusive" powers includes: public order; police; education; local government; roads and transport; agriculture; land and land revenue; forests; fisheries; industry and trade (limited); state Public Service Commissions; and Courts (except the Supreme Court). The states can also make laws along with the Centre (provided the two do not clash), on subjects included in a "Concurrent List." These subjects include: criminal laws and their administration; economic and social planning;

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12 India, Constituent Assembly Debates, vol. 7, p. 43.
13 Ibid
commercial and industrial monopolies; shipping and navigation on the inland waterways; drugs; ports (limited); courts and civil procedures. The arrangement for distribution of powers between the Union and the states has remained generally stable.

The framers of the Constitution placed matters of national concern in the Union List and those of purely State or local significance in the State List. Matters that are of common interest to the States and the Union were placed in the Concurrent List, in order to ensure uniformity in legislation with due regard to the country’s diversity. Parliament and the State legislatures have exclusive powers to legislate on items in the Union List and the State List respectively. Both can legislate on items in the Concurrent List. However, foreseeing the possibility of a situation in which legislation might be required on matters that are not mentioned in any of the three Lists, the Founding Fathers made residuary provisions in Article 248 of the Constitution and Entry 97 of the Union List. The residuary powers of legislation are vested in Parliament. Article 248 (2) says that these include the power to make any law that seeks to impose a tax that is not mentioned in either the Concurrent List or the State List. This was done keeping in view the framework of the Constitution, which envisaged a federation with a strong Centre.14

One of the controversial aspects of center-state relations has been the allocation of economic resources by the Union to the states. Such allocation is carried out by the Planning Commission in the area of developmental expenditure and has led to complaint by the states that the resources provided are inadequate. The states also have their own power to raise revenues. As the Constitution does not emphasize on a strict separation of powers, therefore in the same line we can say that the Constitution does not cannot enforce strictly for the federalism principles as well. That we say after looking into the limitations of our country, its features, and seeing to the varying and growing needs of time, and thus in order to avoid friction there needs to be adopted a federal approach keeping the federal structure intact. This would also prevent our structure either from disintegrating or yielding to the unitary forces. The classical theories of separation of powers, federation, etc. cannot be adopted as they are. They need to be modified according to the conditions prevailing in each different place.15

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15 Abhilasha Kumbhat, Judicial Federalism in India.
Therefore, what kind of federalism do we have and how does it respond to the basic realities and pressures and pulls of contemporary polity, what have we learnt from our experience, what sort of realignment would be preferable and efficient, do our Constitutional conventions and practices detract from this model or go in its favor, what is the trend and how do we catalyze the movement towards the desirable goals, all this needs to be given a thought. This is, therefore, a grey area of constitutional governance which requires a thoughtful deliberation.

As India’s Supreme Court has defined, the essential characteristic of federalism is the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and are independent of each other. In such a setup, the supremacy of the Constitution is fundamental, in order to prevent either the legislature of a federal Unit or those of the Member States from disturbing or impairing or even destroying that delicate balance of power, which satisfies the particular requirements of the States which are desirous of union but are not prepared to merge their individuality in a unity. In such a setup, the primacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. Thus in a Federal structure along with the supremacy of the Constitution, each unit and each organ has prescribed limits of function and demarcated powers as provided by the Constitution of the country. Thus federalism is a constitutional mechanism of shared governance.16

The debate whether India has a ‘Federal Constitution’ and ‘Federal Government’ has been grappling the Apex court in India because of the theoretical label given to the Constitution of India, namely, federal, quasi-federal, unitary.17 The first significant case where this issue was discussed at length by the apex Court was State of West Bengal v. Union of India.18 The main issue involved in this case was the exercise of sovereign powers by the Indian states. The legislative competence of the Parliament to enact a law for compulsory acquisition by the Union of land and other properties vested in or owned by the state and the sovereign authority of states as distinct entities was also examined. The apex court held that the Indian Constitution did not

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16 Somnath Chatterjee, Address at the Fourth International Conference on Federalism, New Delhi, 5 November 2007
18 AIR 1963 SC 1241
propound a principle of absolute federalism. Though the authority was decentralized this was mainly due to the arduous task of governing the large territory.

The court outlined the characteristics, which highlight the fact that the Indian Constitution is not a "traditional federal Constitution". Firstly, there is no separate Constitution for each State as is required in a federal state. The Constitution is the supreme document, which governs all the states. Secondly, the Constitution is liable to be altered by the Union Parliament alone and the units of the country i.e. the States have no power to alter it. Thirdly, the distribution of powers is to facilitate local governance by the states and national policies to be decided by the Centre. Lastly, as against a federal Constitution, which contains internal checks and balances, the Indian Constitution renders supreme power upon the courts to invalidate any action violates the Constitution. The Supreme Court further held that both the legislative and executive power of the States are subject to the respective supreme powers of the Union. Legal sovereignty of the Indian nation is vested in the people of India. The political sovereignty is distributed between the Union and the States with greater weightage in favor of the Union. Another reason which militates against the theory of the supremacy of States is that there is no dual citizenship in India. Thus, the learned judges concluded that the structure of the Indian Union as provided by the Constitution is one centralized, with the States occupying a secondary position vis-à-vis the Centre, hence the Centre possessed the requisite powers to acquire properties belonging to States.  

As against this opinion, was the judgment rendered by Justice Subba Rao, the great champion of State rights. Justice Subba Rao was of the opinion that under the scheme of the Indian Constitution, sovereign powers are distributed between the Union and the States within their respective spheres. As the legislative field of the union is much wider than that of the State legislative assemblies, the laws passed by the Parliament prevail over the State laws in case of any conflict. In a few cases of legislation where inter-State disputes are involved, sanction of the President is made mandatory for the validity of those laws. Further, every State has its judiciary with the State High Court at the apex. This, in the opinion of the learned judge does not affect the federal principle. He gives the parallel of Australia, where appeals against certain decisions of the High Courts of the Commonwealth of Australia lie with the Privy Council.

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Thus the Indian federation cannot be negated on this account. In financial matters the Union has more resources at its disposal as compared to the states. Thus, the Union being in charge of the purse strings, can always, persuade the States to abide by its advice. The powers vested in the union in case of national emergencies, internal disturbance or external aggression, financial crisis, and failure of the Constitutional machinery of the State are all extraordinary powers in the nature of safety valves to protect the country’s future. The power granted to the Union to alter the boundaries of the States is also an extraordinary power to meet future contingencies. In their respective spheres, both executive and legislative, the States are supreme. The minority view expressed by Justice Subba Rao has consistency with the federal scheme under the Indian Constitution. The Indian Constitution accepts the federal concept and distributes the sovereign powers between the coordinate Constitutional entities, namely, the Union and the States.

The next landmark case where the nature of the Indian Constitution was discussed at length was *State of Rajasthan v. Union of India*.20 The learned judges embarked upon a discussion of the abstract principles of federalism in the face of the express provisions of the Constitution. It was stated that even if it is possible to see a federal structure behind the establishment of separate executive, legislative and judicial organs in the States, it is apparent from the provision illustrated in Article 356 that the Union Government is entitled to enforce its own views regarding the administration and granting of power in the States. The extent of federalism of the Indian Union is largely watered down by the needs of progress, development and making the nation integrated, politically and economically coordinated, and socially and spiritually uplifted.

The Court then proceeded to list out some of the Constitutional provisions which establish the supremacy of the Parliament over the State legislatures. In conclusion the apex Court held that it was the ‘prerogative’ of the Union Parliament to issue directives if they were for the benefit of the people of the State and were aimed at achieving the objectives set out in the Preamble.

The issue of federalism was carried forward in *S.R.Bommai V. Union of India*.21 Four opinions were rendered, expressing varying views. Justice Ahmadi opined that in order to understand the true nature of the Indian Constitution, it is essential to comprehend the concept of federalism.

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20 (1977) 3 SCC 592
The essence of the federation is the existence of the Union and the States and the distribution of powers between them. The significant absence of expressions like ‘federal’ or ‘federation’ in the Constitution, the powers of the Parliament under Articles 2 and 3, the extraordinary powers conferred to meet emergency situations, residuary powers, powers to issue directions to the States, concept of single citizenship and the system of integrated judiciary create doubts about the federal nature of the Indian Constitution. Thus, it would be more appropriate to describe the Constitution of India as quasi- federal or unitary rather than a federal Constitution in the true nature of the term. As opposed to this, Justice Sawant and Justice Kuldip Singh regarded democracy and federalism as essential features of the Indian Constitution. The overriding powers of the Centre in the event of emergency do not destroy the federal character of the Indian Constitution. The learned judges elaborated upon the scope and justified use of the power conferred on the president by Article 356 which will not restrict the scope of the independent powers of the respective States for "every State is constituent political unit and has to have an exclusive Executive and Legislature elected and constituted by the same process as the Union Government." 22

In the opinion of Justice Ramaswamy, the units of the federation had no roots in the past and hence the Constitution does not provide mechanisms to uphold the territorial integrity of the States above the powers of the Parliament. The end sought to be achieved by the Constitution makers was to place the whole country under the control of a unified Central Government, while the States were allowed to exercise their sovereign powers within their legislative, executive and administrative powers. The essence of federalism lies in the distribution of powers between the Centre and the State. Justice Ramawamy declared the Indian structure as organic federalism, designed to suit the parliamentary form of Government and the diverse conditions prevailing in India. Justice Jeevan Reddy and Justice Agarwal opined that the expression federal or federal form of government has no fixed meaning. The Constitution is also distinct in character, a federation with a bias in favor of the Centre. But this factor does not reduce the States to mere appendages of the Centre. Within the sphere allotted to them the states are supreme.

The use of article 356, which provides for imposition of presidential rule in a state in the "event of the failure of constitutional machinery," has been the subject of considerable controversy and

22 Art.356, the Constitution of India.

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debate in this regard. Political use of this provision has been extensive. Reacting to distortions in federal relations and the abuse of powers devolved under the constitutional arrangement, some scholars have called for restructuring Indian federalism. That may be neither practical nor offer a real panacea, because the structure so redefined may also be misused or manipulated for political purposes. The remedy lies in the evolution and strict observance of healthy guidelines and norms in the operational aspects of federalism.23

FISCAL FEDERALISM IN INDIA

The tax powers and expenditure responsibilities of the Centre and states are specified in the Constitution. The system of intergovernmental fiscal arrangements in India has served it well for over 50 years. It has achieved a significant equalization of services, instituted a workable system of resolving the outstanding issues between the national government – called the “Centre” in India – and the states, adjusted to changing requirements, and thus has contributed to achieving a degree of cohesiveness in a large and diverse country.24 With the amendment to the Constitution in 1992, the local governments in rural and urban areas too have been accorded constitutional recognition. Besides ensuring law and order, the states have a predominant role in the provision of social services such as education, health, housing, and family welfare.25 They have a co-equal role with the Centre in the provision of economic services. In particular, their roles in agricultural development, irrigation, industrial promotion, and transport infrastructure are important. At the same time, most broad-based and progressive tax powers are assigned to the Centre. The important central taxes are customs, excise duties on manufactured goods, personal income tax, and corporate income tax. The states also have a few tax bases assigned to them, but from the viewpoint of revenues, the power to levy retail sales tax is the most important. The states can borrow from the central government. They can also borrow from the market, but if a state is indebted to the central government, continued borrowing must be approved by the Centre.

23 S.D.Muni, Ethnic conflict, federalism, and democracy in India.
24 M.Govinda Rao, Fiscal federalism in India: Emerging Challenges.
A notable feature of transfers in India is the existence of multiple channels with which to transfer funds. One such channel, the Planning Commission, created by an act of Parliament, provides assistance by way of grants and loans to the states to meet their plan requirements. Until 1969, the plan assistance to states was given for specific ventures and the degree of assistance, as well as grant-loan components, were decided on the basis of the nature of the venture chosen. Since 1969, however, the plan assistance to the states is given by way of both grants and loans on the basis of a formula approved by the National Development Council (NDC). The NDC is chaired by the Prime Minister and is composed of cabinet ministers, members of Planning Commission, and Chief Ministers of the states. The grants given by the Planning Commission constitute between 16 and 20 percent of the total central transfers. The Constitution requires the President of India to appoint a Finance Commission every five years to review the finances of the Centre and the states and recommend both devolution of taxes and grant-in-aid for the ensuing five years. In normal times, the Constitution of India is framed to work as a federal system, but in times of war and other national emergencies it is designed to work as if it is unitary.

Though the Indian judiciary had interpreted the Constitution to declare India a unitary nation in the initial years, later the Court has recognized the fact that the framers of the Indian Constitution intended to provide a federal structure with a strong Centre, which would prevent the nation from disintegration. In a subsequent case, the then Chief Justice P.B.Gajendragadkar, emphasized upon the federal nature of the Constitution and the Judiciary as the sole interpreter of the Constitution which could not be changed by the process of ordinary legislation. In the basic structure classical case, i.e. *Keshavananda Bharti v. State of Kerala*, some of the judges in the full Constitutional Bench expressed federalism as one of the basic features of the Indian Constitution. In another case Justice Bhagwati, described Indian Constitution as a federal or quasi-federal Constitution. In *Sat Pal v. State of Punjab*, the Supreme Court again held that “...ours is a Constitution where there is a combination of federal structure with unitary

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26 Ibid
29 (1982) 1 SCC 12.
"features..." In Pradeep Jain v. Union of India, the Apex Court expressed a non-traditionalistic yet pragmatic opinion while explaining the federal concept in the context of the unified legal system in India. India is not a federal State in the traditional sense of that term. It is not a compact of sovereign State which have come together to form a federation by ceding undoubtedly federal features. In Ganga Ram Moolchandani v. State of Rajasthan the Supreme Court reiterated: Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely supremacy of the Constitution, division of power between the Union and States and existence independent judiciary.

CONTEMPORARY FEDERAL ISSUES IN INDIA

National Counter-Terrorism Centre (NCTC)

The people of India have not yet recovered from the trauma of terrorist killings in Mumbai in 2008. The attack was quelled by the anti-terrorist forces of the Centre with great difficulty after a prolonged struggle. Thus, to combat terrorism effectively, the Centre proposed the NCTC on the lines of the NCTC in the U.S. The fact of lack of intelligence inputs and lack of prompt coordination among intelligence agencies during the Mumbai attacks cannot be ignored. The NCTC derives its powers from the Unlawful Activities (Prevention) Act 1967, in respect of ‘searches’ and the issue of arrest warrants throughout India to prevent terrorist attacks. It is needed for curbing terrorism in a full-fledged way. The safety of people is at stake in most of the States: extremism and a separatist movement in Jammu and Kashmir, ULFA and Bodo Extremists in the North-East, Naxalites in eastern India and some parts of Maharashtra and Andhra Pradesh, terrorist organisations, i.e., Indian Mujahideen (SIMI).

Only a united strategy and efforts by the State and Central governments can effectively deal with the grave challenges posed by the terrorists. After abduction of Collectors and MLAs, the terrorist outfits make demands for the release of several terrorists and their helpers including

31 AIR 2001 SC 2616.
those guilty of murder and held in prison by the state. Should the State governments deal with the situation as it arose by bargaining with the terrorists or should there be a nationally agreed strategy such as not to concede to any of the demands of the terrorists in return for the release of officers or other individuals abducted and held in custody by the terrorists? On the policy, there has been no agreed formulation. Reference was made to the ‘no negotiation strategy’ of a country like Israel though it was pointed out that even a country like Israel had to bargain on many occasions. The position, as of now, in dealing with the terrorist threat seems to be nebulous and indecisive and does not inspire confidence.

All those States took exception to the Central Government taking a unilateral decision without consulting the State governments even though law and order, according to the Constitution, is a subject which falls in the State list as per the Seventh Schedule of the Constitution. (It may be pointed out that the word that appears in the State list is ‘public order’ and not ‘law and order’. Also ‘police’ are under the jurisdiction of the State and it is they who have tackle the violation of public order by the terrorists.)

The major apprehensions by the States regarding the violation of federal polity are as follows -

1. As wide powers are given to the NCTC, the agency could be directed solely at the behest of Home Ministry without taking the consent of the State concerned. So, there will be political mileage to be generated in respect of searches and arrests against opponents.
2. The clear-cut consent or concurrence of the State concerned for launching probe in the event of a terrorist attack has not been spelt out.
3. The mode of appointment of the investigating officers and the nature of accountability of the officers in the NCTC are not specified.
4. Whether the NCTC is bound to inform the State concerned of the stage or progress of investigation is not specifically stated (regarding coordination, information and documents with the other intelligence agencies of the States).

33 Refer, Available at http://economictimes.indiatimes.com/topic/National-Counter-Terrorism-Centre as accessed on 28/06/2013 on 9:20 hrs , IST
34 Refer, Available at http://timesofindia.indiatimes.com/topic/India's-National-Counter-Terrorism-Centre as accessed on 01/07/2013 at 10:53 hrs, IST
5. It is not clear whether the States concerned are entitled to get the relevant information at any stage of investigation from the NCTC.\textsuperscript{35}

Terrorism as an organized threat, whether external or internal, is a phenomenon which did not exist when the founding fathers framed the Constitution nor could they have anticipated it in the then existing situation. Hence it does not expressly figure in any of the three lists in the Seventh Schedule of the Constitution. Perhaps time has come for an amendment to the Constitution to include the subject of terrorism expressly in the concurrent list. A full-fledged discussion on the subject in the Central and State legislatures will provide the opportunity for a comprehensive discussion on the nature of terrorism and strategy and organisation for dealing with the threat. This would remove the ambiguities and provide a base and framework for joint action by the Union and State governments.

A. Goods and Service Tax (GST)

The Goods and Services Tax is a Value Added Tax (VAT) to be implemented in India,\textsuperscript{36} the decision on which is pending.\textsuperscript{37} It will replace all indirect taxes levied on goods and services by the Indian Central and State governments. It is aimed at being comprehensive for most goods and services. India is a federal republic, and the GST will thus be implemented concurrently by the central and state governments as the Central GST and the State GST respectively.\textsuperscript{38} Exports will be zero-rated and imports will be levied the same taxes as domestic goods and services adhering to the destination principle.

The basic claim of the state is that the fiscal dependence of the state on the center will increase, thus disturbing the federal principles embedded in the constitution. The main state taxes \textit{viz} sales

\textsuperscript{35} \textit{See}. A Ratna Velu, Needed NCTC but remove apprehensions, The Hindu Open Page, 11\textsuperscript{th} November, 2012


\textsuperscript{37} \textit{Refer}, Available at http://www.taxmanagementindia.com/wnew/detail_rss_feed.asp?ID=1226 (Last accessed on 26/11/2016)

tax will now be subsumed into GST, thus curtailing the main source of state revenues. Speaking on the violation of federal structure, PM Vasudev says,

“The ongoing efforts of the central government to replace state sales tax with a central levy on goods and services have serious implications for the federal structure. To be clear, centralization has been a consistent trend in India since the entry of British rule over 250 years ago, and the question is whether we should be treading this path. The constitution of India, based largely on the colonial Government of India Act, 1935, provides for a federal structure with clearly defined functions for the central and state governments. It leans heavily in favor of the center at the cost of the states. States, however, have some financial autonomy with powers to collect a variety of taxes. A main source of revenue for the states is the sales tax levied on goods.”

He further says,

‘The present efforts to levy a central tax on goods and services weaken the states further and strike at the roots of the federal structure and the ancient traditions of the country. It is intuitive that centralization and more financial powers with a select group in New Delhi will only lead to greater corruption and vested interests. Transparency and accountability, the watchwords in modern governance, will be the victims. It is not without reason that Mahatma Gandhi advocated the panchayat raj, which can be more responsive and accountable to the society.’

The implementation of goods and services tax (GST) could boost the country's GDP by about 2 per cent annually. GST could increase GDP growth rate by 1.4 to 1.7 per cent with an annual revenue increase of Rs 1.2 lakh crore at current level. GST will create a single Indian common market with supply chain efficiencies and scale up the economy. Furthermore the Federation of Indian Chambers of Commerce and Industry (FICCI) President is of the opinion that GST will boost the economic performance, he says, “It is not that the industry wants GST. But, it will result in better method of administering tax, runs parallel to economy and puts all people in equal footing. When 80 countries worldwide have adopted it, why should we oppose it? The

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39 See, PM Vasudev, GST, the Federal Principle and Accountability, Times of India, 11th April, 2011.
40 Ibid
move to GST is inordinately delayed. We will continue to press for it as non-acceptance by few State governments on political issue is an untenable argument.\(^{42}\)

The basic advantages of GST will be –

1. Speed up economic union of India;
2. Better compliance and revenue buoyancy;
3. Replacing the cascading effect [tax on tax] created by existing indirect taxes;
4. Tax incidence for consumers may fall;
5. Lower transaction cost for final consumers;
6. By merging all levies on goods and services into one, GST acquires a very simple and transparent character;
7. Uniformity in tax regime with only one or two tax rates across the supply chain as against multiple tax structure as of present;
8. Efficiency in tax administration;
9. May widen tax base;
10. Increased tax collections due to wide coverage of goods and services; and
11. Improvement in cost competitiveness of goods and services in the international market.

It is heartening and reassuring to note that India has lately been taking steps in the right direction to improve and, indeed, safeguard the economic condition of the country by steering away from the drawbacks and dangers of the Western zone. India is a federation and there are difficulties to bring States to agree to surrender tax power. Hence low level politics should be set aside and higher good of the nation’s economic prosperity should be the decisive factor.

**B. Biotechnology Regulatory Authority of India Bill**

\(^{42}\) See, The Hindu, FICCI to convince states opposed to GST, 9\(^{th}\) July, 2013.
The Biotechnology Regulatory Authority of India Bill, 2013 was introduced in the Lok Sabha on April 23, 2013. The Bill aims to promote the safe use of modern biotechnology by enhancing the effectiveness and efficiency of regulatory procedures. Biotechnology Regulatory Authority: The Bill establishes the Biotechnology Regulatory Authority of India (Authority). The Authority will consist of a chairperson, two full time members, and two part time members.

The functions of the Authority shall include regulating the research, transport, import, containment, environmental release, manufacture and use of organisms and products of modern biotechnology. The Authority has the power to call for information, conduct an inquiry and issue directions for the safety of products or processes of modern biotechnology. Field trials for certain organisms or products cannot be conducted unless the Authority permits them as aiding the development of modern biotechnology such as genetically engineered plants, animals used in food or any animal clones that can be applied in agriculture, fisheries or food products. The Bill will not apply to the clinical trials of drugs, under the Drugs and Cosmetics Act, 1940, and food or food additives or any material under the Food Safety and Standards Act, 2006.

The Bill is facing a lot of critics with respect to the federal structure violation as envisaged in the Constitution.

Vandana Shiva\textsuperscript{43} explains the violation of federal policy as –

\textit{‘BRAI is an attempt to usurp the powers of the States guaranteed by the Constitution under our federal structure, and under the rules for GMO regulation under EPA are based on State Biotechnology Coordination Committees which have powers to inspect, investigate and take punitive action. It was under these powers 13 states banned BT Brinjal, Kerala could adopt a GMO free policy, and Bihar could order the uprooting of illegal GMO corn trials of Monsanto. BRAI aims at taking these powers away. Article 2 imperially announces “It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of organisms, products and processes of modern biotechnology industry” even though this is unconstitutional ,since agriculture is a State Subject, and GMOs in Agriculture fall in that jurisdiction. The powers of the State under the EPA Rules for Biosafety are being taken away,}

\textsuperscript{43} See, Vandana Shiva, India’s Monsanto Protection Act, Navdanya’s Diary, May 13, 2013.
and the State Biotechnology Regulatory Advisory committees have no legal powers, only the role of “interaction” with the Central Authority. In effect the Federal Structure under the constitution is being destroyed to give fast track approval for GMOs on a national scale.’

To sum up the violation,

a) BRAI overtakes the State Biotechnology Coordination Committees under the Enviroment Protection Act.

b) Agriculture is a State subject and GMOs. i.e. Genetically Modified Organisms fall under the category of Agriculture.

c) The powers for state under the EPA regarding Biosafety are been taken away.

To further expand on the law regarding the GMO and LMO (Living Modified Organism), the Indian Government has signed an International Agreement called the Cartegena Protocol on Biosafety. The Cartagena Protocol on Biosafety is an international agreement on biosafety, as a supplement to the Convention on Biological Diversity. The Biosafety Protocol seeks to protect biological diversity from the potential risks posed by genetically modified organisms resulting from modern biotechnology. The Biosafety Protocol makes clear that products from new technologies must be based on the precautionary principle and allow developing nations to balance public health against economic benefits. It will for example let countries ban imports of a genetically modified organisms if they feel there is not enough scientific evidence that the product is safe and requires exporters to label shipments containing genetically altered commodities such as corn or cotton.\(^4^4\)

The Central Government is empowered to make law on an item in State list in furtherance of an International Agreement. A plain reading of Art 253 says so.

\textit{Art 253: Legislation for giving effect to international agreements. — Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing treaty, agreement}

\footnote{\textit{See,} Cartagena Protocol on Biosafety, \url{http://en.wikipedia.org/wiki/Cartagena_Protocol_on_Biosafety} as accessed on 01/07/2013 at 15:12 hrs, IST.}

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or convention with any other country or countries or any decision made at any international conference, association or other body."

Biotechnology is an area with international ramifications. It, therefore, needs the supervision of the Central Government. Furthermore the GMOs not only come under the Agriculture but also all organisms including animals. So the State’s argument that the GMOs should be under their control since Agriculture is under the State list is wrongly conceived.

CONCLUSION

The finer federal facet has often been misinterpreted by the central operators.\(^45\) So the battle for federal affirmation and restoration of democratic decentralization has gained momentum over the decade. Important Commissions like Rajamannar and Sarkaria Commission have stressed on the federal soul of the Constitution. In the opinion of Amal Ray, the Indian Constitution is a product of two conflicting cultures one representing the national leader’s normative concern for India’s unique personality and the other over-emphasizing the concern for national unity, security, etc. And as a result, the founding fathers opted for a semi-hegemonic federal structure where the balance is in favor of the Centre. This concept is aptly described in the insight offered by Dr. Ambedkar: the Indian Constitution would work as a federal system in 'normal times' but in times of 'emergency' it could be worked as though it were a unitary system. The critics of the Indian Federal system must not ignore the fact that not only the Federal Government in India has been made deliberately strong, there is also a centralizing tendency in the other federal states of the world such as Switzerland, Australia, Canada and the United States.\(^46\)

In an attempt to assert their independence the States have, at various points of time tried to flout the Centre’s orders. An example was the disobedience of Karnataka to confirm to the Centre’s directives regarding release of water to Tamil Nadu. Such actions have generated wide spread opposition from interested parties. A similar situation arose when Punjab Termination of Agreements Bill, 2004, was flouted by the State of Punjab recently. The unilateral termination of

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\(^45\) Ibid.
a tripartite agreement raised a controversy in which the authority of the State to commit such an act is being questioned. Annulling the very basis on which the Supreme Court had pressured the State to implement the river water-sharing agreement of 1981, the Bill has created an unprecedented Constitutional crisis.\textsuperscript{47}

In a response to the increasing number of water disputes the United Progressive Alliance Government has proposed to set up two Commissions to look into the Centre- State relations, including river water-sharing, and to examine administrative reforms.

In the light of the past experiences of misuse of power certain amendments should be effected which will strengthen the federal nature of our Constitution. Firstly, there should be devolution of more financial resources and powers on the States so that they do not have to depend on the Centre for financial assistance. Secondly number of statutory grants to which the States are entitled should increase. Thirdly, the States should also be given greater autonomy to undertake developmental programmes. Lastly, there should be some inbuilt safeguards against the blatant misuse of Article 356 by successive central Governments.\textsuperscript{48}

The Centre has the power to reorganize the states through Parliament; Governors appointed by the Centre can withhold assent to legislation passed by the state legislature; Parliament can override legislation passed by the states in the national interests; the Governor can play a role in the formation of state governments and the Centre is vested with the power to dismiss the state governments under Article 356; residuary powers are vested with the Centre and the major taxation powers lie with the Central authority. Alongside these unitary features, there is a division of subjects between the Centre and states and a concurrent list. Judicial review of Centre-state relations exists as in a federal system. On the balance, the Indian political system has federal features which are circumscribed with a built-in unitary core.\textsuperscript{49}

\textsuperscript{47} Ibid.
\textsuperscript{48} Ibid.
\textsuperscript{49} Prakash Karat, Federalism and Political system in India.