

## **Crisis and Response of Indian Federalism-Assessing the Federalism through the Prism of Constitution and Democracy**

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### ***Abstract***

*“This research paper investigates the profound claim of India as nation having cooperative federalism. The most striking feature of Indian federalism is the concentration of power at the central level as well as the decentralization of certain powers to provincial units. Nehru envisioned a cooperative federalism for India's government structure, which postulates a multifaceted mechanism to maintain its territorial integrity as well as its democratic and plural character. The federal arrangement is constitutionally protected, and certain subjects, areas, and residuary powers are predominated by the union. The contentious issue of present discourse is whether India's cooperative federalism exists or lost its distinctiveness. The main task of this research paper is to examine how the politics has endangered the core tenets of Indian federalism thereby pushed the nation into totalitarian or majoritarian state. The massive abuse of the authorities, institutions and repeated dents to fiscal federalism are the area of concern. The main political battle is not about who is supreme-central government or regional government but whether Nehruvian model of cooperative federalism will survive or not. The regional government have been struggling to have equitable share in the resources, finance, and legislations. Many regional governments have steadily outspoken on the subject of undermining their power and central government authoritarianism. The tribulation journey of Indian federalism from cooperative to confrontationist poses serious questions about the future of Indian federalism and what would be the future of many territories, states, and centrally administered regions in India if this confrontationist approach continues. The primary base of the present research is to critically*

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*examine the political development of last few years and how these events have undermined the constitutional ethos apart from crisis of federalism”*

**Key Words:** *Constitution of India, Democracy, Federalism, Secularism, Parliament, Cooperative Federalism, Asymmetrical Federalism.*

## **I. Prologue**

*Indian federalism rests upon multi-layered sovereignty-both centre and state shared their own autonomy in respective sphere.*<sup>2</sup> Principally, the Indian state appears as a federal state if the Constitution of India is closely examined, because it is divided between the central government and regional governments, with the central government being given more authority.<sup>3</sup> India is not purely federal or unitary but a combination of both, observed Khosla (2012).<sup>4</sup> Indian federalism is regarded as *sui generis*, or unique in itself, since Indian federalism is not fully federal but a combination of unitary and centrist government with greater power for the central government, none of the established theories of federalism could account for this type of federalism. The writings of A.V. Dicey and K.C. Wheare were crucial in giving legal coverage for the growth of the concept of federalism in both classical and traditional terminology of federalism. They were rather the first to give federalism a legal foundation in constitutional law studies.<sup>5</sup> They have made it easier to discern between federation and confederation, a federal state and a unitary state, and the sovereignty of the federation and federating states according to their legalistic explanation of federalism.<sup>6</sup> Apologetically, the federalism theories promulgated by Dicey and Wheare remain futile to acknowledge the Indian variety of federalism due to irrefutable paradox and distinctiveness character of Indian federalism.

In *State of Haryana v. State of Punjab*, the Hon'ble Supreme Court used the word- semi-federal, which denote the Constitution of India is not purely federal

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<sup>2</sup> TILLIN, LOUISE, *INDIAN FEDERALISM*, 10 (Oxford University Press 2019).

<sup>3</sup> *Dharam Dutt v. Union of India* (2004) 1 SCC 712

<sup>4</sup> KHOSLA, MADHAV, *THE INDIAN CONSTITUTION*, 75 (Oxford University Press, 2012).

<sup>5</sup> WHEARE, K.C, *FEDERAL GOVERNMENT* 67 (Oxford University Press, 2021).

<sup>6</sup> DICEY, A.V. , *THE LAW OF THE CONSTITUTION* 257 (Oxford University Press, 2013).

but a combination of both.<sup>7</sup> Again, in *Shamsher Singh v. State of Punjab* the constitution was called 'more unitary than federal' that mean Indian constitution doesn't fulfil the idealist characteristics of federalism.<sup>8</sup> Having its own uniqueness and differences, broadly speaking Indian Constitution is federal with limited power to regional government.<sup>9</sup> Moreover, federal structure can't be changed even by an amendment in the Constitution. India bestowed with commonly accepted features of the federalism-existence of two levels of governments and distribution of powers-legislative, executive and financial. Such unique mechanism is obvious as the country is large and heterogenous as many states have own history, culture, language and geography.<sup>10</sup> The constitutional structure has recognised the varied nature of the provinces; hence the idea of amicable federalism was first time mooted with providing the dual form of polity, administration and governance.<sup>11</sup> This arrangement has made India chiefly a federal nation, with loci of autonomous authorities. The multi-level governance, elected legislatures, independence of revenue and judicial system lead to label India a quasi-federal nation with predominance of union over states.<sup>12</sup>

In the recent time a deliberation among academics has erupted whether the Indian state rightly represents a federal state or a pure unitary state. Many scholars have termed the Indian brand of federalism as consensual federalism, multilayers federalism or centralised federalism. Though Indian federalism is sui generis and hard to define under the conventional explanation of federalism. To examine the deliberation, it would be desirable to revisit the constitutional assembly debates. The Constituent Assembly adopted and interpreted the

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<sup>7</sup> AIR 2002.

<sup>8</sup> (AIR 1974) AIR 2192, 1975 SCR (1) 814.

<sup>9</sup> K. C. WHEARE, *FEDERAL GOVERNMENT* 64 (Oxford University Press, 2021).

<sup>10</sup> Singh, Surendar *Restructuring Indian Federalism-A New Perspective*, Vol-LXXV No. 2, THE INDIAN JOURNAL OF POLITICAL SCIENCE, , 2014, p. 359-360

<sup>11</sup> GRANVILLE AUSTIN, *INDIAN CONSTITUTION-CORNERSTONE OF A NATION* 233 (Oxford University Press, 2019).

<sup>12</sup> *Bhim Singh v. Union of India*, (2010) 5 SCC 538, Supreme Court held in this case that India primarily a federal nation with more power to union government and few power to regional governments.

federalism with strong central government in accordance with circumstances and requirements of post-partition period.<sup>13</sup>

After independence, India adopted the federalism to promote unity in diversity by balancing the competing forces of centripetal and centrifugal trends in order to achieve common national goals. Since the political structure of Indian Constitution is so unusual that it is impossible to describe in brief-what constitute Indian federalism. The regional governments are sovereign but to limited extent, foreign affairs, banking and defence are the subjects of central government but subjects like local administration, health, land, transport, law and order remain vested with the regional government. Interestingly, the central government despite clear demarcation of subject and area can make law on state list and even over-ride the law enacted by the state government.<sup>14</sup>

The Constitution of India unequivocally characterized India as a federal state with sufficient provisions that protect and preserve the interests of regional governments.<sup>15</sup> But many regional governments have registered their strong disagreement over the various issues wherein the central government failed to maintain the political balance and sometime overriding power preserve to regional government. It would be fair to state that Indian state is federal in theory but unitary in practical.<sup>16</sup>

## II. *Understanding the Indian Federalism*

Classical federalism theories suggest division of power between central and provincial government so that both can work smoothly in their respective sphere. According to K.C. Wheare (Wheare 1967) federalism is nothing but upholding the principles of division of power within a sphere and both units work closely with coordination, cooperation and independently.<sup>17</sup> The term asymmetrical federalism a kind of exception to the classical federalism theory that suggests a unique type of union that grant special status to some federative units in the

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<sup>13</sup> Constitutional Assembly Debates XI, 11, 950: T T Krishnamachari

<sup>14</sup> Article 246, Schedule-VII, Const. of India 1950

<sup>15</sup> M.P JAIN, INDIAN CONSTITUTIONAL LAW 529-530 (LexisNexis Pub, 2018).

<sup>16</sup> DR. DURGA DAS BASU, THE CONSTITUTION OF INDIA LECTURE SERIES 163, 2008.

<sup>17</sup> K. C. WHEARE, *FEDERAL GOVERNMENT* 67 (Oxford University Press, London 2021).

Constitution. Therefore, the question at hand is whether India may be included in the discourse of asymmetrical federalism? The answer would not be in affirmation, since merely granting special status to some provinces does not transform the state into an asymmetrical federal state, as vital doctrines of asymmetrical federalism i.e. cooperation, coordination, financial freedom and independence in governance are equally significant and can't be ignore. Though, Constitution of India has granted special status to few states but it is also a factual reality that their administrative structure, financial independence, and autonomous nature have been by and large administer by the central government.

The foremost example of asymmetry among centre-state ties was in the way how North East states govern as crucial power has been retained by the central government. Through the Article 371 of the Constitution and special legislation like AFSPA (Armed Forces Special Powers Act 1958) most of the powers have been exercised by the central government through the office of the Governor. Arunachal Pradesh, Assam, Nagaland, Manipur, Tripura, Sikkim, Mizoram, and Jammu and Kashmir are a few instances of states that are under the direct control of the central government.<sup>18</sup> The state of Jammu and Kashmir was permitted to have its own Constitution, as well as its own criminal procedure and penal code, until August 2019. After abrogation of Article 370, the special status was unilaterally removed, which sparked a political uproar in the nation.

If the Constitution of India grants special status to certain north eastern states, Kashmir, Puducherry or National Capital of Territory of Delhi it means the history, culture, geography and distinctive political character demands that special status to these regions. This idea of asymmetrical federalism not new as it has been implicit in the constitutional text and other literature on federalism.<sup>19</sup> A different treatment to certain region or territory is justified as

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<sup>18</sup> AFSPA was put into effect in 1958, due to the rise in violence in the North East States, The Armed Forces Special Powers Act of 1958 was the name given to it. It is applicable throughout all of Nagaland, Assam, Manipur (with the exception of Imphal's seven assembly districts), and portions of Arunachal Pradesh. The Centre cancelled it in Meghalaya on April 1, 2018. The AFSPA previously applied to a 20 km stretch of the border between Assam and Meghalaya. The AFSPA was repealed by Tripura in 2015. The Act also covers Jammu and Kashmir.

<sup>19</sup> MICHAEL BURGESS, *COMPARATIVE FEDERALISM THEORY AND PRACTICE* 67 (Routledge London, 2006).

asymmetrical federalism recognised formulation of separate policies on the matter of specific concern and it exists in all federation, Ronald Watts (2008) observed.<sup>20</sup> The basic ideals of asymmetrical federalism are to promote national cohesion, secularism, minorities rights and social justice, but impediments, usurping state power, and violations of the constitutional scheme of harmonious interactions have been substituted these ideals if we examine the Indian federalism through asymmetrical standpoint.<sup>21</sup>

The literature on India as an asymmetrical federalist nation is profoundly disputed. To substantiate this contentious discussion, recent events demonstrate how the Indian state is unable to join the asymmetrical federalism. The Jammu and Kashmir held special status until August 5, 2019, when Article 370 was repealed, and the whole administration was transferred to New Delhi. The revocation of Article 370 through a single legislative stroke was severely condemned by all leading constitutional experts that amplifying the idea of centralised federalism. The states like Sikkim, Nagaland, Mizoram and other north eastern states retain their distinct status but maximum directions come from Ministry of Home Affairs. Similarly, Puducherry and Delhi have their own legislative assembly, although other union territories such as Chandigarh, Daman and Diu, and Dadra and Nagar Haveli lack legislatures and are administered directly by the Ministry of Home Affairs. It may be noted that Puducherry and Delhi have legislatures but Lieutenant Governors have surpassed the constitutional limits and usurping the power of governance and administration of elected government of the both States. The case of Delhi is somewhat different because the national capital has all powers except police, land, and public order. As a limited state, Delhi has sole authority for education, commerce, health, water, transportation, and state bureaucracy.<sup>22</sup> However, with the central government usurping capital's powers in virtually every field of legislation, open disagreement and impasse have emerged in

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<sup>20</sup> Watts, Ronald, *Comparing Federal System*, MONTREAL AND KINGSTON-INSTITUTE OF INTERGOVERNMENTAL RELATIONS, 2008, p. 144.

<sup>21</sup> Saxena, Rekha *Is India a Case of Asymmetrical Federalism*, ECONOMIC AND POLITICAL WEEKLY, Jan-Vol. 47 No. 2, (2012) pp.70-71, 73-75.

<sup>22</sup> M.P. SINGH, CONSTITUTION OF INDIA Article 239-A and 239-AA, 739-740 (Eastern Book Co. Lucknow, 2019).

almost every domain of legislation. This is diametrically opposed to the concept of asymmetrical federalism.<sup>23</sup>

### III. Cooperative Federalism-Nehruvian Model of Governance

Nehru was well aware that only federalism could assure the nation's safety, security, and economic success, which is why he stressed for a strong centre with the policy of non-interference with provinces over local governance.<sup>24</sup> The Nehruvian model of federalism is nothing but promotion of unique model of governance based on the cooperation, harmony and national interest-it's a combination of two governments union and provincial level and both are agreed to work together to accomplish the agenda of development.<sup>25</sup> This was the mechanism earlier adopted by the British government and can be traced right from the Regulating Act-1773 which set up a system whereby the British administration supervised the work of East India Company but didn't take power for itself.<sup>26</sup>

Several legislative actions during the British period need to be investigated if we follow the evolution of the federal governance system in India. The Government of India Act 1919 (Montagu-Chelmsford Reforms) is one of the significant events of colonial India that led to conferring some rights and power to provincial governments however this system of dual governance called by 'dyarchy'.<sup>27</sup> The Nehru Committee 1928 (under the headship of Motilal Nehru) is another event that gave a federal solution by proposing to introduce dyarchy at the centre and to fully responsible government in the provinces. The salient features of the Nehru

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<sup>23</sup> Ministry of Home Affairs, Govt. of India Notification Dt 21.05.2015 which give primacy to LG over posting and transfer of Delhi bureaucrats. Please visit, <https://timesofindia.indiatimes.com/city/delhi/najeeb-jung-vs-arvind-kejriwal-lg-has-primacy-in-postings-and-transfers-of-officers-mha-notification-says/articleshow/47380244.cms>

<sup>24</sup> *Constituent Assembly Debates*, Volume V, 20 August 1947.

<sup>25</sup> SAIFI, WASEEM AHMED, *AUTONOMY OF A STATE IN A FEDERATION-A SPECIAL CASE OF JAMMU AND KASHMIR* 32-36 (Springer Pub., 2021).

<sup>26</sup> MP Jain, *Nehru and Indian Federalism*, JOURNAL OF INDIAN LAW INSTITUTE, Oct-Dec 1977, p. 405.

<sup>27</sup> Sharma, Sumir, "History of Constitution of India-Charter Act During Company Rules-1773-1858", Independent Pub., 2018, p. 44

Committee 1928 were to give legislative, administrative and few financial powers to the provinces and this system can be term as arrangement of power through federal system of governance.<sup>28</sup>

he Government of India Act of 1935 was another remarkable legislation that provide a holistic canvas of the governance between union and provinces. The federal concept was unquestionably brought to India by the Government of India Act, 1935.<sup>29</sup> It considered both federalizing British India and integrating the princely states into the Indian federation.<sup>30</sup> However, the federal section of the Act was surrounded by several limitations, and many provincial governments and princely states were not allowed to exercise full autonomy.

After independence the idea of strong centre mooted by the Nehru was occasioned also by the circumstances in which it was taken. The need of strong central government was inevitable for handling the communal riots that preceded and accompanied partition. After the creation of Pakistan, the country was not in position to face another partition on the religion or language basis, hence strong centre was necessary to meet the various challenges.<sup>31</sup> Nehru was of the view that only a strong centre can handle the unprecedented situation arising out of the food crisis, problem of refugees, maintaining the national unity and promotion of social and economic development which had thwarted under colonial rule.<sup>32</sup>

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<sup>28</sup> ADITYA MUKHARJEE, *INDIA SINCE INDEPENDENCE* 42-43 (Penguin India Pub New Delhi-2008).

<sup>29</sup> *CAD Official Report* Vol-XI, 14.11.1949 , “A federal system of government was established for India by the Government of India Act, 1935. With the passage of this law, the dyarchy established by the GOI Act 1919 was abolished, and a Federation of India was established, consisting of the provinces of British India and part or all of the Princely states. The talks at the Third Round Table Conference, the White Paper of 1933, the reports of the Joint Select Committees, and the Simon Commission Report were the four primary sources from which the Government of India Act, 1935, drew its information.”

<sup>30</sup> GRANVILLE AUSTIN, *INDIAN CONSTITUTION-CORNERSTONE OF A NATION* 259 (Oxford University Press, 2019).

<sup>31</sup> BIPIN CHANDRA, *INDIAN AFTER INDEPENDENCE* 63 (Penguin Pub New Delhi, 2008).

<sup>32</sup> Along with Nehru, Dr. Ambedkar too stressed for federalism stating that “Constitution is a Federal Constitution-The Union is not a confederacy of states... Neither are the states agents of the Union, deriving authority from it. The Constitution founded both the Union and the states, and each draw their separate authority from the Constitution. See *Constituent Assembly Debates*, Vol. VIII, 33.



Nehru believes that only federation can promote the economic prosperity by removing internal barriers to trade, through economies of scale, by establishing and industries.<sup>33</sup> While Nehru deeply believed that states were an integral part of India, yet, as the Chairman of the Constituent Assembly's Negotiating Committee, he made it clear to the states that it was entirely for them to join the Constituent Assembly, or accept or not to accept the scheme. According to him, "there can be no coercion, except, of course, the coercion or compulsion of events". He, however, hoped that sooner than later all the states would be represented in the Constituent Assembly, for the peoples of the states wanted to join the Assembly. Nehru thus adopted an indulgent attitude to give a sense of assurance to the provincial governments and princely state so as to persuade them to join the Constituent Assembly.<sup>34</sup> According to Ambedkar, the constitution has tried to minimize the conflict between the centre and states by clearly specifying the legislative powers of each. The overwhelming financial powers of the centre and the dependence of the states upon centre for grants to discharge their function place them under federalism as all disputes of allocation of revenue dealt by the finance commission under Article 280 of the Constitution of India.<sup>35</sup>

The first fifteen years of after independence under Nehru were marked by a democratically elected regime with comfortable majority coupled with consultation, cooperation, harmony, and idealism with state governments. The State Reorganisation Act 1956 under Nehru creating linguistic states accorded the demand that was being made vociferously and was a victory of popular will.<sup>36</sup> Five zonal councils were set up vide part III of the State Reorganisation Act 1956 with the object, in Nehru own words, to develop the habit of cooperative working. The Zonal Councils have so far met 105 times since their inception and also

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<sup>33</sup> Nehru while moving the Objective Resolution on 13<sup>th</sup> December 1946 and during a speech to meeting of the Negotiating Committee of the Chamber of Princes and State Assembly Committee, held on 08<sup>th</sup> August 1947, *Prasad Papers*, File11-C/46-7-8

<sup>34</sup> HM Rajshekhara, *Nehru and Indian Federalism*, INDIA JOURNAL OF POLITICAL SCIENCE, April-June 1994, p. 135-148

<sup>35</sup> Venkataramanan, K, "Explained: India's asymmetric federalism", *The Hindu*, August 11, 2019.

<sup>36</sup> The State Reorganisation Act 1956 come into effect on 1<sup>st</sup> November 1956, the Act was enacted by the Nehru Government after the recommendation of J. Fazal Ali Commission Report who recommended the creation of states on the linguistic formula, other members of commission were; K M Panicker and H N Kunjru.

develop the sense of togetherness among all regional governments. The Nehru period also witnessed some major development that strengthen the federal structure of the country and various issues were resolved through amicable means including inter-state water disputes. Many significant institutions were created during prime minister Nehru era and his term of office can be characterise an amicable federalism which was based on trust and cooperation. The Planning Commission was set up to promote rapid rise in the standard of living, economic stability and efficient exploitation of the resources. The National Development Council was created in 1952 with an aim to impart national character to the entire process of planning.<sup>37</sup>

#### **IV. The Troubled Federalism-Indira to Manmohan**

After Nehru's death, India was left without a strong leader capable of uniting the country. The country was seeking for a dynamic political figure, and Mrs Gandhi was the natural candidate to lead the country after the Nehru. Mrs. Gandhi also had pan-India acceptability and charismatic political image that is capable to defeat all opposition forces. The changing dynamics of Indian politics and some unsavoury development paved the way for Mrs. Indira Gandhi to establish herself a pan India national leader. The first ten years of Mrs. Gandhi were marked by a democratically elected regime with comfortable majority and acceptance in southern part of India. Taking the legacy of Nehru, Mrs. Gandhi too endorses the tenets of cooperative federalism that essentially implies working together.

After assuming the power, for Mrs. Gandhi, the year 1969 was the significant in the Indian political history as first time a collective voice of many state leaders emerged against the central government. The Bangalore's chief ministers' conference was the striking point, the chief ministers of Tamil Nadu, Andhra Pradesh, Karnataka, Kerala and Union Territory of Pondicherry raised the issue of step-motherly treatment by the central government. Though Kerala didn't accept the invitation of the Bangalore chief minister's conclave by the major opposition party of the state endorses the view of the conference. Most of the

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<sup>37</sup> Nehru set up the National Development Council to strengthen and mobilize national efforts and resources for the plan, to promote common economic policies in all vital spheres, and to ensure that all parts of the country develop in an equal and rapid manner, the National Development Council was established on August 6, 1952.

leadership in southern India were dissatisfied with the issue of financial assistance provided by the central government. Their concern on agriculture issue and discriminatory tax policy formulated by the centre led the strong discontentment against the Indira led central government.<sup>38</sup> The conventional dispute of Centre-State relations, such as fiscal devolution and unfettered state autonomy without Central incursion in the functional areas of economic and social development, which had become part and parcel of perennial discourse since the 1960s, could no longer be pushed off as they had been under the umbrella of the Indira Gandhi government. The Indira led government at the Centre, as well as the overall political picture in the majority of states, shows a considerably closer resemblance to the picture that prevailed in the country during the 1967-71 phase than to the picture that prevailed during the 1971-77 phase.

Following the chief ministers' conference, the communist regime in Kerala, led by Namboodiripad, went to the extent of convene a national colloquium (Trivandrum, 1969), which culminated in the formation of an alternative national plan framework, which was then presented to the Central government. In Tamil Nadu, the only state where a regional party won a clear and secure majority, the new ruling party emphasized the issue of Centre-State relations, focusing on specific linguistic, cultural, economic, and political grievances against the Central government.<sup>39</sup> The appointment of the Rajamannar Committee by the Tamil Nadu government, with a remit to go into the question of Centre- State relations in its entirety, represented a landmark in the development of the debate on Centre-State relations in India.<sup>40</sup> Even so, during the first five years of Indira Gandhi's Prime Ministership, corresponding to the general weakness of the Congress at the

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<sup>38</sup> TV Sathyamurthy, *Southern Chief Ministers Meeting*, Vol-18, No. 15, ECO. & POL. WEEKLY, April (1983), p. 576-579.

<sup>39</sup> *Ibid.*

<sup>40</sup> The Rajmanner Commission (1969) was constituted by the Tamil Nadu DMK government of the time, and it was presided over by Dr. P.V. Rajamannar. It was constituted to investigate the issue of what sort of relationship should exist between the states and the federal government. In 1971, the commission submitted its report. The report recommended that the VII schedule be revised and that the states be given additional power. The following are some of its other key recommendations: The immediate establishment of an Inter-State council, the permanent status of the Finance Commission, and the deletion of Articles 356, 357, and 365, which dealt with the President's rule, etc.

Centre, there was no great urgency in the controversies surrounding the federal relationship and its constitutional and political ramifications.

Federalism came under heavily pressure with the declaration of emergency in 1975 under the ominous conditions. Apart from damaging the federal structure, it also sowed the seeds of secessionist militant movement in different parts of the country. The harassment and torture to the political leaders pave the way to unseat the Congress government and the new Janata Party regime introduced various reforms. The 44<sup>th</sup> Amendment helped to mitigate the abuse of emergency provisions. By deleting the clauses which made the declaration and continuance of emergency by the President conclusive, it provided an opportunity for judicial review. The reference of *S R Bommai v. Union of India* judgement is desirable here how the supreme court restore the power of judicial review even in the case of proclamation of emergency.<sup>41</sup> In this background of simmering discontent among the opposition ruled state, in 1984 Mrs Gandhi constituted the Commission on Centre-State relations headed by Justice R. S. Sarkaria. The commission submitted its voluminous report in 1988. The noteworthy report provided many recommendations to maintain the harmonious relation between the centre and state and largely stresses on strengthen the federalism.<sup>42</sup> The unfortunate assassination of Mrs. Gandhi by Sikh militants in 1984 had ruined the implementation process of Sarkaria Commission recommendation.

Though critics says that Congress led government has weaken the federal structure as the party had ruled the country several years. However, it would be unfair to blame for the Congress for all centre-state discontentment. The party had

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<sup>41</sup> S.R. Bommai v. Union of India, 1994 AIR 1918, 1994 SCC (3) 1.

<sup>42</sup> Roy, Jaytilak Guha (1990) *The Indian Journal of Political Science*, Vol. 51, No. 1, pp. 46-53, "The Sarkaria Commission Report made specific comments for decentralisation and state strengthening by proposing appropriate constitutional amendments, which are primarily still on paper today. Mrs. Indira Gandhi established a commission in 1983, headed by Justice R. S. Sarkaria, to look at the relationship between the federal government and the states and make recommendations. Dr. S.R. Sen and Shri B. Sivaraman were members of the commission. It was established to assess how well the current agreements between the Union and the States were functioning given the altered socioeconomic environment. The Commission examined and evaluated the operation of the existing arrangements between the two in terms of powers, functions, and obligations in all areas before making its recommendations. The recommendations have been highlighted by the supreme court such as the formation of an inter-state council, the appointment of a governor, and article 356, etc.

acknowledged the major fiasco and tried to resolve all outstanding disputes in an amicable manner. The resolution of Assam problem through Assam Accord 1988, militancy in Punjab, separatist movement in North-East region and special status to Jammu and Kashmir made the country into the comfortable situation.

### **V. Crisis of Indian Federalism-2014 and Beyond**

The last three decades preceding 2014 had witnessed a troubled federalism, though various attempts were made to harmonise the centre-state relations with constitutional mechanism but period of post 2014 can be characterise a clean dismemberment of federalism from the Indian polity set-up. In order to contextualise this assessment, it would be worthwhile to examine the events in the political, judicial and administrative arena. The dismemberment hypothesis not just rhetoric but an evident assessment where cooperative federalism annulled and the nation has been pushed to totalitarian state which is being administered from the South Block. Evidently, the previous Congress governments retained its commitment to federalism; their efforts to revitalise the federal ethos and encourage mutual cooperation, social justice, and secularism through numerous legislations were significant. The ten years of the UPA regime (2004-2014) and the Rao period (1990-1995) displayed extraordinary trust between national and regional governments, that brought tremendous economic development in the states. This was the time when regional parties and civil society had a greater say in governance. Strikingly, the decisive victory of the BJP in 2014 and rise of Hindutva brought the curtain down on the accomplishments of previous governments that led to rupture of amiable constitutional federalism. Since 2014, the typical public discourse has been resounding with the triumphalism of a strong central government (thumping majority of the ruling party) on one hand and waning the regional government on the other hand. A robust central government doesn't mean a sheer mandate to pull apart the constitutional structure, muzzle the centre-state coordination, and jeopardize the opposition parties' governments in the provinces.

Various decisions of the central government in the period 2014 to 2022 have deteriorated not only the federalism but also the spirit of political negotiation, economic cooperation, social justice and secularism. In a federal structure of the nation-the national view is always different from the regional standpoint and the

central government should show a large heart to accommodate the aspirations of the regional governments. Unfortunately, various move of the central government has reinforced the notion that the current administration at the centre failed to appreciate the basic tenets of the federalism. Looking at the present state of affairs, it would be rightly appropriate to cite C H Alexandrowicz (1954) who questioned India's claim of a federal nation.<sup>43</sup> The below mentioned details and account is a clear display of lament on the defeat of Indian federalism.

### **A. Legislative Despotism**

The period of 2014 to 2022 can be characterise the phase of legislative tyranny. This was the phase of clean break from an original republicanism and it is not just rhetoric but substantive legislative oppression was evident. The most vicious form of legislative oppression can be seen in the enactment of farm laws and approval of the recommendation of Fifth Delimitation Commission headed by Justice Ranjana Prakash Desai.<sup>44</sup> The farm laws have been withdrawn by the government after nationwide farmers agitation. The case of farm law was pretty inimitable, central government passed the three farm laws which are subject of State List Entry 14. Surprisingly, the parliament passed the laws with a single legislative stroke and no consultation was made with the states and farmers union. The Essential Commodities (Amendment) Act, 2020, the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020, the Farmers Empowerment and Protection) Agreement on Price Assurance Act, 2020, and the Farm Services Act 2020 were enacted even the entire opposition demanded more debate and consultation.<sup>45</sup> The agricultural laws were finally withdrawn due to nationwide protest of farmers union. The international media had extensively reported how India's largest farmers movement have launched a massive public movement in the capital to repeal three agricultural laws which were not only unconstitutional

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<sup>43</sup> Alexandrowicz CH, *Is India a Federation* INTL. & COMPARATIVE LAW QUARTERLY, p. 393.

<sup>44</sup> Justice Ranjana Prakash Desai appointed as fifth chairman of the Delimitation Commission, she assumed charge on 13<sup>th</sup> March 2020.

<sup>45</sup> The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, 2020, The Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, 2020 and Essential Commodities (Amendment) Act, 2020 introduced in 27<sup>th</sup> September 2020. These bills were promulgated hurriedly and all opposition parties boycotted the legislations but to no avail and finally government issued the notification that led to unprecedented farmers movement.

rather a sheer attempt to appropriating farmers crops, benefits and agriculture security, these laws were termed as draconian and anti-farmers; A formal guarantee on Minimum Support Prices (MSP) for agricultural crops was also demanded by the farmers' union and this demand yet to be met.

The issue of the delimitation commission's recommendation is quite peculiar as the recommendation has given undue to favour to Jammu region and legitimate concern of Kashmir have been sidelined. The central government appointed a delimitation commission to redraw legislative and parliamentary seats in the state of Jammu and Kashmir, which is now divided into three union territories: Jammu, Kashmir, and Laddakh.<sup>46</sup> The commission's proposals contain numerous problems, since all prominent political parties in Kashmir have expressed strong resistance to the findings and suggested measures for Kashmir. The commission has deceitfully treated Kashmir and many regions of the Kashmir transfer to Jammu and entire report ignored the legitimate claims of the Kashmir. It should be emphasised that the commission was formed during the legislative freeze on increasing or decreasing the number of assembly seats. The Supreme Court has yet to pronounce the legitimacy of Article 370 and whether the 2019 abrogation motion was in accordance with the spirit of the Indian Constitution. Furthermore, Section 63 of the Jammu and Kashmir Reorganisation Act 2019 forbids any changes till 2026.<sup>47</sup> The canonical federal principles explicitly indicate that the decisive approval for any law belonging to the state will be obtained from the elected bodies of the state legislatures. However, the elected body of Jammu and Kashmir will not be able to adopt or reject the regulations for their representation.

Another move that brought the country under intense international condemnation was the abrogation of Article 370 from Jammu and Kashmir. The government's disrespect for the set protocols of parliamentary process in the way the Jammu and Kashmir Reorganisation Bill 2019 was presented in the house was appalling.

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<sup>46</sup> The Jammu and Kashmir State (Reorganisation) Act 2019, notified on 09<sup>th</sup> August 2019.

<sup>47</sup> Sec. 63 states that “notwithstanding anything contained in sections 59 to 61, until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust the division of successor Union territory of Jammu and Kashmir into Assembly and Parliamentary Constituencies and any reference to the “latest census figures” in this Part shall be construed as a reference to the 2011 census figures. The Jammu and Kashmir State (Reorganisation) Act 2019, notified on 09<sup>th</sup> August 2019.

The abrogation of Article 370 was unilateral, blatant, and undemocratic and the state of Jammu and Kashmir was divided by misinterpreting some of the Constitution's provisions is condemned by many prominent constitutional experts and lawyers. The provisions of the Instrument of Accession between the State of Jammu and Kashmir and India are recognised under Article 370 of the Constitution of India and it deserved to be honoured until it was amended, following due deliberation with all stakeholders of the state.

This move has also created strong apprehension amongst different states of India especially north east region that whether their autonomy, cultural identity and socio-economic interest are safe after 5<sup>th</sup> August 2019 development? There is apprehension among many states that same method may be adopted against other states of north east and southern state to implement the agenda of central government? On the line of state of Jammu and Kashmir, Mizoram, Nagaland, Arunachal Pradesh, Meghalaya and Sikkim also enjoy special protection under constitutional scheme. Hence, it would catastrophic if Mizo people of Mizoram state lost their autonomy through any arbitrary action from New Delhi. Similarly, Naga and Kuki community of Manipur are apprehensive about their democratic, cultural and ethnic identity as happened in Kashmir, New Delhi can take any decision disregarding the voice of the people.

The central government increasingly extending its hands on the subject in the State and Concurrent List is matter of deep concern as the balance of the Constitution is now turned on its head. The field of Concurrent List is area of common interest and the law enacted by the central government must confirm the interest of the regional government. Moreover, the area of State List is completely a prohibition zone for the central government subject to the rule that two and more state approached to the central government giving their consent to make the law. The Sarkaria Commission report rightly observed that if there is no coordination between the centre and state it will be a situation of legislative tyranny. The commission specifically recommended that there should be a coordination of policy or imbrication of jurisdiction through a process of mutual consultation and cooperation.<sup>48</sup>

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<sup>48</sup> *Supra* note 44.



## **B. Emergence of Authoritarianism?**

The period of 2014 to 2022 of Indian polity can be termed as authoritarianism in Indian political system. The current regime at the centre running the states through their representatives in states and the office of the Governor has been turned into party office of the ruling regime. The appointment of Governors in the state is purely a political position and their job is not to create hindrances but to facilitate the governance. As per the constitutional scheme the position of Governor is alike to President of India at the centre and he has to act at the aid and advise of the cabinet. This mechanism has been brought to ensure the no possibilities of the constitutional crisis and elected government is always accountable to the people. Last eight years of the governance at the centre has been unprecedented as the country had never witnessed the massive abuse of the office of the Governor and repeated attempt to sabotage and disruption of the governance, legislative assemblies and routine administration by the Governors.<sup>49</sup>

The governance and administration of many States are a pale imitation of the return of Viceroy Raj in India, as Governors control the state administration from the New Delhi, hence complete disregarding the mandate of the elected government and ethos of the federalism. The situation of Maharashtra Governor is amusing as the Governor administered the oath of chief minister to Devendra Fadnavis in the wee hours of 2020 in order to prevent larger alliance to form government.<sup>50</sup> It is noteworthy to mention that the Lieutenant Governors of Delhi and Puducherry sabotaged the governance and administration of the elected legislative bodies and it is unprecedented and nothing but mockery with the Constitution of India and Constitutionalism. A few months ago, the Governor of Rajasthan had refused to convene the assembly session as he was under apprehension that biggest alliance may form the government and that move will dwindle the prospects of opposition party to form government through horse-

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<sup>49</sup> According to constitutional provisions, the Governors have no discretion over when to call the Assembly session. It should be noted that because our Constitution is based on a parliamentary democracy, the Governor may occasionally call a meeting of the Assembly at any time or place "he thinks fit"; however, he must do so in accordance with the Council of Ministers' advice. This is the authority of the Cabinet, according to Article 174 of our Constitution when and how to convene the Assembly session.

<sup>50</sup> <https://www.hindustantimes.com/india-news/in-his-quiet-invite-governor-gave-to-fadnavis-14-days-to-prove-majority/story-Kk0MNRi4Q04xYNZGaugm7M.html>.

trading.<sup>51</sup> Though, the opposition party lost the election but didn't lose the hope to form government through unconstitutional methods. This kind of situation has been prevailed in almost all states and office of the Governors were the instrumental in formation of the government in various states viz Madhya Pradesh, Goa, Karnataka, Meghalaya and Maharashtra.

### ***Complexities of GST and Financial Concern of Provinces***

The constitutional scheme grants the central government more revenue collection powers while the regional governments are tasked to undertake most of the development and welfare responsibilities. The sharing of revenue with the regional government is well documented under Article 268 to 281 of the Constitution. Considering the vitality of intergovernmental financial relation, the revenue subject assigned to both Parliament and legislatures as the matter is critical in a federal setup.<sup>52</sup> It is obligatory to the central government to share income tax, sharing of excise duties and also grant aid to the regional governments to meet their welfare and development programmes. The Indian constitution contain provisions for flexible and adaptive financial relationships that may be reviewed on a periodical basis in light of the experience of central resources and state demands. The state has sole jurisdiction over the taxes listed in the State List. The central government is entitled to the earnings of the Union List taxes. The Concurrent List includes no taxes. The overall tax structure of the country is such like central government play a big role in collection tax, levies, excise and other duties etc. It is also fact that centre is under obligation to meet the all kind of financial requirement of the regional government.<sup>53</sup>

The financial health of the regional government deteriorated when the central government introduced the GST (Goods and Service Tax) regime and implemented throughout the nation.<sup>54</sup> The revenue source of regional governments had deteriorated badly as a result of GST implementation abruptly. In the GST scheme (Constitutional Amendment Act of 101<sup>st</sup> of 2016) it has been

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<sup>51</sup> Mustafa, Faizan (2020), Deccan Chronicle, 28.12.2020. <https://www.deccanchronicle.com/opinion/columnists/271220/by-not-letting-assembly-meet-did-arif-fulfil-governors-role.html>.

<sup>52</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW 625 (Lexisnexis Pub, 2018).

<sup>53</sup> *Ibid.*

<sup>54</sup> Praveen Chakravarty, Heading for GST Exit, *The Indian Express*, New Delhi Ed. May, 12/2022.

specified the provision to reimburse states for revenue losses caused by the introduction of the GST. The GST was made possible by the states renouncing practically all of their authority to levy local-level indirect taxes and consenting to let the existing multiplicity of imposts be merged into the GST. While the States would receive the SGST (State GST) component of the GST as well as a share of the IGST (Integrated GST), it was agreed that revenue shortfalls caused by the transition to the new indirect tax regime would be made up from a pooled GST Compensation Fund for a five-year period ending in 2022. This corpus, in turn, is funded by a compensating cess charged on so-called "demerit" items. The shortfall is calculated annually by projecting a revenue assumption based on 14% compounded growth from the base year's (2015-2016) revenue and calculating the difference between that figure and the actual GST collections in that year, as specified in Section 7 of the GST (Compensation to States) Act, 2017. The revenue shortfall for the 2020-21 fiscal year is likely to be 3 lakh crore, with the Compensation Fund expected to have only around 65,000 crore from cess accruals and balance to pay the compensation to the States. The demand of various regional government that GST compensation cess regime be extended to another five years and central scheme fund should be raised seems logical as pandemic has severely hit their revenues.<sup>55</sup>

In August 2022, the many chief ministers of Indian states have expressed deep concern about dwindling state revenue in NITI Aayog meeting chaired by the prime minister.<sup>56</sup> Many regional governments sought higher or at least equitable share in the divisible pool of taxes and an extension of GST compensation but no positive response from the central government. The state financial capability further worsened when the central government introduced the Ujwal DISCOM Assurance Yojana, Waiver of Farm Loan and slowdown of the economy due to pandemic.

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<sup>55</sup> Singh, Vivek & Karan Bhasin, *Variation in the GST experience of States may have a big message*, 16.11.2020, <https://www.livemint.com/opinion/online-views/variations-in-the-gst-experience-of-states-may-have-a-big-message-11605536097609.html>

<sup>56</sup> George, Verghese K, *Renewing India's Federalism Pledge*, *The Hindu*, New Delhi Ed. AuG. 10, 2022.

### *Administrative Hostilities over Centre-State Services*

Escalation of hostility between centre-states over governance, administration, and central grants has been a major concern for the future of Indian federalism. The discriminatory and hostile treatment of the opposition party government has made the situation tense to explosive, resulting in unprecedented hostility between the centre relations. The whole idea of federalism lies on the cooperation and coordination but when hostility, aggression and discrimination replaced the former it would be the situation of annihilation of federalism. The recent trends in Indian politics demonstrate a new low of federal ethos and the hostility is somewhat of a paradox to the basic ideas of constitutional scheme of harmonious relation between centre and state. The earlier philosophy of cooperative federalism has been turned into confrontationist and reasons are many. This contradiction between centre-state relation can be considered an outcome of the most intense and conflictual relationships that exist in the Indian federal system.

In general, states avoid any resentment or annoyance to the centre because they are vulnerable and largely rely on the central assistance. On the other hand, the central government's superiority in parliament and discretion in grants make a farce of cooperative federalism and violate not only the constitutional scheme of harmonious relations but also the underlying concepts of federalism. The frequent centre-state skirmishes in the recent times can be identified as developing enmity and both are mutually hostile toward one another, yet their antagonism rarely reaches the point of conflict, since major power always vested with the central government.<sup>57</sup> The misuse of all-India service cadre bureaucracy for political gain, discrimination in aid, and abuse of central agencies against political opponents is the root cause of all hostility between the centre and the state. The proposed amendments to the Indian Administrative Service (IAS) Cadre Rules 1954 have triggered another round of tussle between central and state governments.<sup>58</sup>

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<sup>57</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW 719 (LexisNexis Pub., 2018).

<sup>58</sup> The government recently proposed changing the cadre norms for central civil service officers. The proposed rules will give the central government complete authority over the transfer and posting of IAS, IPS, and IRS officers. The move will restrict the power of states to refuse to give over civil servants for central deputation. Furthermore, if a dispute emerges between the centre and states, the central government will make the final

A group of former civil servants termed the proposed amendments to the IAS service rules arbitrary, illogical, and unconstitutional.<sup>59</sup> These amendments will amount to interfere with the basic structure of the Constitution of India as a Union of States and can cause irreparable damage to the impartial, autonomous, and independent bureaucracy. These proposed amendments in the service rules would give unilateral powers to the central government to pick and choose any all-India service officers working in the states to be withdrawn from their services in the state of their allotment and brought to the Centre without the concurrence of either the officer concerned or of the state government. While this change in the rules may appear to be a minor, technical one, it, in fact, hits at the very core of the constitutional scheme of Indian federalism.

The proposed amendment has made mockery of the delicate federal balance that the all-India services are designed to maintain.<sup>60</sup> In the latest tragic tussle between Punjab Police and Delhi Police, the delicate federal structure of the Indian union has been exposed completely. When interstate police rivalry erupted and instead of extending support both were engaged in brawl, certainly such kind of situation is alarming for federal structure. In connection with a case registered in Punjab, the state Police landed in Delhi to arrest a prominent firebrand leader, but the Delhi Police, got released him enroute to Punjab disregarding the warrant and copy of the first information report of the state police.<sup>61</sup> Similarly, the Uttar Pradesh Police got released a news anchor under false pretence when the Chhattisgarh Police attempted to arrest him in Ghaziabad. There has never been an interstate police rivalry like this before.<sup>62</sup>

The primary argument of centre-state hostility is that the central government looks at the opposition governments in the different states as political rivals. If the opposition government allowed to continue in the State and the opposition party government complete its term, it would be a heightened risk of losing the

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decision, and the states must follow it. Please visit: <http://dopt.nic.in> for further details about Department of Personnel and Training (DoPT) IAS (Cadre) Rules, 1954.

<sup>59</sup> Shetty, K Ashok Vardhan “Drop the IAC Cadre Rules Amendment” *The Hindu*, New Delhi, January 21, 2022

<sup>60</sup> The New Indian Express, New Delhi Ed. January 28, 2022.

<sup>61</sup> <https://indianexpress.com/article/cities/delhi/tajinder-pal-singh-bagga-arrest-bjp-haryana-punjab-delhi-police-highway-drama-7904667/>.

<sup>62</sup> <https://timesofindia.indiatimes.com/city/noida/noida-police-detain-zee-news-anchor-over-doctored-video-of-rahul-gandhi/articleshow/92674628.cms>.

parliamentary seats the upcoming parliamentary election, the central government apprehension. Since 2019 the nation has witnessed fall-apart of the various regional government or frequent changes in chief ministers and it became possible due to constructive support of central government. The main allegations of the regional government and opposition parties' leaders were-the central government has unleashed all central agencies against their cabinet members and leaders for acute harassment led to collapse of their government. The heavy misuse of CBI, Income Tax and Enforcement Directorate has been unprecedented and these agencies were instrumental to form the choice government in the State. The central government had many tools at its disposal, but to choose to use these tools was strategic in the context of central-state relations. The central government has not used these tools against their allied partners or where their own government are ruling.<sup>63</sup>

The essence of cooperative federalism lies in consultation and dialogue. It is deeply concerning that how the central government has extended its hand at the domain of the state administration and disrupted their routine administration function. The case of Delhi Government tussle with the central government through the office of the Lieutenant Governor was the testament how ruthlessly the state power usurps by the central government that too unconstitutionally. How the central government rip the pieces of ACB (anti-corruption branch) which directly works under the Government of Delhi was unparalleled. The central government deployed the paramilitary forces overnight and took over the control of entire administration of ACB in their own hand, it was unprecedented. Moreover, through a notification the ministry of home affairs almost robbed the entire administrative powers from the Government of Delhi shifted to office of the Lieutenant Governor. In this context, the Delhi High Court provides a relief to the Government of Delhi but central government challenged the verdict and the matter sub-judice since then.

## VI. Concluding Remarks

It is clear that Indian federalism has been passing through one of its most critical phases. India adopted the federalism not by choice but under compulsion to be survived as multicultural, multi-ethnic, and multi-religious

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<sup>63</sup> Chidambaram, P "My right to live without fear" *The Indian Express*, New Delhi Ed. August 28, 2022, p. 10

nation. Despite the array of differences amongst states the federalism have tied the nation together in complex ways. Hence, survival of federalism is critical for the survival of the nation. The Indian model of federalism protect the resentment, secularism, social justice and multiculturalism as discussed above in the Nehruvian model of federalism.<sup>64</sup> This research pape SubmitS few propositions; firstly, the legislative despotism of the union must end and states autonomy in legislation, supremacy of Constitution and rule of law must be restored. Certainly, it's an alarming situation as how the parliament enacted some contentious laws ramming the constitutional conventions pose serious threat to democracy, rule of law and Constitution. Secondly, the issues relating to fiscal federalism must be resolved amicably. After introduction of the GST, the financial state of the many States has been declined. The GST compensation must be release priority wise and recommendations of Finance Commission report should be executed judiciously keeping in view of population size, geography, and economic status of the States.

Furthermore, central government has restructured the sponsoring scheme of various centrally funded schemes and that causes undue financial burden on the regional government, and it should be pragmatic. Thirdly, the central government must withdraw the authoritarian views and avoid imposition of ultra-nationalism ideology on the States. The new paradigm from cooperative federalism to confrontationist is deeply concerning and poses a threat to very idea of India. Lastly, it would be desirable to highlight the track-record of judiciary how it has preserved the federalism. It may be noted that judiciary performance is not appreciable as the supreme court has remained unsuccessful to preserve federalism in some extent. Generally, courts are expected to defend the constitution in liberal democracies, whenever the action of the political class are excessive or undermine the constitutional principles, the judiciary are known to be first intervener through the power of judicial review. Unfortunately, the country has not witnessed rigorous and emphatic behaviour of the judiciary whenever there was an attack on constitutional principles.

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<sup>64</sup> Mahwood Philip, *The Politics of Survival: Federal States in the Third World*, Vol 5(4), *INTL. POL SC. REV.*, 1984, pp. 521-531