



A Study On Federalism And Constitutional Issues In India

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Abstract: This study, titled “A Study on Federalism and Constitutional Issues in India” provides a comprehensive examination of federalism within the framework of the Indian Constitution. The research explores the historical evolution of Indian federalism, the constitutional provisions that govern it and the challenges it faces. It also presents a comparative analysis of federal systems in countries like the USA, Canada, Australia, Germany and Switzerland offering insights into the prospects of future federalism in India. The study dive into the key constitutional issues and analyses landmark cases that have shaped Indian federalism. It concludes by offering findings and recommendations to strengthen the federal structure and address ongoing constitutional challenges in India.

Index Terms – Federalism, Indian Constitution, Issues of Federalism, Constitutional Issues, Comparative Analysis of India, Australia, USA, Canada, Germany and Switzerland

1.0 INTRODUCTORY VIEW:

Federalism and constitutional issues are fundamental aspects of India’s governance structure that have significant implications for the distribution of powers, relationships between the central government and states, and the overall functioning of the country’s democracy. A detailed study of federalism and constitutional issues in India is essential to understand the complexities, challenges, and evolution of the country’s federal system. The Indian system of Federalism is also known as a quasi-federal system as it consists both the features of federation and union. As per Article 1 of the Indian Constitution, “India that is Bharat shall be a Union of States.” The type of Federalism in India is not about coming together of the states to form the Federal Union. But it was a blend of both the unitary and federal system. The federal system in India is unique in its own kind. It is also known as ‘federation sui generis’, which means a federation of its own kind. The federal system in India consist of two forms of governments – The State Government and The Central Government. The federation allows Independent Judiciary systems to operate. Thus, due to the quasi-federal system in India, many issues and challenges pertain to the federal structure arises.¹

The Federalism is a constitutional mechanism divides power between different levels of government, granting autonomy to federated units while sharing power according to agreed rules. It combines self-government and shared governance. Indian Constitution mention the distribution of legislative, administrative and executive powers between the union government and the state governments. The legislative powers in India are classified as a Union List, a State List and a Concurrent List which represent the powers vested upon the union government, the state governments and the powers shared between them. The Indian federalism is unique, as it has evolved since the British rule came into power in India which from a unitary system to a federal system after independence. The Indian federalism has faced several issues even today such as the integration of princely states, linguistic reorganization of states,

¹ Introduction on federalism and constitutional issues, available at: <https://unacademy.com/content/kerala-psc/study-material/indian-constitution/issues-and-challenges-pertaining-to-federal-structure/> (last visited on 29/4/2024)

regional movements and demands for autonomy, centre-state relations and conflicts, fiscal federalism and resource sharing, cooperative federalism and inter-state coordination and many more.

In the India's constitutional framework, federalism stands as a cornerstone, embodying the delicate balance between centralized authority and regional autonomy. At the heart of this study lies an exploration of the nuanced interplay between federalism and constitutional issues in India. I embark on a journey to unravel the intricate web of power-sharing arrangements, institutional dynamics, and legal frameworks that shape the relationship between the Union and the States. Federalism in India is not merely a legal doctrine but a living reality, constantly evolving in response to historical, political, and socio-economic forces. From the founding fathers' vision of a strong centre to the demands for greater regional autonomy, the trajectory of Indian federalism is marked by tensions and negotiations, compromises and contestations. Our inquiry delves into the constitutional foundations of Indian federalism, tracing its origins in the debates of the Constituent Assembly and the crafting of the Indian Constitution. We examine key provisions, such as the distribution of legislative powers, the role of the judiciary as the arbiter of federal disputes, and the mechanisms for intergovernmental cooperation. Yet, federalism in India is not without its challenges. Regional disparities, linguistic diversity, and socio-economic inequalities often strain the federal bond, giving rise to conflicts over resources, identity, and governance. We scrutinize these fault lines, exploring the implications for democratic governance, social cohesion, and nation-building. Moreover, our study sheds light on contemporary issues and debates shaping the landscape of Indian federalism. From the implementation of fiscal federalism to the dynamics of centre-state relations in a rapidly globalizing world, we analyse the ongoing transformations and their implications for democratic governance and constitutional stability. In undertaking this study, we seek not only to deepen our understanding of Indian federalism but also to contribute to broader debates on constitutionalism, democracy, and governance in diverse and pluralistic societies. By interrogating the complexities of federalism and constitutional issues in India, we aspire to offer insights that resonate beyond borders and enrich scholarly discourse on governance and democracy in the 21st century.

1.1 OBJECTIVES OF THE STUDY:

- a. To examine the constitutional framework of federalism in India and its evolution over time.
- b. To discuss about the issues and challenges faced by Indian federalism.
- c. To discuss about the issues and challenges faced by Indian Constitution.

1.2 SCOPE OF THE STUDY:

The importance of studying about the Federalism and Constitutional issues in India is to tackle the modern problem due to the constant changing of the society demanding various needs such as demanding a new separate state, same-sex marriage, conflict between different states, state and center interference in the state list, religious and communal tensions etc.

It is crucial for understanding the complex governance structure of the country. Some of the key aspects and scope of studying include:

- a. **Understanding the distribution of powers:** By studying federalism in India one can understand how powers are divided between the central governments and the state governments. this includes legislative, administrative and financial powers.
- b. **Constitutionals provisions:** India has a written Constitution that outlined the framework for governance. Studying constitutional issues helps in understanding the fundamental principles, rights and duties enshrined in the constitution.
- c. **Role of institutions:** Federalism and Constitutional issues in India also involves analysing the roles and functions of key institutions such as President, Parliament, Supreme Court, and State Assemblies.
- d. **Inter-state relations:** Studying federalism provides insights into the dynamics of inter-states relations, including issues related to resources sharing, dispute resolution, and cooperative federalism.
- e. **Evolution of federalism:** By examining past amendments, judicial interpretation, political development, one can gain a deeper understanding of how federalism has evolved in India over time.
- f. **Comparative analysis:** Studying federalism and Constitutional issues in India also allows for comparisons with other federal systems around the world which provides valuable insights into different models of governance.

1.3 RESEARCH METHODOLOGY:

In order to meet the objectives of the study, data have been collected from the Secondary resources. Such data have been taken from journals, peer reviewed articles and the data published in various journals and websites.

- a. Analysis of relevant constitutional provisions, laws, and judicial precedents related to federalism.
- b. Case studies of key federalism related issues and conflicts at the centre state level.
- c. Comparative analysis with federal systems in other countries to draw lessons and best practices.
- d. Data analysis of fiscal transfers, budgetary allocations, and economic indicators to assess the financial aspects of federalism.

1.4 REVIEW OF LITERATURE:

1. The writer, Dr. N.V. Paranjape, in his book Indian Legal and Constitutional History, has provide a comprehensive overview of the evolution of legal and constitutional framework in India. It provides the essentials for understanding the historical context and development of the Indian legal systems, showing insights into various stages and influences that have mould the latest legal landscape in India.
2. The writer, Elliot Bulmer, in his book Federalism, it has provided an in-depth exploration of the principles, practices, and challenges of federal systems of government.
3. The writer, Michael Burgess, in his book Comparative Federalism, it has provided an in-depth analysis of federal systems across the globe, focusing on the comparative aspects of federalism such as political, social and economic fields.
4. The writer, S.K. Jain in his book Indian Federalism: Emerging Issues, it has delved into the evolving dynamics and contemporary challenges facing the federal structure of India. It provides a detailed analysis of how Indian federalism has adapted over time and highlights the emerging issues that influence centre-state relations and governance in India.
5. The writer, Y.V. Reddy and G.R. Reddy in his book Indian Fiscal Federalism, they have stated the comprehensive examination of the fiscal dimension of federalism in India. It stated the complex financial relationships between the central and state governments providing insights into mechanisms of fiscal transfer, revenues, sharing and fiscal policy in a federal setup.
6. The writer, Dr. JN Pandey in his book Constitutional Law of India, provides a comprehensive and detailed analysis of the Indian Constitution covering various provisions, principles, and judicial interpretations.

1.5 RESEARCH QUESTIONS:

1. How has the concept of federalism evolved in India since independence, and what are the key constitutional provisions that define the federal structure of the country?
2. What are the major challenges faced in the implementation of federalism in India, particularly concerning the distribution of powers, resources, and responsibilities between the central government and state governments?
3. What are the emerging constitutional issues surrounding federalism in India, and how are they shaping the discourse on centre-state relations?

1.6 MODE OF CITATIONS:

The mode of Citation that I am using in my research include:

1. **APA (American Psychological Association) Style:**

In APA style, citations within the text include the author's last name and the year of publication. For example:

(Author Last Name, Year)

At the end of my study, I would like to include a list of references in order by the author's last name, providing detailed information about each source cited. Example of Citation be formatted in APA style:

Author Last Name, First Initial(s). (Year). Title of the Book. Publisher.

2. **Footnotes:**

It is a note that are placed at the end of a page and used to reference parts of the text.

1.7 RESEARCH CONSTRAINTS:

In this study, I had encountered several constraints that impacted the research process. Firstly, due to limited time constraints, I am unable to collect more information or data and secondly, because of the complexity of the subjects making it difficult to understand and analyse all aspects, which may have limited the generalizability of my findings. Additionally, the use of self-reported data introduced the potential for response bias, which may have influenced the accuracy of the results. These constraints highlight the need for future research to explore these issues in a more robust and comprehensive manner.

1.8 CHAPTERIZATION:

Chapter-I: Introduction

In this chapter, I am going to discuss about the Introduction of the study on the title “A study on Federalism and Constitutional Issues in India”, which include Objective, Scope, Research Methodology, Review of Literature, Research Questions, Mode of Citation, Research Citation about the Study.

Chapter-II: Historical Background

In this chapter, I am going to discuss about the History of Indian federalism and Indian Constitutional, meaning, objectives, importance, federal feature of Indian Constitution, evolution of federalism in India and structure of Indian federalism.

Chapter-III: International Prospection of Federation

In this chapter, I am going to discuss about the international prospectus on federation, federalism in USA, Canada, Australia, Germany and India, Comparative analysis of federal system in USA, Canada, Australia, Germany, Switzerland, and India, and Prospects for future federalism.

Chapter-IV: Constitutional Provisions and Issues Faced by Indian Federalism

In this chapter, I am going to discuss about the Indian Federalism, Issues faced by Indian Federalism, Constitutional Provisions related to federalism in Indian Constitution, Institutions Promoting Federalism in India, Recent trends in Indian federalism, Judicial Legislation of federalism in India and Landmark cases on federalism.

Chapter-V: Issues Faced by Indian Constitution

In this chapter, I am going to discuss about the Meaning of Constitution and Constitutional Issues, Objectives of Indian Constitution and Issues faced by Indian Constitution.

Chapter-VI: Conclusion, Findings and Suggestions

In this chapter, I am going to conclude and give findings and suggestions about my study on the titled “A Study on Federalism and Constitutional Issues in India”.

Hence, after discussing the Introduction the researcher in the next Chapter tried to focus on the “History of Indian Federalism and Indian Constitution”

CHAPTER-II HISTORICAL BACKGROUNDS

2.1 HISTORY OF INDIAN FEDERALISM AND INDIAN CONSTITUTION:

The history of the Indian Constitution and the evolution of Indian federalism are intertwined narratives that illuminate the journey of a nation grappling with diversity, unity, and democracy. Born out of the crucible of colonial rule and the struggles for independence, the Indian Constitution stands as a testament to the aspirations of a pluralistic society seeking to forge a common destiny.

The history of the federal system in India lies in the Simon Report of May 1930 which support the idea of a federal government in India. This support for the federal form of government for the India of the future was further affirmed in the in the First Round Table Conference of 1930. After the Third Round Table also flopped significantly, the British Government issued a White Paper in March 1933, which proposed a new Indian Constitution with an accountable government in the province and the principle of dyarchy at the Union of India. As a result of the publication of the White Paper, a Joint Select Committee of both Houses of Parliament was appointed by His Majesty's Government in April in the year 1933 to evaluate and survey the proposals of the White Papers. These proposals were enacting into law and received the assent of the British Crown and ultimately the Government of India Act of 1935 came into force.

The Federal Court of India:

Consequent to the passing of the Government of India Act. 1935, a federal Government consisting of Provinces as its component units was formed in India. The Act also contained a provision for voluntary

accession of native Princely States to the Federation. Therefore, a federal court was established as a supreme tribunal to act as an interpreter and guardian of the Constitution and to settle the justiciable disputes between the center and the federating units or between the units themselves. This court was formally inaugurated on October 1st in the year 1937 and held its first sitting on December 6th 1937 at Delhi.²

The Federal Court consisted of a Chief Justice of India and not more than six puisne Judges all of them appointed by His Majesty by warrant under the Royal Singh Manual and were to hold office until the age of 65 years. The numbers of Judges of the Federal Court could be increased on the presentation of an address by the Legislature to the Governor-General for submission to his Majesty. A Judge could be resigned or removed on the ground of misbehavior or infirmity of mind or body if the Privy Council on reference by the Crown so recommended. To be qualified for appointment as a Chief Justice of the Federal Court, a person was required to be a Barrister, advocate or pleader of 15 years standing. The salaries, allowances, leaves and pensions of the Judges of the Federal Court including the Chief Justice were to be determined by the King-in-Council.

The Federal Court had Original, Appellate and Advisory jurisdiction.

- a. Its exclusive original jurisdiction extended over the cases between the federation and its units. The dispute must relate to the existence or extent of a legal rights arising out of the interpretation of the Act or the extend of legislative or executive authority. In the exercise of the original jurisdiction the Federal Court was to pronounce a declaratory judgment.
- b. The Appellate jurisdiction of the Federal Court extended to the appeals from High Courts in British India as also the appeals from the High Courts of the Federating Provinces. Under certain circumstances, an appeal from a judgment, decree or final Order of the High Court could be taken to the Federal Court even without certificate of the High Court if the subject matter of the dispute was not less than Rs. 50,000/- or the value of the property was of the like sum and special leave to appeal from the Federal Court was obtained. The Appellate jurisdiction of the Federal court in Civil and Criminal cases was considerably extended by the Federal Court Act, 1947.
- c. Under the Advisory jurisdiction, the Federal Court could be called upon to answer any question of law which might be referred to it by the Governor-General which in his opinion was of a vital public importance.

The Federal Court functioned until the coming into forces of the Indian Constitution that is on 26th January 1950, where it gave way to the Supreme Court of India. Nevertheless, its contribution to the Indian Judicial system in setting healthy traditions of fair play and justice has earned it a unique place in the legal and constitutional history of India.³

The Federal System of Government in India:

The Government of India Act, 1935 stated about the federal form of Government for India. Prior to this Act, the constitutional structure of the Government was unitary wherein the Provincial Government were derived their powers by devolution from the Central Government and discharged their functions subject to the authority of their respective legislatures under the superintendence, direction and control of the Governor General-in-Council and ultimately of the Secretary of State for India. The only sphere in which the Provincial Governments enjoyed some measures of autonomy was the administration of transferred subjects. The Indian States were autonomous within their own territories and their relations with the Governor General-in-Council were governed by the rule of paramountcy. Some of the provisions, however did not directly concern the constitutional problem and we therefore not of much importance from the constitutional stand point. The basic features of the Act were, All India Federation, Dyarchy in the Centre, Provincial autonomy, Safeguard provided in the Constitution to the responsible Government of India.

The Indian Federation under the Government of India Act, 1935:

The Government of India Act, 1935 contemplated the establishment of an Indian Federation composed of the Governor's Provinces and the Chief Commissioner's Provinces in British India and such of the Indian States, as may voluntarily accede to it. The tribal and excluded areas were also to be subjects to the jurisdiction of the Federal Government of India, but they were not given a representation on its various organs. The Governor's Provinces and the Chief Commissioner's Provinces were to join the Federation compulsorily while the princely States could enter the federation voluntarily if their ruler signed an Instrument of Accession. Thus, any State could keep out of federation, if it so desired. But the Act imposed a condition precedent for the establishment of the Federation. The Federation could be established by the Crown only when the States representing not less than one-half of the aggregate population of the States and entitled to not less than fifty-two seats allotted to them in the Federal Upper Chamber (Council of State) signified their assent to accede to

² Federal Law Journal 27-36 (1938)

³ Paranjape N.V., Indian Legal & Constitutional History, The Federal Court of India, 17th Edition, Allahabad (Prayagraj), Central Law Agency, 2015, 146-147.

the Federation. When the necessary number of States assented to join the Federation and their Instruments of Accession were accepted by the Crown, the two Houses of Parliament, the House of Lord and the House of Commons, were to present an address to the Crown praying that a Proclamation might be issued establishing a Federation. Then only His Majesty was to issue a Proclamation announcing the establishment of the Federation on a specified date. Thus, there could be no Federation without the States joining it. Outside these limits the autonomy of the State and its relations with the Crown as a paramount power remained unaffected. A Ruler could, by a supplementary Instrument, vary the Instrument of Accession by extending the subjects for which he had federated. In that case, the Instrument was to be rejected. Having once joined the Federation, no State could get out of it nor could it diminish the subjects for which it had acceded. Thus, the Federation of India, says K.V. Punniah was “a never-ending union between the State and the Provinces. The states were allowed a time limit of twenty- years to make up their minds whether to join the Federation or to keep out of it.

Features of the Indian Federation under the Act of 1935:

The Federation as contemplated by the Act of 1935, no doubt, possessed certain basic principles of Federation. As rightly pointed out by All. Keith the Indian Federation exhibited all the characteristics of a Federal Government, namely, a written and a rigid Constitution, an elaborate division of powers and a Federal Court to act as an umpire in constitutional disputes. These features were borrowed from the Canadian and Australian modes, which in their turn, had largely been influenced by the American pattern. Nevertheless, the Indian Federation as envisaged by the Government of India Act, 1935, had several peculiar or rather abnormal features which distinguished it from every other federation of the world. The peculiarities of the Indian Federation can briefly be stated as follows:

1. The first distinguishing feature of the Indian Federation was the heterogeneity of its units. The federating units were dissimilar in size. Population, importance, status and political character. It was a union of eleven Governor's Provinces which were partially democratic Institutions and five hundred and odd autocratic States at varying stages of mediaeval feudalism. The disparity in legal status and in the internal political structure of the Federating units, namely, the Provinces and the Indian States, presented a peculiar problem in forming the Indian Federation. In

theory, the Provinces had no original or independent power to surrender to the Centre. In their case federation meant accession of powers for the Centre. The Indian States, on the other hand, were not part of His Majesty's dominion though they were under his suzerainty. In their case, the federation meant transference of power to the Federal authority. This meant that the Federation was a gain to Provinces and loss to the States

Again, normally a federation is formed voluntarily by certain independent and autonomous units desirous of a union for certain common purposes. But in the scheme of federation proposed in the Government of India Act, 1935 the Provinces were to join it compulsorily whereas the entry of the Princely States of the Federation was purely voluntary to be signified by the execution of an instrument of Accession. The State became a unit of the Federation only after the acceptance of that Instrument by the Crown.

2. Another peculiarity of the Indian federal system was to be found in the fact that the States differed not only from the Provinces but among themselves as to the extent of their powers in the federation. The scope of federal Jurisdiction in the States depended solely upon the transfer made by the respective rulers through the Instrument of Accession. This differential treatment of the units of a federation had no rational basis and was likely to be a cause of mutual jealousy among the federating States.

3. Unlike a normal federation, the residuary power under the Indian Federation was vested with the Governor General who had the discretion to decide whether a particular subject not enumerated in any of the three legislative Lists, should belong to the Federation of the Province. This made Executive, the supreme power in the federation rather than the Constitution itself.

- 4 One more abnormality of the Indian Federation was that it sought to bring together units of varying political status and character. The British Provinces had a semi-democratic framework and a constitutional Government. The Indian States, on the other hand, were pure autocracies without any internal constitutional check on the power and authority of the ruler. These States were represented in the Federal Legislature by their nominees and this obviously meant that people of the State were not properly represented in the Federal Legislature as they had no legal voice in the selection of nominees. The composition of the Federal Assembly was contrary to the basic principles of federation as the representatives from the Provinces were to be indirectly elected on the basis of separate communal electorates while those from States were the nominees of the rulers. In case of Council of States also there was a departure from the normal practice of federalism. The representatives to this upper House

were elected by the method of direct election instead of indirect one. The allocation of seats to the Provinces varied from province to province and specific seats were assigned to Europeans, Anglo-Indians and Christians

4. The federation envisaged by the Government of India Act, 1935 stressed on communalism as the seats in the Legislatures were to be filled in on the basis of communal award. The Muslims, the Sikhs, the Hindus and even the depressed classes were given separate representation and this broke down the solidarity of the nation.

5. The two sets of the Government, the Central and the Regional, are autonomous and independent within their assigned spheres of jurisdictions. Thus, it recognises the sovereignty of the people. But the Indian Federation proposed under the Government of India Act, 1935 envisaged no real transfer of power to the people. The Federal Legislature besides being improperly constituted, was to have very limited powers. The Governor-General was vested with so vast a reserve of powers that he was nothing short of a dictator in the federal sphere. More than 80 per cent of the items in the budget were not votable and the Legislature had no control over such expenditure.

6. The provisions relating to amendment of the Constitution were sufficiently rigid and complex and were contrary to basic principles of federal Policy. Unlike the Canadian and Australian Federalism where the Parliamentary sanction was a mere formality, the Indian Federation made the parliamentary sanction a grim reality. The Indian Legislatures could not even propose amendments except in certain minor cases specified in the Act of 1935. The provisions of the Government of India Act, 1935 could be amended or altered only by the British Parliament.

7. The Indian Federation unlike other federations, derived its authority from a foreign source, namely, the British Parliament. Even the coming into existence of the Indian Federation depended on the vote of the House of Parliament. Thus, one critic has rightly remarked that "prior to 1947, India was governed neither from Delhi nor from Simla, but from White-Hall"

The Federal Government:

The Federal Government as contemplated by the Act of 1935 comprised three organs, namely, the Federal Executive, the Federal Legislature and the Federal Judiciary.

a. The Federal Executive:

The Governor General as the head of the Federal Executive was supreme command of the military, naval and air forces in India. This command was, however, subject to the power of His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such functions as might be assigned to him. Prior to the Government of India Act, 1935, the Governor General also used to be the Viceroy of India representing in the latter capacity the Crown in relation to the Indian States. Section 3 of the Government of India Act, 1935 separated these two offices so that hereafter they could be held by two different persons. But there was nothing in the section to prevent both these offices to be held by one single person.

b. Federal Legislature:

The Federal Legislature under the Government of India Act, 1935 consisted of His Majesty represented by Governor General and two Chambers to be known as the Council of State and the Federal Assembly respectively. The Council of State, which was the Upper Chamber was to consist of 156 representatives, of British India and not more than 104 representatives of the Indian States. The quorum for the Council of State was fixed at 1/6th of the total membership. The Federal Assembly was to consist of 250 representatives of British India and not more than 125 representatives of the Indian States. The Federal Assembly unless dissolved earlier, had a life of five years from the date of its first meeting. The representatives of the Indian States in the Federal Assembly were all nominees of the Rulers while those from Provinces were to be indirectly elected. The allocation of seats among the Indian States was proportionate to their respective population of each state. The Council of State and the Federal Assembly were to select from among their members respectively a President and a Speaker to preside over these Chambers. A member after having been chosen as a President or as a Speaker, was to vacate his office if he ceased to be a member of the Chamber over which he presided. He could resign his office any time or be removed from his office by a vote of no confidence for which fourteen days prior notice was necessary. The Joint Session of the two Chambers was to be presided over by the President of the Council of State.

Legislative Procedure:

The two Chambers had nearly equal powers and any Bill, except a financial Bill, could be introduced in either Chamber. The demand for grants were to be submitted first to the Assembly. Both the Chambers had the power to assent or refuse to assent to any demand or to reduce it. Where the Assembly rejected any demand, it could not be submitted to the Council of State unless Governor General so directed, and where the Assembly reduced a demand, the Council of the State was to be asked to sanction the reduced demand, unless the Governor General directed otherwise. If the Chambers differed with respect any demand, the Governor General was to

summon a joint sitting of the two Chambers to resolve the deadlock and the decision of the majority was to prevail a Bill was regarded as having been passed when it was passed by both the Chambers. In case a Bill after being passed by one Chamber was rejected by the other or was amended in a form not agreeable to the former, or a period of six months had elapsed from the date the Bill was sent to the other Chamber, in that event the Governor General could summon a joint sitting of both the Chambers. After the bill was passed by both the Chambers it came for the anent of the Governor General. He could assent to it, or veto it or send it back for reconsideration or reserve it for His Majesty's consideration.

Financial Powers of the Federal Legislature:

The Government of India Act, 1935, introduce a Bill of amendment for (i) imposing or increasing any tax, or (ii) for regulating the borrowing of money, or (iii) for declaring any expenditure charged on the revenues of the Federation, or (iv) for increasing the amount of any expenditure, could be introduced or moved except with the previous sanction of the Governor General. No Bill or amendment which affected coinage and currency of the Federation could be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion. In conclusion, the powers of the Federal legislature were severely restricted due to executive legislation, ordinance-making by the Governor General and restrictions as to finance, currency and tariff policy, etc.

c. Federal Judiciary (Federal Court):

The Government of India Act, 1935 provide for the establishment of a Federal Court in India. The court was to act as the interpreter and guardian of the Constitution and as a tribunal for the determination of disputes between the constituent units of the Federation.

The genesis of Indian federalism can be traced back to the debates and deliberations of the Constituent Assembly, convened in 1946 to draft an enduring framework for governance. Led by luminaries such as Dr. B.R. Ambedkar, Jawaharlal Nehru, and Sardar Vallabhbhai Patel, the Assembly navigated the treacherous waters of communalism, caste divisions, and regional aspirations to craft a Constitution that would guide the destiny of a newly independent nation. Central to the deliberations of the Constituent Assembly was the question of federalism – the distribution of powers between the central government and the constituent units. Drawing inspiration from various sources, including the Government of India Act of 1935 and the constitutions of other federal nations, the framers of the Indian Constitution sought to strike a balance between unity and diversity, autonomy and integration in India.⁴

Till 1935, India had a Unitary system of government. But after the Government of India Act, 1935 came into force, it introduced the federal concept in India and the word “Federation”

The framers of the Indian Constitution took the Government of India Act, 1935 as the basis on which the new constitution was to be framed in view of the social diversities and the vast size of the country. However, they refrained from creating a fully federalized political system in India at the time of the country's independence because of their fear of further disunity and secessionist tendencies in a country which had already been subjected to partition. As a result, even though the states are sovereign in their prescribed legislative field and executive power is co-existence with their legislative powers, the powers of the states are not coordinate with the Union. This is why the Indian Constitution is often described as ‘quasi-federal’. It can be better phrased as ‘federation sui generis’ or federation of its own kinds. Therefore, the term ‘federation’ is not mention in the Constitution of India. Article 1 describes India as a ‘Union of States’ and not as ‘Federation of States’.⁵ The development of India as a federal country can be broadly divided into two parts, that is the constitutional or legal provisions and the face of federalist India brought in by the Judiciary.⁶

The Indian Constitution, adopted on January 26, 1950, enshrined a federal structure with a strong center. Its delineated powers between the Union and the States, assigning exclusive, concurrent, and residual powers to each tier of government. The Seventh Schedule of the Constitution outlined the division of legislative powers, while the provisions for a concurrent list allowed for shared jurisdiction in certain areas. However, Indian federalism is not a static construct but a dynamic process shaped by historical contingencies, political exigencies, and judicial interpretations. Over the years, the balance of power between the center and the states has shifted, reflecting changing political dynamics, economic imperatives, and social realities. One of the defining moments in the evolution of Indian federalism was the reorganization of states along linguistic lines in the 1950s and 60s. This transformative process, spearheaded by leaders such as Potti Sreeramulu and

⁴ Supra note 4

⁵ History of Indian federalism and Indian Constitution, available at:

https://d19k0hz679a7ts.cloudfront.net/value_added_material/6efd6-sui-generis-indian-federalism-evolving-dynamics-and-emerging-concerns.pdf (last visited on 7/5/2024)

⁶ Historical background of federalism in India, available at <https://blog.ipleaders.in/federalism-in-india/> (last visited on 30/4/2024)

Jawaharlal Nehru, sought to accommodate linguistic diversity and foster a sense of regional identity within the federal framework. Another milestone was the adoption of the Constitution's federal principles by the judiciary, particularly the Supreme Court of India. Through landmark decisions such as the Kesavananda Bharati case and the S.R. Bommai case, the judiciary has played a crucial role in interpreting and safeguarding the federal character of the Indian Constitution, ensuring a delicate equilibrium between central authority and state autonomy. Moreover, the dynamics of Indian federalism have been shaped by economic reforms, globalization, and the emergence of new political forces. The rise of regional parties and the demands for greater fiscal autonomy have challenged the traditional notions of center-state relations, necessitating a reimagining of the federal compact. Overall, the history of the Indian Constitution and Indian federalism is a saga of resilience, adaptability, and democratic experimentation. From the Constituent Assembly debates to the contemporary challenges of governance in a globalized world, the story of Indian federalism is a testament to the enduring quest for unity in diversity, democracy, and inclusive development.

2.2 MEANING OF FEDERALISM:

In simple terms, Federalism means a system of governance in which power is divided between the Union authority and States government in India.

Federalism is a constitutional mechanism for dividing power between the Union and the States government so that federate units can take pleasure substantial, constitutionally guaranteed autonomy over certain policy areas, sharing power in accordance with agreed rules and regulations over other areas. Thus, federalism mix with partial self-government with partial shared government. Federal system is usually associated with culturally diverse or territorially large countries. Example of large countries are Argentina, Belgium, India, Germany, Australia, Canada, Malaysia, Nigeria, Pakistan, Spain, South Africa and United States of America.

⁷

According to Freeman, federation was a mechanism of compromise between two opposing political forces under any of these three classes of government. It was an intermediate state that combined the advantages of the large state- peace, order and general well-being with those of the small state -the full development and autonomy of their individual citizen. ⁸

In summary Federation according to Freeman was characterized by three essential qualities: it was artificial, it was based upon human resources and it was entirely circumstantial. ⁹ Federalism in India is known as a quasi-federal system because it combines key characteristics of a federation and a union. The division of powers is further enhanced by a third tier of government that is the local self-government. Federalism in India allows for both national and regional diversity as it allows the central government to implement policies that apply uniformly throughout the country.

Federalism is a system of governance characterized by the distribution of power between a central authority and constituent political units, such as states or provinces, within a larger political entity. It is a principle of organization that seeks to balance the advantages of centralized authority with the benefits of local autonomy, fostering a system of shared sovereignty and cooperation. At its core, federalism embodies the principle of division of powers, delineating specific areas of jurisdiction and authority for both the central government and the subnational units. This division is typically enshrined in a constitution or legal framework, which outlines the respective powers, responsibilities, and relationships between the different levels of government. One of the fundamental features of federalism is the existence of dual sovereignty, where both the central government and the subnational units possess independent authority within their respective spheres. This allows for a degree of flexibility and diversity in governance, as different regions or states may adopt policies tailored to their unique needs and preferences. Federalism also serves as a mechanism for promoting political stability, social cohesion, and democratic governance. By decentralizing power and decision-making authority, federal systems empower local communities and enable them to participate more actively in the political process. This can help to mitigate conflicts, accommodate diverse interests, and foster a sense of ownership and belonging among citizens. Moreover, federalism can facilitate economic development and innovation by creating competitive environments and encouraging experimentation in policy implementation. Subnational units may have the freedom to enact policies tailored to their specific economic circumstances, which can lead to greater efficiency, productivity, and responsiveness to local needs. However, federalism is not without its challenges and complexities. The distribution of powers between the central government and subnational units can sometimes lead to tensions, conflicts, and inconsistencies in policy implementation.

⁷ Bulmer Elliot, Federalism, 2nd Edition, Stockholm Sweden, International IDEA Publication, 2015, 3.

⁸ Burgess Michael, Comparative Federalism, 1st Edition, 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN, Routledge, 2006, 13.

⁹ Ibid

Coordination and cooperation between different levels of government may be necessary to address shared challenges and achieve common goals. Furthermore, the effectiveness of federalism depends on various factors, including the strength of democratic institutions, the presence of effective mechanisms for intergovernmental cooperation, and the commitment of political actors to uphold the principles of federalism. In conclusion, federalism is a dynamic and multifaceted principle of governance that seeks to balance centralized authority with regional autonomy, fostering cooperation, diversity, and democratic participation within a larger political entity. As a foundational principle of many modern democracies, federalism continues to shape the contours of governance and political organization around the world.

2.3 OBJECTIVES OF FEDERALISM:

The main Objectives of Federalism is to balances the National unity with Regional autonomy of the country. The crucial aspects for the institutions, government both Union and the States to practice federalism at different levels should agree and understandable to some rules and regulation of power sharing as stated in the Indian Constitution. It is a political system that distributes powers between a Central authority and separate powers such as States or provinces. It is also to safeguards and promote the unity of the country, while at the same time accommodate Regional diversity.

2.4 IMPORTANCE OF FEDERALISM IN INDIA:

The importance of federalism in India is given below:

- a. India is a multi-diverse country with a range of cultures, languages, religions, and ethnic groups.
- b. Federalism allows regional governments to set their own priorities and also develop their own policies to promote economic growth and social development in their regions.
- c. Federalism helps to prevent tyranny by dividing power between the central government and state governments. This makes it more difficult for any one level of government to become too powerful and dominant.
- d. Federalism can help to protect the rights of minorities by giving them a voice in their own government. The Minorities of the states or country can elect their own representatives to regional governments and advocate for their interests or needs.¹⁰

2.5 FEDERAL FEATURES OF INDIAN FEDERALISM:

The federal features of the Indian Constitution are given below:

- a. **Division of Powers:** The Union List, State List and the Concurrent List in the 7th Schedule of the Indian Constitution distribute powers between the Central government and the States government.
- b. **Dual Polity:** The Indian Constitution establishes a dual polity with the Union at the Centre and the States on the perimeter. Each is endowed with sovereign powers to be exercised in the field that the Constitution has allotted to them.
- c. **Written Constitution:** It lays out the structure, Organisations, authorities and functions of the federal and states government as well as the parameters within which they must work. As a result, it prevents misunderstandings and conflict between the two.
- d. **Independence Judiciary:** The Indian Constitution establishes an Independence Judiciary, led by the Supreme Court, to resolve dispute between the Centre and States as well as between the states themselves.
- e. **Constitutional Supremacy:** The Indian Constitution is the Supreme law of the land. The requirement of the Act must follow by the law established by the Centre and States. As a result, the governments institutions, the Legislative, Executive and the Judiciary at both levels must functions within the Constitution jurisdiction.
- f. **Bicameralism:** Like other federation country, the Constitution of India provides for a bicameral parliament which consist of the Lok Sabha and Rajya Sabha.
- g. **Rigid Constitution:** Indian Constitution is a Rigid Constitution which can be amended either by the joint action of the federal and states legislation or by an independent authority.¹¹

¹⁰ Importance of federalism in India, available at:

https://testbook.com/amp/ias-preparation/issues-challenges-pertaining-federal-structure#amp_tf=From%20%251%24s&aoh=17146375988786&referrer=https%3A%2F%2Fwww.google.com (last visited on 4/5/2024)

¹¹ Federal features of Indian Federalism, available at:

Case law:

1. **State of West Bengal V. Union of India:** In this case, the Supreme Court stated that, the Indian Constitution does not promote an absolute federalism. The court further states the characteristics that the Indian Constitution is not a traditional federal constitution:

- a. Firstly, it is highlighted by the court is that constitution of India is the supreme document which governs all states and there is no provision of separate constitutions.
- b. Secondly, it is highlighted by the court is that the states have no power to alter the constitution but only central government has the power to alter the constitution of India.
- c. Thirdly, it is highlighted by the court is that the Indian constitution renders supreme power upon the courts to invalidate any action which violates the constitution.
- d. Fourthly, it is highlighted by the court is that the distribution of powers facilitates national policies matter by central government and local governance by the state government.

The learned judges finally concluded that the structure of India is provided by constitution is centralized in the secondary position, namely the center. Thus, the Indian government is “Quasi Federal”. Because it contains features of single citizenships, dual and flexibility of the constitution.¹²

2.6 EVOLUTION OF FEDERALISM IN INDIA:

In India, between 321 and 185 B.C. in Magadha, the Mauryan for the first time assimilated a number of kingdoms and republics which might be the first sub-continental state in Indian history India.¹³

In the Initial Years during 1947-1950 before independence, India adopted a federal structure with a strong emphasis on centralization to address the challenges of nation-building and integration of diverse princely states into the Indian Union. The Government of India Act, 1935, established a federal system with a strong Union government and limited autonomy for the states in India.

During the Nehruvian Era of 1950-1960 which falls under the leadership of Prime Minister Jawaharlal Nehru, India pursued a model of “cooperative federalism,” emphasizing cooperation between the central and state governments for nation-building and economic development. While the central government retained significant powers, Nehru advocated for state participation in decision-making processes and allocation of resources.

During the period of 1950-1960 the rising demand for linguistic states gained prominence during this period, leading to the reorganization of states along linguistic lines based on the recommendations of the States Reorganization Commission 1953-1956 which marked a significant shift towards accommodating regional aspirations and decentralizing power to linguistic and cultural units within the federal framework.

During the Indira Gandhi Era of 1960-1980 the period saw a centralization of power under Prime Minister Indira Gandhi, marked by the imposition of the era witnessed tensions between the central government and states, particularly those governed by opposition parties.

Post 1990 the judiciary has played a crucial role in interpreting and safeguarding federal principles enshrined in the Constitution. Landmark judgments, such as the Bommai case 1994 and the S.R. Bommai v. Union of India case, clarified the limits of central intervention in state affairs and upheld the principles of federalism.

The evolution of federalism in India is a multifaceted narrative that reflects the country’s journey from colonial rule to becoming the world’s largest democracy. Shaped by historical contingencies, political exigencies, and socio-cultural dynamics, Indian federalism has undergone a complex and transformative evolution over the decades. The seeds of Indian federalism were sown during the British colonial era, with the Government of India Acts of 1919 and 1935 laying the groundwork for the distribution of powers between the central government and the provinces. However, it was the struggle for independence and the demand for self-rule that provided for a more robust federal structure.

India was for a long time colonized by the British. The Government of India, Act gave India its federal structure, divided India into provinces and gave each provinces a king that was to rule.

Although the British attempts to remains in power over India, during the 20th century a nationwide struggle for independence took off by the Indian National Congress and other political organizations. Indian leader Mahatma Gandhi leads millions of people to the streets to attend the national campaigns of non-violent civil disobedience against the British rules and in the year 1947 India gain its independence. The new constitution

https://testbook.com/amp/ias-preparation/issues-challenges-pertaining-federal-structure#amp_tf=From%20%251%24s&aoh=17146375988786&referrer=https%3A%2F%2Fwww.google.com (last visited on 5/5/2024)

¹² Federal features of Indian Federalism, available at: <https://blog.ipleaders.in/what-is-federalism/> (last visited on 5/5/2024)

¹³ Evolution of federalism in India, available at: <https://blog.ipleaders.in/federalism-in-india/> (last visited on 8/5/2024)

came into force in 1950, the country was a centralized federation at the time, with strong center and weaker states, but it has grown increasingly federal during the last decade. The form of the federal structure was initially modelled on the one created by the British, but after a couple of years reorganized in a way that was believed to be more effective. For example, the states were reorganized on the basis of what language that was spoken in the area, this was believed to solve different kinds of social problems.

The Constituent Assembly, convened in 1946 to draft an enduring constitution for independent India, grappled with the question of federalism amidst the backdrop of partition, communal tensions, and regional aspirations. The framers of the Indian Constitution sought to strike a delicate balance between centralized authority and regional autonomy, drawing inspiration from various sources, including the Government of India Act of 1935 and the constitutions of other federal nations. The Indian Constitution, adopted on January 26, 1950, enshrined a federal structure with a strong center. It delineated powers between the Union and the States, assigning exclusive, concurrent, and residual powers to each tier of government. The Seventh Schedule of the Constitution outlined the division of legislative powers, while provisions for a concurrent list allowed for shared jurisdiction in certain areas. The early years of Indian federalism were marked by efforts to consolidate national unity and integrate diverse regions and communities within the federal framework. The reorganization of states along linguistic lines in the 1950s and 60s was a watershed moment that sought to accommodate linguistic diversity and foster a sense of regional identity. However, Indian federalism has not been without its challenges and tensions. Regional disparities, linguistic and ethnic diversity, and socio-economic inequalities have often strained the federal bond, giving rise to conflicts over resources, identity, and governance. The demands for greater autonomy by various states, such as Tamil Nadu, Punjab, and West Bengal, have tested the resilience of the federal compact. Moreover, the dynamics of Indian federalism have been shaped by economic reforms, globalization, and the emergence of new political forces. The rise of regional parties and the demands for greater fiscal autonomy have challenged the traditional notions of center-state relations, necessitating a reimagining of the federal compact. The judiciary, particularly the Supreme Court of India, has played a crucial role in interpreting and safeguarding the federal character of the Indian Constitution. The landmark decisions such as the Kesavananda Bharati case and the S.R. Bommai case, the judiciary has affirmed the principles of federalism and protected the rights of states against encroachments by the center. Overall, the evolution of federalism in India is a testament to the resilience, adaptability, and democratic spirit of the nation. From the Constituent Assembly debates to the contemporary challenges of governance in a globalized world, Indian federalism continues to evolve in response to changing political, economic, and social realities, reaffirming its commitment to unity in diversity and democratic governance.

2.7 STRUCTURE OF INDIAN FEDERALISM:

The structure of Indian federalism is a complex framework that embodies the principles of unity in diversity, division of powers, and shared sovereignty. As the world's largest democracy, India's federal system is enshrined in the constitution, which stated the distribution of powers between the central government and the states, as well as the mechanisms for cooperation and coordination between different levels of governance.

At the heart of Indian federalism lies the principle of division of powers, which allocates specific responsibilities and authorities to both the central government and the state governments. This division is outlined in the Seventh Schedule of the Constitution, which consists of three lists: The Union List, the State List, and the Concurrent List.

a. **Union List:** The latest Union List consists of 100 items in which earlier it consists of 97 items on which the parliament has exclusive power to legislate. Which consists of defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organisation of the Supreme Court, High courts and union public service commission, income tax, customs and export duties, duties of excise, corporation tax, taxes on the capital value of assets, estate duty and terminal taxes.

b. **State List:** The State List consists of 61 items in which earlier it consists of 66 items. This list maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, etc. The state legislature has exclusive power to make rules and regulations on these subjects. Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 mention situations in which the Union government can legislate.

- c. **Concurrent List:** The Concurrent List consists of 52 items in which earlier it consists of 47 items. The list includes marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press NS stamp duties.

Therefore, the Indian Constitution also demonstrate a fair distribution of powers, with each level of government having its own realm, allowing for context-sensitive decision-making.¹⁴

Beyond the division of legislative powers, the Indian federal structure also encompasses various institutions and mechanisms for intergovernmental cooperation and conflict resolution. These include:

- a. **Indian Federalism:** K.C. Wheare who is a federal theorist has maintained that the Indian Constitution is quasi-federal in nature which means it consist of both combination of federal and unitary features.
- b. The Supreme Court of India concluded in **Sat Pal v State of Punjab and Others (1969)** that the Indian Constitution is more quasi-federal than federal or unitary.
- c. **Provisions in the Constitution to Ensure Federalism:** Articles 245 to 254 of the Indian Constitution outline the states' and the Centre's separate legislative powers.
- d. **Inter-state Council:** Article 263 established an Inter-State Council to ensure a seamless transition of commerce between the Union and the states, as well as the resolution of disputes.
- e. **Finance Commission:** Article 280 established the Finance Commission, which was charged with defining the Union's and states' financial relationships and terms. It plays a crucial role in ensuring fiscal autonomy and equity among different states.
- f. **73rd and 74th amendment:** The 73rd and 74th amendments further provided structures for local self-government in order to improve grassroots democracy.
- g. **Institutions for Federalism:** The Planning Commission was always open to debate on matters relating to the polity's federal nature and was attentive to the various developmental needs of states.
- h. Inter-state tribunals, the National Development Council, and other informal bodies have acted as platforms for dialogue between the Union, states, and UTs.¹⁵
- i. **Governor:** Each state in India is headed by a Governor, who is appointed by the President of India. While the Governor acts as the constitutional head of the state, the real executive power rests with the Chief Minister and the Council of Ministers.
- j. **President:** The President of India is the ceremonial head of state and the supreme commander of the armed forces. While the President's powers are largely nominal, they play a crucial role in the appointment of key officials, including Governors and members of constitutional bodies.
- k. **Judiciary:** The judiciary, particularly the Supreme Court of India, serves as the guardian of the Constitution and the arbiter of disputes between the centre and the states. Through its interpretation of the Constitution and its judgments, the judiciary has played a crucial role in upholding the federal character of Indian governance.

Therefore, the structure of Indian federalism is a dynamic and multifaceted framework that seeks to balance centralized authority with regional autonomy, fostering cooperation, diversity, and democratic governance. Through its division of powers, institutions, and mechanisms for intergovernmental cooperation, Indian federalism embodies the principles of unity in diversity and shared sovereignty, reflecting the aspirations of a vibrant and pluralistic democracy.

Hence, after discussing the History of Indian Federalism and Indian Constitution the researcher in the next Chapter tried to focus on the "International Prospection of Federation"

¹⁴ Division of powers, available at: https://en.m.wikipedia.org/wiki/Federalism_in_India (last visited on 14/5/2024)

¹⁵ Structure of Indian federalism, available at: <https://www.iasgvan.in/daily-current-affairs/challenges-to-federal-india> (last visited on 9/5/2024)

CHAPTER-III

INTERNATIONAL PROSPECTION OF FEDERATION

3.1 INTERNATIONAL PROSPECTION ON FEDERATION:

The Federation as a system of governance has been embraced by a numerous country around the world in which each adapting it to suit their unique historical, cultural, and political contexts. An international prospection on federation offers valuable insights or in-depth into the diverse ways in which federations operate, challenges they face, and the opportunities they present for the democratic governance, diversity management, and nation-building.

1. **Diversity Management:** The Federations is often emerging in a country characterized by linguistic, ethnic, religious, or cultural diversity. By decentralizing the power and allowing for regional autonomy, federations provide a mechanism for accommodating diverse identities and interests within a unified political framework. Examples include Canada, where federalism has been an instrumental in managing the tensions between English-speaking and French-speaking regions, and Switzerland, which has successfully integrated multiple linguistic and cultural communities within its federal structure.
 2. **Democratic Governance:** The Federations typically feature a division of powers between the central government and provincials' units creating multiple centres of authority and enabling the citizens to participate more actively in the political process. This decentralization of power can enhance accountability, responsiveness, and representation, as governments at both the central and regional levels compete for popular support. Examples include the United states, where the states play a significant role in shaping policies on issues such as healthcare, education, and environmental regulation and Germany, where the federal system has fostered a robust culture of political participation and citizen engagement.
 3. **Conflict Management:** The Federations have often been adopted as a mechanism for resolving internal conflicts and promoting peace and stability in ethnically or regionally divided countries. By granting autonomy to different regions or ethnic groups, federations can address grievances, mitigate tensions, and facilitate reconciliation. Examples include Bosnia and Herzegovina, where a federal system was established as part of the Dayton Agreement to end the Bosnian War and accommodate the interests of Bosniaks, Croats, and Serbs, and South Africa, where federalism has been proposed as a means of addressing historical injustices and promoting reconciliation between different racial and ethnic groups.
 4. **Economic Development:** The Federations can create an opportunity for economic development and innovation by fostering competition among subnational units and allowing for tailored policies that reflect regional priorities and resources. This decentralization of economic decision-making can lead to greater efficiency, productivity, and responsiveness to local needs. Examples include Australia, where states and territories have the flexibility to implement policies that address regional disparities and capitalize on local economic strengths, and Brazil where federalism has been instrumental in promoting economic growth and reducing poverty in diverse regions across the country. Despite these potential benefits federations also face significant challenges including tensions between centralization and decentralization, conflicts over resource allocation, fiscal federalism and the need to balance the regional autonomy with national unity. Moreover, the success of federations depends on effective mechanisms for intergovernmental cooperation, institutional capacity-building, and inclusive governance that ensures the participation and representation of all citizens, regardless of their geographical or cultural background.
- To conclude, an international prospection on federation reveals the diverse ways in which federations operate, the challenges they face, and the opportunities they present for democratic governance, diversity management, and nation-building. By studying the experiences of different federations around the world, policymakers, scholars, and citizens can gain valuable insights into the strengths and weaknesses of federal systems and explore innovative approaches to addressing the complex challenges of governance in diverse and pluralistic societies.

3.2 FEDERALISM IN USA, CANADA, AUSTRALIA, GERMANY AND INDIA:

Federalism is a system of governance characterized by the division of powers between a central authority and constituent political units within a larger political entity. This system has been adopted by several countries around the world in which each adapting it to suit their unique historical, cultural, and political contexts. Four examples of federalism in practice are found in the United Kingdom, the United States, Canada, Australia, Germany and India. The federalism in each country are discussed below:

1. **United States:**

The United States is the essential example of federalism with power divided between the federal government and the individual states. The US Constitution separate specific powers for the federal government such as defence, foreign affairs, and interstate commerce while reserving all other powers to the states. This division of powers is enshrined in the Tenth Amendment of the US Constitution which states that any powers not explicitly granted to the federal government are reserved for the states or the people. This principle of federalism ensures that states retain significant autonomy in governing matters such as education, transportation, and law enforcement. The Supremacy Clause establishes the Constitution, federal laws, and treaties as the supreme law of the land and thereby resolving conflicts between federal and state laws in favour of federal Constitution law of USA.

2. **Canada:**

Canada became a federation in the year, 1867 and had the distinction of being the first country to combine the parliamentary tradition of responsible government, based upon the Westminster model with the federal principles.¹⁶ The country operates as a federal state, with power divided between the federal government and the ten provinces including three territories. The Canadian Constitution separate the distribution of powers between the federal and provincial governments with areas of jurisdiction outlined in the Constitution Act of 1867. The provinces have authority over matters such as education, healthcare, and natural resources while the federal government retains control over areas such as defence, immigration, and trade. Canada's federal system has evolved over time, with the recognition of Indigenous rights and the implementation of mechanisms for intergovernmental cooperation, such as the Council of the Federation.

Unlike the USA, where powers not explicitly granted to the federal government are reserved for the states, Canada's Constitution gives residual powers to the federal government, providing it with broader authority. Each province in Canada has its own constitution and legislative assembly, granting them significant autonomy in matters of provincial jurisdiction.

3. **Australia:**

The Australia became a federation in January 1901 and must be set against the background of British imperial relations in the 19th century colonial constitutional and political evolution, important socio-economic interests and development and not least geographical size.¹⁷ The country operates as a federal parliamentary democracy with power divided between the federal government and six states and 2 territories. The Australian Constitution listed the division of powers between the federal government which is known as Commonwealth and state governments with areas of jurisdiction specified in sections 51 and 52. The states have authority over areas such as education, healthcare, and transport while the federal government has responsibility for defence, foreign affairs, and immigration. The Australia's federal system has been characterized by a high degree of cooperation between the central government and states governments facilitated by mechanisms such as the Council of Australian Governments (COAG) and the Intergovernmental Agreement on Federal Financial Relations. Australia grants residual powers to the Commonwealth giving it broader authority over matters not explicitly assigned to the states. Australia has a High Court which is tasked with interpreting the Constitution and resolving disputes between the Commonwealth and the states which ensuring the integrity of the federal system.

4. **Germany:**

The Federal ideas and forms in Germany can be traced back to the Holy Roman Empire and can be found in the German Bund between 1815-1866 and in what in 1871 was the imperial federation of Prussia and the surrounding German principalities the formed the German Empire until 1918. Many commentators on Germany also acknowledges the democratic federal credentials of the Weimar Republic (1919-1933) as a federal precursor to the Federal Republic of West Germany constructed in 1949.¹⁸

¹⁶ Supra note 9 (84)

¹⁷ Supra note 9 (85)

¹⁸ Supra note 9 (95)

The Germany's federal system is more decentralized compared to other federal system. The country consists of 16 states which is known as Lander and each with its own government and constitution. These states have considerable autonomy and authority over various policy areas. The Powers are divided between the federal government known as the Bund and the states known as Lander according to the German Constitution. While the federal government has authority over areas such as foreign affairs, defence, and currency and the states have jurisdiction over education, policing, and cultural affairs and in Germany, the legislative body of Bundesrat, the states participate directly in federal legislation. This gives states a significant role in the legislative process at the federal level. Germany has a Federal Constitutional Court known as Bundesverfassungsgericht which is tasked with ensuring that both federal and state laws comply with the Basic Law. It acts as a check on the division of powers between the federal government and the states.

5. **India:**

The origin and formation of India as a Federation in 1950 are predicated upon several ambiguities. First, the term 'Federal' was conspicuous for its studied ambiguity in the constitutional debates of the elected Constituent Assembly that adopted the new constitution.

The main forces that led to the creation of the federation in the year 1950:

- a. The interaction of the British colonial pattern of centralisation and the thinking of the Indian political leadership.
- b. The British desire to bring together within a single constitutional system the parts of India under indirect rule-the princely state and those under direct rule – the British provinces with representatives' institutions.
- c. The British concerns about the communal rights and communal status between Hindus and Muslims meant that issues of states' rights were generally sub-ordinated to the larger, more dangerous, challenge of seeking to accommodation to the Muslim.
- d. The experience of partition in 1947 demonstrated the inherent dangers of separatism to those constructing the constitution and predisposed them to favour centralisation.
- e. The goals of economic development and modernisation seemed to require a strong central authority capable of directing the economy.
- f. The existence of a highly centralised, hegemonic mass party and the absence of a strong state and regional parties supported a centralised federal formula.¹⁹

India's federal system is characterized by a strong central government with significant powers enumerated in the Constitution. The central government has authority over areas such as defense, foreign affairs, and finance. The Powers are divided between the Union government and the states government. While the central government retains certain exclusive powers, such as foreign policy and defense, states have authority over areas like education, health, and agriculture. The India's federalism has some unitary features meaning that the central government can encroach upon areas that are typically within the purview of the states in certain circumstances. For example, during emergencies the central government can assume greater control over state affairs. To facilitate cooperation and coordination between the central government and the states, India has an Interstate Council which acts as a forum for discussion and resolution of issues between the centre and the states.

Therefore, federalism manifests in diverse ways across the UK, USA, Canada, Australia, Germany and India reflecting the unique historical, cultural, and political contexts of each country. While the specifics of federal arrangements vary, all countries share a commitment to balancing centralized authority with regional autonomy, fostering cooperation, diversity, and democratic governance within a unified political legal framework.

3.3 COMPARATIVE ANALYSIS OF FEDERAL SYSTEMS IN USA CANADA AUSTRALIA GERMANY SWITZERLAND AND INDIA:

The comparative analysis of the federal systems in the USA, Canada, Australia, Germany, Switzerland, and India reveals diverse approaches to federal governance which highlighting the main similarities and differences in constitutional frameworks such as division of powers, intergovernmental relations and policy outcomes. It is discussed below:

a. **United States of America (USA):**

- The Constitutional Framework of the USA operates under a written constitution that separate powers between the federal government and 50 states.

¹⁹ Supra note 9 (89)

- The Division of Powers under the US federal government has enumerated powers including defence, foreign affairs and interstate commerce. States retain residual powers such as education and public health.
- The Intergovernmental Relations of the US features a system of dual federalism with distinct spheres of authority for federal and state governments. The Intergovernmental cooperation occurs through mechanisms such as federal grants and cooperative programs.
- The Policy Outcomes of the Federalism in the USA has led to policy diversity across states fostering experimentation and innovation in areas such as healthcare, education, and environmental regulation.

b. **Canada:**

- The Constitutional Framework of Canada operates under a federal system established by the Constitution Act, 1867 which divides powers between the federal government and 10 provinces and 3 territories.
- The Division of Powers in the Canadian federal government has authority over areas such as defence, immigration, and international trade while provinces manage areas like healthcare, education, and natural resources.
- The Intergovernmental Relations of Canada operates under a system of cooperative federalism which characterized by frequent intergovernmental negotiations, agreements, and shared decision-making processes.
- The Policy Outcomes of the Federalism in Canada has facilitated the accommodation of linguistic and cultural diversity while also posing challenges related to regional disparities and Indigenous rights.

c. **Australia:**

- The Constitutional Framework of Australia operates under a federal system established by the Commonwealth of Australia Constitution Act in the year 1901 which divides powers between the federal government and 6 states and 2 territories.
- The Division of Powers under the Australian federal government has authority over areas such as defence, immigration, and trade, while states manage areas like healthcare, education, and transport.
- The Intergovernmental Relations of the Australia's federal system features a mix of cooperative and competitive federalism with intergovernmental agreements and mechanisms for resolving disputes between levels of government.
- The Policy Outcomes of the Federalism in Australia has fostered policy diversity and experimentation while also posing challenges related to overlapping jurisdictions and fiscal imbalances between states.

d. **Germany:**

- The Legal Framework of Germany operates under a federal system established by the Basic Law of 1949 which divides powers between the federal government and 16 states known as Länder.
- The Division of Powers under the German federal government has authority over areas such as foreign affairs, defence, and monetary policy while states manage areas like education, policing, and cultural affairs.
- The Intergovernmental Relations of Germany's federal system features cooperative federalism with intergovernmental agreements, joint decision-making bodies, and mechanisms for resolving disputes between federal and state governments.
- The Policy Outcomes of Federalism in Germany has facilitated the protection of regional identities and autonomy while also ensuring coordination and cohesion in areas of national interest.

e. **Switzerland:**

- The Constitutional Framework of Switzerland operates under a federal system established by the Federal Constitution of 1848 which divides powers between the federal government and 26 cantons.
- The Division of Powers of the Swiss federal government has authority over areas such as foreign affairs, defence, and currency while cantons manage areas like education, healthcare, and local government.
- The Intergovernmental Relations of Switzerland's federal system features cooperative federalism with regular meetings of federal and cantonal representatives, joint decision-making processes, and mechanisms for resolving disputes.

- The Policy Outcomes of Federalism in Switzerland has fostered decentralized governance, citizen participation, and fiscal autonomy at the cantonal level while also ensuring national cohesion and solidarity.
- f. **India:**
- The Constitutional Framework of India operates under a federal system established by the Constitution of India which divides powers between the central union government and 28 states and 8 union territories.
 - The Division of Powers in the Indian federal government has authority over areas such as defence, foreign affairs, and currency while states manage areas like healthcare, education, and agriculture.
 - The Intergovernmental Relations of India's federal system features cooperative federalism with mechanisms such as the Inter-State Council, National Development Council, and Finance Commission facilitating intergovernmental cooperation and coordination.
 - The Policy Outcomes of Federalism in India has facilitated the accommodation of linguistic, cultural, and regional diversity while also posing challenges related to fiscal imbalances, regional disparities, and centre-state conflicts.

Therefore, a comparative analysis of federal systems in the USA, Canada, Australia, Germany, Switzerland, and India reveals diverse approaches

3.4 PROSPECT FOR FUTURE FEDERATION:

The prospects for future federations are influenced by various factors including political, economic, social, and technological developments such as:

1. **Globalization and Interdependence:**

The Increasing globalization and interconnected may lead to the formation of new federations or the expansion of existing ones. Federations provide a framework for managing diverse interests and fostering cooperation in an interconnected world.

2. **Regional Integration:**

The Regional integration initiatives such as economic and political partnerships may evolve into federations as member states seek deeper forms of cooperation and integration. Examples include the European Union and the African Union.

3. **Devolution and Decentralization:**

There is growing demand for devolution and decentralization of powers from central governments to regional or local authorities. Federations offer a model for decentralizing governance while preserving national unity.

4. **Conflict Resolution:**

The Federations can serve as a mechanism for resolving conflicts and addressing grievances among diverse communities or regions within a country. Future federations may emerge in conflict-prone regions as a means of promoting peace, stability, and reconciliation.

5. **Democratic Governance:**

The Federations provide opportunities for democratic governance at multiple levels which allowing citizens to participate in decision-making processes and hold governments accountable. Future federations may prioritize democratic principles and institutions to enhance legitimacy and trust in the functioning government.

6. **Innovations in Governance:**

The Advancements in technology and communication may enable innovative forms of governance within federations such as e-governance, participatory decision-making, and digital citizenship. Future federations may leverage technology to enhance transparency, efficiency, and citizen engagement.

7. **Sustainable Development:**

The Federations can play a critical role in addressing global challenges such as climate change, environmental degradation, and sustainable development. Future federations may prioritize sustainable policies and practices to promote ecological resilience and human well-being.

8. **Crisis Management:**

The Federations provide mechanisms for coordinating responses to crises and emergencies including natural disasters, pandemics, and economic downturns. Future federations may strengthen crisis management capacities to mitigate risks and ensure resilience in the face of unforeseen challenges.

9. **Social Inclusion and Equity:**

The Federations offer opportunities for promoting social inclusion, equity, and diversity by recognizing and accommodating the rights and interests of diverse communities within a country. Future federations may prioritize policies and programs aimed at reducing inequalities and promoting social cohesion.

10. Adaptive Governance Structures:

The Future federations may adopt adaptive governance structures that are responsive to changing needs, preferences, and aspirations of citizens and communities. This may involve flexible arrangements for sharing powers, resources, and responsibilities among different levels of government.

Therefore, we can summarize that the prospects for future federations are shaped by a complex interplay of global trends, regional dynamics, and local contexts. While federations offer opportunities for promoting cooperation, democracy, and sustainable development, they also face challenges related to governance, inclusivity, and resilience in an increasingly complex and interconnected world.

Hence, after discussing the International Prospection of Federation the researcher in the next Chapter tried to focus on the “Constitutional Provisions and Issues Faced by Indian Federalism”

CHAPTER-IV

CONSTITUTIONAL PROVISIONS AND ISSUES FACED BY INDIAN FEDERALISM

4.1 INDIAN FEDERALISM:

India is a federal system but with more bend towards a unitary system of government. It is considered a quasi-federal system as it has features of both a federal and a unitary system of government. Article 1 of the Indian Constitution states that ‘India that is Bharat, shall be a Union of States’ the word federation is not mentioned in the Indian Constitution but the elements of federalism were introduced by the Government of India Act of 1919 which separated powers between the center and the state legislatures.²⁰

The Indian system of Federalism is often stated as a quasi-federal system as it represents the features of both the federation and union. As per Article 1 of the Indian Constitution, “India that is Bharat shall be a Union of States.” Federalism is a legal mechanism that divides power between different levels of government, granting autonomy to federated units while sharing power according to agreed rules.²¹

The Indian Constitution specifies the distribution of legislative, administrative and executive powers between the union and the state governments. The legislative powers are categorized under 7th schedule of the Indian Constitution which consist of a Union List, a State List and a Concurrent List the powers shared among them. The Indian federalism has faced several challenges and issues over the years such as the integration of princely states, linguistic reorganization of states, regional movements and demands for autonomy, center-state relations and conflicts, fiscal federalism and resource sharing, cooperative federalism and inter-state coordination, etc.²²

Federalism is best understood as a method of promoting self-rule and shared rule and of balancing the interest of a nation with that of a region. A federal system is the constitutional arrangement that provides institutional form of federalism. The political process of Indian federalism has accommodated bargaining and co-operative federalism with many challenges from one-party dominant systems to multi-party coalitions.²³

The Constitution defines the distribution of legislative, executive, and financial powers between the central government and the states. While the central government has authority over subjects such as defense, foreign affairs, currency, and interstate trade, state governments have jurisdiction over areas like agriculture, health, education, and policing. Concurrent subjects, such as criminal law, marriage, and bankruptcy, allow both central and state governments to enact laws, subject to certain limitations.

Indian federalism exhibits several federal features including dual sovereignty, division of powers, written Constitution, and an independent judiciary. States have their own governments, legislatures, and constitutions, providing them with a degree of autonomy within their respective spheres of jurisdiction. Additionally, the Constitution establishes independent judiciary, including the Supreme Court and High Courts, to adjudicate disputes between the center and the states, ensuring the supremacy of the Constitution and upholding federal principles.

²⁰ Federalism in India, available at: <https://byjus.com/free-ias-prep/federalism/> (last visited on 9/5/2024)

²¹ Introduction on Indian federalism, available at: <https://unacademy.com/content/kerala-psc/study-material/indian-constitution/issues-and-challenges-pertaining-to-federal-structure/> (last visited on 2/5/2024)

²² Introduction on Indian federalism, available at: <https://www.drishtiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism> (last visited on 2/5/2024)

²³ Jain S.K., Indian Federalism: Emerging Issues, Edition, New Delhi, Kalpaz Publications, 2017.

Despite its federal structure, Indian federalism also incorporates unitary features, which empower the central government to maintain unity and integrity of the nation. The Constitution grants the central government certain overriding powers, such as the ability to legislate on subjects in the State List during emergencies, dissolve state governments under specific circumstances, and intervene in state affairs to uphold constitutional provisions.

Indian federalism entails cooperation and coordination among states and between the center and the states to address common challenges, promote economic development, and foster national unity. Interstate councils, such as the Zonal Councils and the North-Eastern Council, facilitate dialogue and cooperation between the center and the states on regional issues and interstate disputes.

Over the years the Indian federalism has evolved in response to changing political, social, and economic dynamics. Challenges persist in maintaining the balance between centralization and decentralization, addressing regional disparities, resolving interstate disputes, ensuring fiscal federalism, and upholding democratic principles and constitutional values.

The Indian federalism embodies a complex system of governance that balances central authority with state autonomy, unity with diversity, and cooperation with competition. It reflects the pluralistic ethos and democratic aspirations of India, while also confronting the inherent tensions and challenges inherent in managing a vast and diverse nation.

4.2 ISSUES FACED BY INDIAN FEDERALISM:

Indian federalism, while a cornerstone of the country's governance structure, faces several challenges and issues that impact its functioning and effectiveness. These issues stem from a combination of historical legacies, socio-economic disparities, political tensions, and institutional complexities.

The issues that the Indian federalism are facing are given below:

a. Centre-State Relations: One of the main challenges in Indian federalism is the dynamic between the central government and the state governments. Over the years there have been instances of centralization of power where the central government encroaches upon the autonomy of states leading to tensions and conflicts. This centralization can take various forms including excessive use of executive orders, imposition of centrally sponsored schemes and interference in state policymaking.

b. Regional Disparities: India is a country marked by vast regional disparities in terms of socio-economic development, infrastructure, and access to basic services. While federalism aims to address these disparities by empowering states to formulate policies tailored to their specific needs, challenges persist in ensuring equitable development across regions. Issues such as uneven distribution of resources, disparities in infrastructure investment, and differential access to healthcare and education remain significant challenges for Indian federalism.

c. Division of Powers:

The division of powers between the Union and the states is not clear and balanced. The Centre has more powers and resources than the states and can interfere through various means such as President's rule, Governor's role, central laws, etc. The states have limited autonomy and fiscal power to pursue their own development and policies. For example, President's rule was imposed in Arunachal India and Uttarakhand in 2016 on grounds of constitutional breakdown, but was later revoked by the Supreme Court.

d. Fiscal Imbalance:

The Fiscal federalism is a significant issue in Indian federalism with disparities in revenue generation and resource allocation between the centre and the states. States often argue that they do not receive a fair share

of central taxes, leading to financial dependence and limited fiscal autonomy. Moreover, the complex system of intergovernmental transfers, grants, and devolution mechanisms has led to inefficiencies and disparities in resource distribution, exacerbating regional inequalities. The fiscal relationship between the Union and the states are not equitable and transparent. The Union government collects most of the taxes and distributes them to the states according to its discretion or criteria.

Case Law: State of West Bengal v. Union of India (1963)

The issue in this case is regarding the Disputes over fiscal autonomy and resource allocation between the central government and state governments.

In this case, the Supreme Court upheld the federal principle by affirming the exclusive jurisdiction of the states over matters included in the State List. The case involved a challenge to the Essential Commodities Act, 1955, which was enacted by the central government to regulate the production,

supply, and distribution of essential commodities. The Court ruled that the Act encroached upon the legislative domain of the states and violated the federal structure of the Indian Constitution.²⁴

e. Unequal Representation of Seats in Rajya Sabha:

The representation of states in the Rajya Sabha is not proportional to their population, area or contribution. Some states are over-represented and some are under-represented. For instance, Uttar Pradesh has 80 Lok Sabha seats while Meghalaya has only two.

f. Centralized Amendment Power:

The parliament has the power to amend the Constitution with a majority under Article-368 of the Indian Constitution.²⁵

g. The Indestructible Union with Destructible Units:

The resolute efforts of the Union government and its frequent declarations that Andhra India would be divided irrespective of the legislature's views pose a grave danger to Indian federalism and unity.

h. Office of the Governor:

The office of the Governor for each state in India has been an issue as it poses a threat to the federal character of the Union. Centre's visible arbitrariness in misusing such constitutional office has been the subject of debates and divergent opinions in the country.

The imposition of President's Rule in Arunachal India in January 2016, while there was an elected government in the State, created a bizarre incident in the constitutional history of India. The Supreme Court on July 13 termed the Governor's decision as unconstitutional and ordered the restoration of the Congress government in Arunachal Pradesh in India.

i. Single Constitution and Citizenship:

The Indian Constitution recognise single citizenship. It is upon the idea of 'one nation and one citizenship'. All are citizens of India irrespective of whichever state he/she belong to.

j. Integrated Services:

The integrated judiciary is a feature of the Indian federation. In India, Supreme Court is the apex court and all other courts are subordinate to it. The States don't have separate independent courts dealing with state matters. The machinery for elections, accounts, and audits in India is integrated. The All Indian Services and central services are also considered by many states and critics as anti-federal.

k. Centralised Planning:

The Centralized planning that is the Planning Commission which is now the NITI Aayog appointed by the Union government, considerable preponderance in legislative power for the Union. The States only fill the blank spaces meant for in the text for planning. There is no special planning commission for the states in India. It also adds to the misery of states and poses smooth functioning of federal spirit across the country.

l. Ethnic and Linguistic Diversity:

India's federal structure is further complicated by its rich tapestry of linguistic, ethnic, and cultural diversity. While federalism provides a mechanism for accommodating these diverse identities and aspirations, it also poses challenges in terms of managing competing demands and ensuring inclusive governance. Issues such as language politics, cultural identity, and demands for regional autonomy often strain the federal bond, leading to tensions and conflicts. The topic for official language in India is still a burning issue. The southern states oppose to Hindi as the official language of India has led to a language crisis in India.

m. Issue of Religion:

India is a fine example of religious heterogeneity that sometimes gives rise to turmoil to weaken the federation. The religious process need not be divisive as there is reasonable tolerance on the part of the people and a genuine secular policy on the part of the government, religion may not cause imbalances in a federation.

n. Economic incompatibilities of the units:

The Differences in economic standards and relative economic and fiscal incompatibilities among the constituent states also pose a threat to a federation. The continuous demand for financial equality creates problems in India.

o. Physical Environments:

²⁴ For further explanation visit- <https://www.scribd.com/document/695611312/State-Of-West-Bengal-V-Union-of-India> (last visited on 2nd June 2024- 5 pm)

²⁵ Issues faced by Indian federalism, available at: <https://www.drishtiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism> (last visited on 10/5/2024)

The physical environment plays a major role for federation by affecting communication. In the absence of good communication, the poorer states tend to develop a complex of neglect and feel that they are receiving less than their fair share of resources for development share by the Union compared to other States. In India, the North-Eastern states are having similar feelings and creating problems for the federation.

p. External forces:

The External forces also create setback for a federation. The tension in the North Eastern States of India is due to the interference of neighbouring countries. China's claim on some portion of the territory of Arunachal India on LAC threatens the territorial integrity of India. The Tamil Issue in Sri Lanka creates disruptive forces in India.²⁶

q. Emergency Powers:

The Indian Constitution provides for emergency powers that allow the central government to assume greater authority in times of crisis. While these powers are intended to ensure national security and stability, they also have the potential to undermine the federal structure by centralizing power and bypassing state governments. Instances of misuse or abuse of emergency powers have raised concerns about the erosion of federal principles and democratic norms.

Case Law: Additional District Magistrate, Jabalpur v. Shiv Kant Shukla (1976)

The issue in this case is regarding the Balancing national security and individual rights during periods of emergency.

This case is popularly known as the "Habeas Corpus case," which arose during the Emergency declared by Prime Minister Indira Gandhi in 1975. The Supreme Court had to decide whether individuals detained during the Emergency could challenge their detention through writs of habeas corpus. In a controversial decision, the Court ruled that during an Emergency, the right to life and personal liberty under Article 21 could be suspended. This case underscored the tension between centralized authority and individual rights in times of crisis.²⁷

r. Inter-State Disputes: Intergovernmental disputes between states are another challenge facing Indian federalism. These disputes can arise over issues such as water sharing, boundary disputes, and resource allocation, often leading to prolonged legal battles and political tensions. While mechanisms such as the Interstate Council and the courts exist to resolve such disputes, they are often slow and ineffective in providing timely resolutions.

Case Law: State of Tamil Nadu v. State of Karnataka (Cauvery Water Dispute)

The issue in this case is regarding the Resolving disputes between states over water sharing, boundary demarcation, and resource allocation. In this case, the Cauvery water dispute is one of the most prominent interstate disputes in India, involving conflicting claims over the distribution of water from the Cauvery river basin between the states of Tamil Nadu and Karnataka. The Supreme Court has issued several judgments and directives over the years to address this contentious issue, highlighting the challenges of managing interstate disputes within the federal framework.²⁸

These cases stated above are some of the key issues faced by Indian federalism and the role of the judiciary in resolving disputes, upholding federal principles, and safeguarding the rights of states and citizens. While federalism in India has encountered challenges, the judiciary's interventions have played a crucial role in maintaining the balance between centralized authority and regional autonomy within the federal framework.

a. In 2011, the two nations were on the verge of signing a water-sharing agreement under which India would receive 42.5 percent of the water and Bangladesh roughly 37.5 percent during the dry season. However, the West Bengal Chief Minister opposed the proposed treaty because the water supply is still a state-list issue in India.²⁹

²⁶ Issues faced by Indian federalism, available at: <https://www.clearias.com/indian-federalism-issues-challenges/#questions-based-on-the-topic-%e2%80%98issues-and-challenges-about-the-indian-federalism> (last visited on 11/5/2024)

²⁷ For further explanation visit- <https://lawbhoomi.com/case-analysis-adm-jabalpur-v-shivkant-shukla/> (last visited on 1st June 2024 – 6pm)

²⁸ For further explanation visit- <https://indiankanoon.org/doc/1308647/#:~:text=The%20Government%20of%20Tamil%20Nadu%20filed%20a%20complaint%20dated%206th,to%20be%20taken%20by%20the> (last visited on 2nd June 2024 – 5pm)

²⁹ Contemporary issues related to federalism in India, available at: https://testbook.com/amp/ias-preparation/issues-challenges-pertaining-federal-structure#amp_tf=From%20%251%24s&aoh=17146375988786&referrer=https%3A%2F%2Fwww.google.com (last visited on 16/5/2024)

- b. Formation of Telangana under Article 3 of the constitution raised a lot of questions against the federal nature of the polity.
- c. 100th amendment of the constitution where land was transferred to Bangladesh has posed as a serious threat to federalism in India.
- d. Introduction of Goods & Services Tax is a major point. Whereas the supporters of GST argue that states too should levy taxes under it, the naysayers argue on the autonomy of states.

Others issues in relation to Centre and State:

1. **Fiscal Imbalance:** States often complain that they lack financial autonomy and rely largely on the federal government funding. State fiscal autonomy has been sought due to concern about financial resource allocation, revenue sharing methods and grant distribution.
2. **GST Implementation:** The centre and states disagree on revenue sharing, GST Council decision making authority and revenue loss compensation. The introduction of GST in 2017 marked a significant milestone in India's federalism, aiming to streamline indirect taxation and promote economic integration. However, challenges remain in implementing a harmonized tax regime while addressing concerns related to revenue-sharing, compensation to states, and fiscal autonomy.
3. **Dispute Resolution:** Constitutional interpretations, power distribution and law enforcement have caused conflict.
4. **Role of Governor's:** Governor's discretionary powers and state politics are debated. Governor's opposing elected state governments have raised issues about their impartiality and neutrality.
5. **State autonomy and Central Interference:** Some states claim the central government actions violate their powers and autonomy.
6. **Water sharing and river dispute:** State to state river water dispute have led to judicial confrontations.
7. **Encroachment of the centre on state listed subjects:** Many analyses view the Farmer's Produce Trade and Commerce Act of the Union government as an intrusion on state list subjects.
8. **Competitive and Cooperative federalism:** Competitive federalism encourages state competitiveness while Cooperative federalism promotes collaboration and decision-making. Balancing these two approaches and ensuring a fair allocation of resources and opportunities among nations is a constant problem.³⁰

In conclusion, Indian federalism deals with a range of challenges and issues that impact its functioning and resilience. From center-state relations to fiscal imbalances, regional disparities, and intergovernmental disputes, these challenges underscore the complexities of governing a diverse and pluralistic democracy like India. Addressing these issues requires a concerted effort to strengthen democratic institutions, promote intergovernmental cooperation, and ensure equitable development across regions, thereby safeguarding the principles of federalism and democratic governance.

4.3 CONSTITUTIONAL PROVISIONS RELATED TO FEDERALISM IN INDIAN CONSTITUTION:

The Indian Constitution which is adopted on January 26, 1950 is the foundational document that outlines the federal structure of governance in India. It contains several provisions related to federalism, which separate the distribution of powers between the central government Union and the state governments as well as the mechanisms for cooperation and coordination between different levels of governance. The key constitutional provisions related to federalism in the Indian Constitution:

a. Article 79: Bicameralism

This Article establishes the Parliament of India as the supreme legislative body of the country. The Parliament consists of two houses that is the Rajya Sabha which is known as the Council of States or the Upper house and the Lok Sabha which is known as the House of the People. The Rajya Sabha is the upper house of Parliament and represents the states and union territories. Its members are not directly elected by the people but are elected by the elected members of the Legislative Assemblies of the States and by the members of the Electoral College for Union territories. The Rajya Sabha is a permanent body and cannot be dissolved. Whereas, the Lok Sabha is the lower house of Parliament

³⁰ Issues and Challenges in Centre and States relations, available at:

<https://theiashub.com/free-resources/mains-marks-booster/federalism-issues-and-challenges-pertaining-to-the-federal-structure> (last visited on 16/5/2024)

and it's the representative of the people of India. Its members are directly elected by the eligible voters of India through general elections. The Lok Sabha is subject to dissolution every five years or earlier if the President of India dissolves it on the advice of the Prime Minister. The maximum strength of the Rajya Sabha is fixed at 250 members, of which 12 are nominated by the President of India for their contributions to art, literature, science, and social services. The maximum strength of the Lok Sabha is determined by law but cannot exceed 550 members, including two members nominated by the President to represent the Anglo-Indian community, if deemed necessary. Article 79 lays down the qualifications for membership of Parliament, including citizenship, age, and other criteria as specified by law. Members of Parliament enjoy certain privileges and immunities to ensure the independence and functioning of the legislature. Parliament exercises legislative, financial, and oversight functions, including enacting laws, scrutinizing government policies and expenditures, and representing the interests of the people and the states. Both houses of Parliament have specific roles and responsibilities, with the Lok Sabha having primacy in matters of finance and confidence. Article 79 itself is not subject to amendment, as it forms part of the basic structure of the Constitution. However, provisions related to Parliament can be amended through the prescribed procedure under Article 368, which requires a special majority of Parliament and ratification by a majority of states.

b. Division of Powers:

The division of powers refers to the allocation of legislative, executive, and financial authority between different levels of government within a federal system. The listings in the Constitution's in the 7th Schedule under Article 246 is discussed below:

Union List:

The latest Union List consists of 100 items in which earlier it consists of 97 items on which the parliament has exclusive power to legislate. Which consists of defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organisation of the Supreme Court, High courts and union public service commission, income tax, customs and export duties, duties of excise, corporation tax, taxes on the capital value of assets, estate duty and terminal taxes.

State List:

The State List consists of 61 items in which earlier it consists of 66 items. This list maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, etc. The state legislature has exclusive power to make rules and regulations on these subjects. Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 mention situations in which the Union government can legislate.

Concurrent List:

The Concurrent List consists of 52 items in which earlier it consists of 47 items. The list includes marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press NS stamp duties.

Therefore, the Indian Constitution also demonstrate a fair distribution of powers, with each level of government having its own realm, allowing for context-sensitive decision-making.³¹

Case Law: State of West Bengal v. Union of India (1963), In this case, the Supreme Court upheld the federal principle by affirming the exclusive jurisdiction of the states over matters included in the state List. The Court ruled that certain provisions of the Essential Commodities Act, 1955, encroached upon the legislative domain of the states and violated the federal structure of the Constitution.

The division of powers also extends to the executive and financial powers:

- a. **Executive Powers:** The Constitution provides for separate executive powers at the central and state levels, with the President of India being the head of the Union executive and the Governors being the heads of state executive. The central government is responsible for executing laws related to Union List subjects, while state governments are responsible for executing laws related to State List subjects.
- b. **Financial Powers:** The division of financial powers pertains to the distribution of revenues and taxation authority between the central and state governments. While the central government has the authority to levy taxes on Union List subjects and collect certain other taxes, state governments have

³¹ Division of powers, available at: https://en.m.wikipedia.org/wiki/Federalism_in_India (last visited on 14/5/2024)

the authority to levy taxes on State List subjects and collect revenue through sources such as sales tax, excise duty, and stamp duty.

Therefore, the division of powers in India seeks to strike a balance between central government and state government, ensuring effective governance, accountability, and responsiveness to the diverse needs and aspirations of the Indian Union.

c. Dispute Resolution:

Dispute resolution in Indian federalism refers to the mechanisms and processes employed to resolve conflicts and disputes between the central government and the state governments, as well as among states themselves. These disputes may arise due to conflicting interpretations of constitutional provisions, jurisdictional conflicts, disagreements over resource allocation, or disputes related to inter-state boundaries or water sharing. The Indian Constitution provides for an independent judiciary, including the Supreme Court and High Courts, to adjudicate disputes between the central government and state governments, as well as among states. The judiciary plays a crucial role in interpreting the Constitution, resolving disputes, and upholding federal principles. Landmark cases, such as the Bommai case (1994) and the S.R. Bommai v. Union of India case, have clarified the limits of central intervention in state affairs and affirmed the principles of federalism. The Interstate Council, established under Article 263 of the Constitution, serves as a forum for discussion and resolution of disputes between the central government and the state governments, as well as among states themselves. The Interstate Council serves as a forum for resolving disputes, coordinating policies, and addressing common challenges faced by different states. It provides a platform for dialogue, consultation, and coordination on issues of common interest, helping to prevent and resolve conflicts through mutual understanding and cooperation. In cases where disputes cannot be resolved through judicial or political means, arbitration and mediation may be employed as alternative dispute resolution mechanisms. Arbitration involves the appointment of a neutral third party to adjudicate the dispute and render a binding decision, while mediation involves the assistance of a neutral mediator to facilitate negotiations and reach a mutually acceptable solution. The Indian Constitution contains specific provisions for resolving disputes between the central government and state governments, as well as among states. Example, Article 131 provides for the Supreme Court's original jurisdiction in disputes between the central government and one or more states, while Article 262 provides for the adjudication of inter-state water disputes by a tribunal appointed by the President of India. Political dialogue and negotiation between the central government and state governments, as well as among states, can also play a significant role in resolving disputes. Through constructive engagement, consensus-building, and compromise, political leaders can address contentious issues, bridge differences, and find mutually acceptable solutions to complex challenges. Therefore, dispute resolution in Indian federalism involves a combination of judicial, political, and administrative mechanisms aimed at ensuring the peaceful resolution of conflicts, promoting cooperation and coordination between different levels of government.

d. Article 280:

This Article establish the Finance Commission which was charge with defining the Union's and states' financial relationships. The Finance Commission plays a crucial role in ensuring fiscal autonomy and equity among different states, thereby promoting fiscal federalism. Article 280 provides for the appointment of a Finance Commission by the President of India every five years or at such earlier intervals as deemed necessary. The Commission consists of a Chairman and four other members appointed by the President. The President may also appoint additional members as necessary. The primary function of the Finance Commission, as outlined in Article 280, is to make recommendations to the President on the distribution of the net proceeds of taxes between the central government and the states, and the allocation of grants-in-aid to states.

The Commission also determines the principles governing the grants-in-aid to be given to states and the measures needed to augment the consolidated fund of a state to supplement the resources of local bodies. The Finance Commission is required to take into account several factors when making its recommendations, including the resources of the central government and the states, the demands on these resources, the expenditure commitments of the central government, the need for equitable distribution of funds, and any other relevant factors. Upon completion of its deliberations, the Finance Commission submits a report to the President of India containing its recommendations. The President lays the report before both houses of Parliament, along with an explanatory memorandum explaining the action taken on the recommendations of the Commission. The recommendations of the Finance Commission are considered by Parliament, which may approve or modify them as it deems fit. Once approved by Parliament, the recommendations become binding on the central government and the

states. The Finance Commission plays a crucial role in promoting fiscal federalism by ensuring the equitable distribution of financial resources between the central government and the states. Its recommendations help address regional imbalances, promote balanced development, and strengthen cooperative federalism by fostering financial autonomy and accountability at all levels of government. Therefore, Article 280 of the Indian Constitution establishes the Finance Commission and delineates its functions and responsibilities in recommending the distribution of financial resources between the central government and the states, thereby contributing to the effective functioning of India's federal system.

e. Article 368:

Article 368 of the Indian Constitution plays a significant role in the context of federalism as it governs the process of amending the Constitution, including provisions related to the federal structure. Article 368 grants Parliament the power to amend any provision of the Constitution, including those related to the federal structure. This includes provisions concerning the distribution of powers between the Union (central government) and the States. Parliament can amend these provisions to modify the allocation of powers, redefine the relationship between the Union and the States, or address any other aspect of federalism. While Parliament has broad powers to amend the Constitution, including federal provisions, the basic structure doctrine imposes limitations. The basic structure doctrine, established by the Supreme Court, holds that certain fundamental features of the Constitution, including federalism, cannot be amended. Therefore, Parliament cannot alter the essential features of federalism that form part of the basic structure, such as the division of powers between the Union and the States, without violating the Constitution. The power of judicial review enables the judiciary, particularly the Supreme Court, to review the validity of constitutional amendments related to federalism. If a constitutional amendment alters the federal structure in a manner that undermines its essential features or violates the basic structure doctrine, the Supreme Court has the authority to strike down the amendment as unconstitutional. This ensures that the principles of federalism, such as the distribution of powers and the autonomy of states, are safeguarded from arbitrary changes by Parliament. This Article mention the procedure for amending federal provisions of the Constitution. Any amendment related to the distribution of powers between the Union and the States must comply with the special procedure prescribed under Article 368(2). This procedure requires the amendment to be ratified by the legislatures of not less than one-half of the States by a simple majority. This provision ensures that any amendment affecting federalism receives adequate consideration and approval from the states, which are vital stakeholders in the federal system. Therefore, Article 368 serves as a mechanism for maintaining the balance of power between the Union and the States in the federal structure of India. While it grants Parliament the authority to amend federal provisions, it also imposes limitations to protect the essential features of federalism, ensuring that any changes to the federal structure are made in accordance with constitutional principles and through a democratic process.

f. 73rd and 74th amendment:

These amendments further provide structures for local self-government in order to improve the grassroots democracy. This amendment brought the State Governments under the constitutional obligation to adopt the new system of Panchayati Raj. The 11th schedule was added to the Constitution of India, 1950 (COI) through this amendment which contained 29 subject matters of the Panchayats. It also added Part IX to the COI which contained provisions from Articles 243 to 243 O. The act does not apply to Nagaland, Meghalaya, and Mizoram, as well as certain other areas.

74th Amendment Act, 1992: The act granted municipalities constitutional status. This act added Part IX-A to the COI which contained provisions from Articles 243P to 243ZG. It also added 12th schedule to the COI containing 18 functional items which are to be placed within the purview of municipalities.³²

g. Residuary Powers:

The Constitution of India delineates the distribution of legislative powers between the central government and the state governments through three lists that is the Union List, the State List, and the Concurrent List. The Union List contains subjects on which only the central government can legislate, the State List contains subjects on which only state governments can legislate, and the Concurrent List contains subjects on which both central and state governments can legislate. However, residuary powers are not explicitly mentioned in any of these lists. Article 248 of the Indian Constitution grants residuary powers to the Parliament of India. It states that Parliament has exclusive power to make laws

³² Constitutional provisions related to federalism in Indian Constitution, available at: <https://vajiramandravi.com/guest-upsc-notes/federalism-in-indian-polity/#header-6> (last visited on 14/5/2024)

with respect to any matter not enumerated in the Concurrent List or State List. This provision effectively vests residuary powers in the central government, allowing Parliament to legislate on any subject not specifically assigned to the states. Residuary powers contain a wide range of subjects that are not covered by the Union List or the State List. This includes areas such as aviation, space, telecommunications, intellectual property rights, and other matters of national or international significance that may not have been contemplated at the time of framing the Constitution. The Supreme Court of India has clarified the scope and extent of residuary powers through various judgments. In the matter of **Union of India v. H.S. Dhillon (1971)**, the Supreme Court held that residuary powers are comprehensive and enable Parliament to legislate on any subject not within the legislative competence of the states. However, the court also emphasized that residuary powers are not unlimited and must be exercised in conformity with constitutional principles and the basic structure of the Constitution. Residuary powers play a crucial role in maintaining the federal balance between the central government and the state governments. By vesting residuary powers in the central government, the Constitution ensures that Parliament can legislate on matters of national importance or urgency that may not have been foreseen by the framers of the Constitution. At the same time, it preserves the autonomy of states by delineating specific areas of legislative jurisdiction through the Union List and the State List. Therefore, residuary powers in Indian federalism empower the central government to legislate on matters not assigned to the states, thereby ensuring the flexibility and adaptability of the legislative framework to changing circumstances and emerging challenges while preserving the federal structure of governance.

h. Federal Supremacy:

In the event of a conflict between laws made by the central government and laws made by state governments on subjects in the Concurrent List, the law enacted by the central government prevails (Article 254). This provision upholds the principle of federal supremacy and ensures uniformity in laws on concurrent subjects. The Repugnancy between Central and State Laws under Article 254 deals with situations where both the Parliament and the state legislatures have enacted laws on the same subject matter in the Concurrent List, but there is a conflict between them. Case Law: **M. Karunanidhi v. Union of India (1979)**, In this case, the Supreme Court held that if there is a repugnancy between a central law and a state law on a concurrent subject, the state law will be void to the extent of the repugnancy.³³

i. Distribution of Administrative Powers:

Its powers refer to the allocation of executive authority and responsibilities between the central government and the state governments. The Union Executive comprises the President of India, the Vice President, the Prime Minister, and the Council of Ministers. The President is the head of the Union Executive and exercises executive powers on behalf of the central government. The Prime Minister, as the head of the Council of Ministers, is responsible for administering the affairs of the central government, including formulation and implementation of policies, decision-making, and coordination of government departments and ministries. Each state in India has its own executive headed by the Governor, who is appointed by the President. The Governor acts as the constitutional head of the state and exercises executive powers on behalf of the central government within the state. The Chief Minister, as the head of the state government, is responsible for the administration of the state and exercises executive authority in matters within the state's jurisdiction. The Constitution delineates specific administrative functions and responsibilities between the central government and the state governments. While certain subjects, such as defence, foreign affairs, communications, and railways, fall under the exclusive jurisdiction of the central government, others, such as law and order, health, education, agriculture, and local government, are primarily within the domain of the state governments. The division of administrative functions ensures that each level of government focuses on its core areas of responsibility while promoting effective coordination and cooperation between the centre and the states. Both the central government and the state governments have their own administrative machinery, including civil services, departments, and agencies, to implement policies, deliver services, and administer laws within their respective jurisdictions. The Indian Administrative Service (IAS) and the Indian Police Service (IPS), serve both the Union and state governments and each state also has its own state civil services to manage state-level administration. Various mechanisms exist to facilitate coordination and cooperation between the central government and the state governments in matters of administration. These include the Inter-State Council, the National

³³ Fact of the case available at: <https://www.drishtiijudiciary.com/doctrines/constitution-of-india-doct/doctrine-of-repugnancy> (last visited on 15/5/2024)

Development Council, and various committees and forums for dialogue and consultation on issues of common interest. Through these mechanisms, the central government and the state governments work together to address challenges, promote development, and ensure efficient delivery of public services. Therefore, the distribution of administrative powers in Indian federalism seeks to strike a balance between central authority and state autonomy, ensuring effective governance, responsiveness to local needs, and cooperative federalism. It reflects the principles of decentralization, subsidiarity, and democratic governance inherent in India's federal structure.

j. Appointment of Governors:

Each state in India is headed by a Governor, who is appointed by the President of India (Article 155). While the Governor acts as the constitutional head of the state, the real executive power rests with the Chief Minister and the Council of Ministers. This provision ensures a link between the central government and state governments and facilitates cooperation and coordination between the two levels of governance. The appointment of Governors in India is a crucial aspect of the country's federal structure as it plays a significant role in the functioning of the states and the Union territories. This Article of the Indian Constitution provides for the appointment of Governors as the heads of the states. It states that there shall be a Governor for each state who shall be appointed by the President of India. The Governor is the constitutional head of the state and acts as the representative of the President. The powers and functions of the Governor include, the Governor exercises executive powers on behalf of the President, including the appointment of the Chief Minister and other members of the Council of Ministers, summoning and proroguing the state legislature, and promulgating ordinances when the legislature is not in session. The Governor has a role in the legislative process, including giving assent to bills passed by the state legislature, addressing the legislature at the commencement of each session, and addressing joint sessions of the legislature in case of disagreement between the two houses. The Governor also has discretionary powers, such as the power to dissolve the state legislative assembly in certain circumstances, recommend President's Rule in the state, and reserve bills for the consideration of the President. Governors are appointed by the President of India, who acts on the advice of the Prime Minister and the Council of Ministers. The appointment process is largely political, with the ruling party or coalition at the centre often selecting individuals who are seen as loyal to the party or who have a background in politics or public service. The Constitution does not specify any qualifications for the appointment of Governors, except that they must be Indian citizens. Governors are usually individuals with a background in politics, administration, or public service. The tenure of a Governor is not fixed but it is generally at the discretion of the Union government. Governors can be removed from office by the President on the advice of the Prime Minister. However, Governors can also exercise discretionary powers in certain situations, which can impact the functioning of state governments and have implications for federal relations. Therefore, the appointment of Governors in India is a constitutional process that reflects the federal nature of the India governance system. While Governors are appointed by the President, they play a key role in representing the Union government in the states and overseeing the functioning of state governments in accordance with the Constitution and the principles of federalism.

k. Article 356: President's Rule:

This Article empowers the President to assume control over the administration of a state in case of failure of constitutional machinery.

Case Law: S.R. Bommai v. Union of India (1994), In this landmark case, the Supreme Court laid down guidelines for the exercise of President's Rule, emphasizing that it should be used as a measure of last resort and only in cases of constitutional breakdown. Article 356 of the Indian Constitution, often referred to as President's Rule or State Emergency, provides for the imposition of President's Rule in states in certain exceptional circumstances. President's Rule can be imposed in a state on various grounds, including, if the state government is unable to function in accordance with the provisions of the Constitution due to political instability, internal disturbances, or breakdown of law and order, or the state government fails to comply with or implement the directions of the central government or other constitutional authorities, or if the state legislature is unable to conduct its business or pass necessary legislation due to a deadlock or other reasons.

President's Rule can be imposed in a state by the President on the basis of a report from the Governor of the state or otherwise. Once President's Rule is imposed, the Governor assumes the functions of the state government, and the state legislature is either suspended or dissolved. The President can then make laws or issue ordinances for the governance of the state, and the state comes under the direct control of the Union government. President's Rule initially lasts for six months from the date of its imposition. However, it can be extended for additional periods, each not exceeding six months, with

the approval of both houses of Parliament. The total period of President's Rule in a state cannot exceed three years, including any extensions. The imposition of President's Rule is subject to judicial review by the courts. The Supreme Court has the authority to examine the validity of the imposition of President's Rule and can strike it down if it finds that it was imposed in violation of the Constitution or on improper grounds. The imposition of President's Rule has significant implications for Indian federalism. While it is intended to be a temporary measure to address exceptional circumstances, it represents a departure from the principles of democratic governance and state autonomy. President's Rule essentially places the state under the direct control of the Union government, which can lead to centralization of power and erosion of state autonomy. While it is a mechanism for ensuring constitutional governance, its use has been controversial and has raised concerns about its impact on federalism and democratic principles in India.

Therefore, the Indian Constitution contains comprehensive provisions related to federalism, which govern the distribution of powers between the central government and state governments, as well as the mechanisms for cooperation and coordination between different levels of governance. These provisions embody the principles of federalism and serve as the cornerstone of India's federal structure, ensuring a delicate balance between centralized authority and regional autonomy within a unified political framework.

4.4 INSTITUTIONS PROMOTING FEDERALISM IN INDIA:

The Institution's that are promoting federalism in India are discussed below:

a. The Supreme Court:

The Supreme court is the highest court in the country in India. It's the duty of the Supreme court to safeguard, and interpreter the provision of laws of the Constitution and statutes. It has the power to handle disputes between the Union and the State or States in the country.

b. The Inter-State Council:

The Council is a constitutional body mention under Article 263 of the Constitution to promote coordination and cooperation among the Union and the states on matters of common interest. It consists of the Prime Minister, Chief Ministers of all states, Chief Ministers of union territories with legislatures and six central ministers nominated by the Prime Minister.

c. The Finance Commission:

The Commission is a constitutional body mention under Article 280 of the Constitution to recommend the distribution of revenues between the Union and the states. It also suggests to increase the resources of states and grants-in-aid to states.

d. The NITI Aayog:

The NITI Aayog is implemented in the year 2015 to replace the Planning Commission of India. It acts as an advisory body for the Union and the states on matters of economic and social development.³⁴

e. The Election Commission: This commission is a body that ensures free and fair election in India. It consists of the State election commission and central election commission which upheld the federal structure of India.

f. The Zonal Councils: This councils is a statutory body that was establish under the States Reorganisation Act 1956 which aims at providing a place for discussions between states in a different zones on matter of common concerns.

4.5 RECENT TRENDS IN INDIAN FEDERALISM:

The Recent trends in Indian federalism reflect the evolving dynamics of governance, politics, and society in the country. These trends are shaped by a combination of factors, including changes in political leadership, socio-economic developments, judicial interventions, and shifts in public opinion. The constitution clearly mentions the Union government and State governments their powers. The federal government also gives the state sense autonomy for social and economic development. The Indian federal system is not a true federal system but it is a union centric kind. Both the center and the states derive their powers from the Indian constitution, and the Indian constitution derives its powers from the people in a federal form of government. The center states governments share powers in three ways:

a. The Union List:

This list is managed by the Union government.

³⁴ Institutions promoting Federalism in India, available at: <https://www.drishtiias.com/daily-updates/daily-news-editorials/complexity-of-indian-federalism> (last visited on 12/5/2024)

b. State List:

This list is managed by the State only except during State emergency.

c. The Concurrent List:

It contains all the matters on which both the Union government and the State government can make laws.

However, the central government makes major decisions, and the states always follow the central governments orders and directives. The central governments and the states have separate subjects on which they can make laws, but in the event of a dispute or an emergency, the central laws take precedence over the state's laws. India has a quasi- federal government from Nehru to Mrs. Gandhi because they had a one-party dominance system at the center and worked for their party's interests rather than the National interest. The recent trends for Indian federalism are demand for greater state autonomy, demand for smaller state appointment of Governor, emergence of multi-party system, trend towards coalition government.³⁵

The main trends in Indian federalism are discussed below:

1. **Devolution of Power:** There has been a growing emphasis on devolving power from the central government to the states, reflecting the principle of cooperative federalism. Initiatives such as the Goods and Services Tax (GST) and the Fourteenth Finance Commission have sought to empower states by granting them greater fiscal autonomy and decision-making authority in areas such as taxation and resource allocation. This trend towards decentralization aims to promote efficiency, accountability, and responsiveness in governance.
2. **Interstate Cooperation:** There has been an increasing focus on interstate cooperation and coordination to address common challenges and pursue shared goals. Mechanisms such as the Interstate Council and forums like the NITI Aayog provide platforms for states to collaborate on issues such as water sharing, infrastructure development, and disaster management. This trend reflects a recognition of the importance of collective action in addressing complex socio-economic and environmental challenges.
3. **Judicial Activism:** The judiciary has played a proactive role in shaping the contours of Indian federalism through its interventions in cases involving centre-state disputes, fiscal federalism, and environmental governance. Landmark judgments, such as the Kesavananda Bharati case and the S.R. Bommai case, have affirmed the principles of federalism and upheld the rights of states against encroachments by the centre. Judicial activism has contributed to a more nuanced understanding of federalism and strengthened the constitutional checks and balances between different levels of governance.
4. **Regional Aspirations:** There has been a resurgence of regional aspirations and demands for greater autonomy among certain states, driven by factors such as linguistic identity, cultural heritage, and socio-economic disparities. States like Tamil Nadu, West Bengal, and Maharashtra have asserted their distinct identities and advocated for more autonomy in decision-making and resource allocation. This trend underscores the complex interplay between national unity and regional diversity within the federal framework.
5. **Economic Reforms and Innovation:** Indian federalism has witnessed innovations and experiments in economic policy and governance at the state level. States such as Gujarat, Karnataka, and Kerala have implemented pioneering initiatives in areas such as industrial development, technology innovation, and social welfare, showcasing the potential of decentralized governance in driving economic growth and human development. This trend highlights the importance of flexibility and innovation in adapting federal structures to local contexts and priorities.
6. **Challenges of Cooperative Federalism:** While there have been efforts to promote cooperative federalism, challenges remain in achieving effective coordination and cooperation between the centre and the states. Issues such as fiscal imbalances, centre-state conflicts, and political differences can impede progress towards shared goals and hinder the functioning of cooperative federalism. Addressing these challenges requires sustained dialogue, mutual trust, and a commitment to collective action.

Therefore, recent trends in Indian federalism reflect a dynamic and evolving landscape characterized by devolution of power, interstate cooperation, judicial activism, regional aspirations, economic innovation, and challenges of cooperative federalism. As India continues on its path of democratic governance and socio-

³⁵ Recent trends in Indian federalism, available at: <https://www.studocu.com/in/document/aligarh-muslim-university/political-science/recent-trends-in-indian-federalism/21223756> (last visited on 17/5/2024)

economic development, navigating these trends will be crucial in shaping the future trajectory of Indian federalism and realizing the aspirations of its diverse citizenry.

4.6 JUDICIAL LEGISLATION OF FEDERALISM IN INDIA:

The Judicial legislation is also known as judicial activism and has played a significant role in shaping the contours of federalism in India. The judiciary particularly the Supreme Court of India has interpreted and applied constitutional provisions related to federalism in resolving disputes between the central government and state governments and delineating the boundaries of authority between different levels of governance. The role of judicial legislation in Indian federalism are discussed below:

1. Constitutional Interpretation:

The Indian Constitution provides a framework for federal governance, outlining the distribution of powers between the Union and the states. However, the interpretation of these provisions is often subject to judicial scrutiny and clarification. The Supreme Court has played a crucial role in interpreting the Constitution's federal provisions, including Article 246 (distribution of legislative powers), Article 254 (repugnancy between central and state laws), and Article 263 (Interstate Council).

2. Centre-State Disputes:

Judicial legislation has been instrumental in resolving disputes between the central government and state governments over matters of legislative jurisdiction, executive authority, and fiscal autonomy. Landmark cases such as the **Kesavananda Bharati case (1973)** and the **S.R. Bommai case (1994)** have affirmed the federal character of the Indian Constitution and upheld the rights of states against encroachments by the centre. These judgments have established principles of federal supremacy, cooperative federalism, and constitutional morality.³⁶

3. Fiscal Federalism:

The judiciary has also addressed issues related to fiscal federalism, including the distribution of financial resources between the Union and the states. The **State of West Bengal v. Union of India (1963)** and the **State of Karnataka v. Union of India (1977)** have clarified the principles governing fiscal transfers, grants-in-aid, and revenue sharing arrangements. The Supreme Court's intervention has promoted greater transparency, equity, and accountability in fiscal relations between different levels of government.³⁷

4. Environmental Governance:

Judicial legislation has extended to environmental governance, where the judiciary has intervened to protect federal principles in matters of environmental regulation and resource management. Cases such as **M.C. Mehta v. Union of India (1986)** and **T.N. Godavarman Thirumulpad v. Union of India (2006)** have addressed issues of intergovernmental coordination, interstate pollution, and environmental protection. The judiciary's proactive role has contributed to the development of environmental jurisprudence and the promotion of sustainable development.³⁸

5. Political Accountability:

Judicial legislation has also served as a mechanism for holding governments accountable and ensuring adherence to constitutional principles of federalism. By reviewing legislative and executive actions in light of constitutional provisions, the judiciary has acted as a check on arbitrary exercises of power and safeguarded the rights of states and citizens. This judicial oversight enhances political accountability and reinforces the rule of law within the federal framework.

6. Challenges and Criticisms:

While judicial legislation has played a constructive role in strengthening Indian federalism, it has also faced criticisms and challenges. Critics argue that judicial activism may encroach upon the domain of elected representatives and undermine democratic decision-making. Moreover, concerns have been raised about the judiciary's capacity to address complex policy issues and its potential impact on intergovernmental relations. The Indian judiciary heard a number of cases involving the issue of the federal character of the Indian constitution.

a. State of West Bengal v. Union of India: The Constitution of India is not truly Federal in character. The basis of the distribution of powers between the Union and States is that only those powers which are concerned with the regulation of local problems are vested in the States and the

³⁶ Facts of the case available at: <https://www.drishtiias.com/daily-updates/daily-news-analysis/s-r-bommai-v-union-of-india-case-1994> (last visited on 17/5/2024)

³⁷ Facts of the case available at: <https://indiankanoon.org/doc/184521/> (last visited on 18/5/2024)

³⁸ Judgment of the case available at: <https://indiankanoon.org/doc/372706/> (last visited on 18/5/2024)

residue, especially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union.³⁹

b. **State of Rajasthan v. Union of India:** In a sense, the Indian Union is federal. But the extent of federalism in it is largely watered-down by the needs of progress and development of the country which has to be nationally integrated, politically and economically co-ordinated and socially, intellectually and spiritually uplifted. With such a system, the States cannot stand in the way of legitimate and comprehensively planned development of the country in the manner directed by the Central Government.⁴⁰

c. **State of Karnataka v. Union of India: The Indian Constitution is not federal in character but has been characterized as quasi-federal in nature.** Even though the executive and legislative functions of the Centre and States have been defined and distributed, there runs through it all a thread or rein in the hands of the Centre in both the fields. “Kesavananda Bharati v. State of Kerala: Some of the judges, in this case, held federalism to be a part of the basic structure of the constitution which means it can’t be tampered with.”⁴¹

In conclusion, judicial legislation has been a defining feature of Indian federalism, shaping the interpretation and application of constitutional provisions, resolving disputes between different levels of government, and promoting principles of cooperative federalism and constitutional governance. While it has faced criticisms and challenges, judicial activism remains an essential mechanism for upholding federal principles, protecting the rights of states and citizens, and ensuring the stability and integrity of India’s federal structure.

4.7 LANDMARK CASES ON FEDERALISM:

The Landmark cases on federalism in India have played a pivotal role in defining and shaping the relationship between the central government and the state governments do in separate the boundaries of authority between different governance. These cases adjudicated by the Supreme Court of India have affirmed the federal character of the Indian Constitution and upheld the rights of states against encroachments by the center. The most significant landmark cases on federalism in India are discussed below:

a. **State of West Bengal v. Union of India (1963):**

In this landmark case, the Supreme Court upheld the federal principle by affirming the exclusive jurisdiction of the states over matters included in the State List. The case involved a challenge to the Essential Commodities Act, 1955, which was enacted by the central government to regulate the production, supply, and distribution of essential commodities. The Court ruled that the Act encroached upon the legislative domain of the states and violated the federal structure of the Constitution. This judgment reaffirmed the supremacy of the Constitution and established the principle that the central government cannot legislate on matters within the exclusive domain of the states.⁴²

b. **In this matter, Hargovind pant vs Raghukul Tilak & others (1979),** the Supreme Court gave the federal interpretation of the role of governor and declared that the Governor’s office is an independent constitutional office which is not subject to the control of the government of India.⁴³

c. The landmark case, **Keshavanand Bharti vs Union of India (1973),** the Supreme Court declare, federalism as part of the ‘basic structure’ of the constitution which was not the amending power of the parliament. This view was subsequently reiterated in **Minerva Mills vs. Union of India (1980)** case.⁴⁴ Perhaps the most significant case in Indian constitutional history, Kesavananda Bharati v. State of Kerala, established the doctrine of the basic structure of the Constitution. The case challenged the 24th Amendment Act, which sought to nullify the Supreme Court’s earlier ruling in **Golaknath v. State of Punjab (1967)**, which held that Parliament could not amend fundamental rights. In a landmark judgment, the Supreme Court held that while Parliament has the power to amend the Constitution, it cannot alter its basic structure, which includes federalism. This case established

³⁹ Judgment of the case available at: <https://indiankanoon.org/doc/603736/> (last visited on 18/5/2024)

⁴⁰ Explanation of the case available at: <https://www.shankariasparliament.com/current-affairs/gs-ii/states-power-to-challenge-centre> (last visited on 19/5/2024)

⁴¹ Judicial legislation of federalism in India, available at: <https://blog.ipleaders.in/federalism-in-india/> (last visited on 15/5/2024)

⁴² Facts of the case available at: <https://www.juscorpus.com/a-case-study-state-of-west-bengal-vs-union-of-india/> (last visited on 15/5/2024)

⁴³ Facts of the case available at: <https://byjus.com/free-ias-prep/judicial-behavior-working-indian-federalism/> (last visited on 16/5/2024)

⁴⁴ Facts of the case available at: <https://blog.ipleaders.in/kbharatikerala/> (last visited on 16/5/2024)

federalism as an essential feature of the Indian Constitution, immune from arbitrary amendments by the central government.⁴⁵

d. The judgement in **S.R. Bommai vs. Union of India (1994)** was a federal dynamics of the country where the Court reverse its earlier decisions in a number of cases in which it had consider the issue of determination of breakdown of constitutional machinery in a state to be the prerogative of the executive which did not warrant judicial scrutiny.⁴⁶

e. **I.R. Coelho v. State of Tamil Nadu (2007):**

In this case, it reaffirmed the supremacy of the Constitution and the basic structure doctrine, particularly with regard to principles of federalism and separation of powers. The case challenged the validity of the Ninth Schedule of the Constitution, which contains laws immune from judicial review. The Supreme Court held that laws placed in the Ninth Schedule are subject to judicial review if they violate the basic structure of the Constitution, including principles of federalism. This judgment strengthened the role of the judiciary in upholding federal principles and protecting the rights of states.⁴⁷

f. **NCT of Delhi v. Union of India (2018):**

In this case, the Supreme Court clarified the distribution of powers between the elected government of the National Capital Territory of Delhi (NCT) and the Lieutenant Governor (LG), who represents the central government. The Court held that while the LG has a role to play, the elected government of the NCT has executive powers over matters not explicitly reserved for the central government. This judgment affirmed the principles of cooperative federalism and upheld the rights of elected state governments in the exercise of executive authority.⁴⁸

These landmark cases have significantly contributed to the development and consolidation of federalism in India, establishing important principles, safeguards, and precedents that uphold the federal character of the Indian Constitution. Through their rulings, the Supreme Court has reaffirmed the supremacy of the Constitution, protected the rights of states, and promoted a balance of power between the central government and state governments within the federal framework.

Fiscal federalism:

Many of the features of fiscal federalism in India have their origins in this history. The East India Company was a creation of the British Crown. It was granted a Charter of incorporation by Queen Elizabeth in 1600. Under the Charter, the company was given the exclusive right of trading with India. It as later given the right to impose punishments for offenses committed by its servants. Although it initially derived authority from the Crown, the Company later jointly exercised the power to govern its most prized colony. The Company set up a number of factories and trading centers at various places in India. Of these Bombay, Madras, and Calcutta became the main settlements and were declared as Presidencies.⁴⁹

It refers to the financial relationships between the differently levels of government, namely the Central or Union government and the State government.

The Constitutional provisions of fiscal federalism in the Indian Constitution are Article 280 which provides for the establishment of a Finance Commission to define the financial relations between the union and states government and to recommend the distribution of the Union and the States and among the States themselves.⁵⁰

Issues with Fiscal Federalism:

a. **Fiscal Responsibility and Budget Management (FRBM) Act:** The prior consent from the Union government, mandated by this section, has been convert into a restrictive tool to limit deficit financing beyond the limits prescribed by the State FRBMs

b. **Rising Liabilities:** Since 2014, the combined outstanding liabilities of states and union territories have been increasing, influenced by policies like the Ujjwal DISCOM Assurance Yojana (UDAY) and Farm Loan Waiver schemes.

c. **Cesses and Surcharges:** There's a growing trend of cesses and surcharges comprising a larger portion of the divisible tax revenue, effectively reducing the share of revenue available for distribution to states.

⁴⁵ Facts of the case available at: <https://blog.ipleaders.in/golaknath-c-v-state-punjab-1967-overview-analysis/> (last visited on 16/5/2024)

⁴⁶ Landmark cases on federalism, available at: <https://byjus.com/free-ias-prep/judicial-behavior-working-indian-federalism/> (last visited on 16/5/2024)

⁴⁷ Facts of the case available at: <https://byjus.com/free-ias-prep/coelho-case-2007-sc-judgements/> (last visited on 14/5/2024)

⁴⁸ Facts of the case available at: <https://indiankanoon.org/doc/144413017/> (last visited on 14/5/2024)

⁴⁹ Reddy Y, V, and Reddy G.R., Indian Fiscal Federalism, 1st Edition, New Delhi, Oxford University Press Publication, 2019,

⁵⁰ Fiscal federalism, available at: <https://www.studyiq.com/articles/fiscal-federalism-ongoing-issues/> (last visited on 13/5/2024)

d. **Goods and Services Tax (GST):** This has led to states losing autonomy in setting tax rates according to their specific developmental needs, increasing their financial dependency on the central government.

e. **Article 282 and its Broad Interpretation:** This has been used extensively to justify centrally sponsored schemes, impacting the fiscal federal structure by centralising funding and decision-making for programs traditionally within state jurisdiction.

Cooperative federalism and Competitive federalism:

Cooperative federalism allows the central and the state government to collaborate on policies, programmes, and resources for national development. The main mechanism of Cooperative federalism in India are Inter-State Council, NITI Aayog, 7th schedule, GST Council.

In the Competitive federalism the governments compete to attract investment by creating a business-friendly environment, implementing investor-friendly regulation. It encourages the states to embrace innovative policies, reforms, and initiatives to strengthen governance and economic competitiveness. The Apparatus of Competitive federalism in India are Ease of doing business Rankings, Special Economic Zones (SEZs), Investment Promotion Initiatives. India has both Cooperative and Competitive federalism. The Competitive federalism, it encourages states to compete between them to improve and strengthen their economic growth and governance, whereas the Cooperative federalism refers to the teamwork and collaborative decision-making by the states.

Collaborative federalism:

The Constitution Bench of the Supreme Court held in **Government of NCT of Delhi v. Union of India (2018)** that the idea behind the concept of collaborative federalism is negotiation and coordination so that differences which may arise between the union and the state government in their respective pursuits of development can be traced out.

Asymmetrical federalism:

The Asymmetrical federalism is a form of federalism in which different parts of a country's territory have different degrees of autonomy.⁵¹

There are three types of Asymmetrical federalism they are:

a. Political asymmetry:

The Representation of States in the Rajya Sabha based on their population is known as political asymmetry. Example: States such as Uttar Pradesh have 31 seats in the Rajya Sabha whereas Meghalaya and Mizoram have just one each.

b. Constitutional asymmetry:

The Special provisions and powers extended to Nagaland, Mizoram and others mentioned under Article 371.

c. Fiscal asymmetry:

When transferring funds from the Union to States, the statutory transfers are made based on the recommendations of the Finance Commission.⁵² Another form of asymmetry occurs when a federal country has territories that belong to the federation but are not constituent units of it. Example:

a. Canada consists of 10 provinces and 3 territories. The provinces are full members of the federation. The territories belong to Canada and are governed as part of Canada, but they are not members of the federation. Unlike provincial legislatures, the powers of territorial legislatures are not regulated in the Constitution but rather in ordinary federal statutes and the consent of the territories is not required for the approval of the constitutional amendments.

b. India consists of 29 states and 7 Union Territories. The states are members of the union, while the Union Territories are parts of India but not part of any state.⁵³

Hence, after discussing the Constitutional Provisions and Issues Faced by Indian Federalism the researcher in the next Chapter tried to focus on the "Issues Faced by Indian Constitution"

CHAPTER-V

ISSUES FACED BY INDIAN CONSTITUTION

⁵¹ Supra note 8 (21)

⁵² Cooperative, Competitive, Collaborative and Asymmetrical federalism, available at: <https://theiashub.com/free-resources/mains-marks-boosters/federalism-issues-and-challenges-pertaining-to-the-federal-structure> (last visited on 13/5/2024)

⁵³ Supra note (22)

5.1 MEANING OF CONSTITUTION:

In general, a Constitution is a set of rules, regulations and principles that define the nature and extent of government and the relationship between the executive, legislative and judiciary. It also includes various rights and duties such as freedom of movement, press, liberty and thought. It reflects India's conflicts, aspirations, ideals and national struggles.

A Constitution means a document having a special legal sanctity which sets out the frame-work and the principle functions of the organs of the government of a state and declare the principles governing the operations of those organs.⁵⁴

The term "Constitution" refers to a fundamental document or set of principles that establishes the framework for governance, delineates the structure and powers of government institutions, and defines the rights and duties of citizens. Constitutions serve as the supreme law of the land, providing the foundation for the legal and political systems of a country. The meaning of a constitution includes the following:

1. **Fundamental Document:** A constitution is a foundational document that sets out the basic framework for governance and establishes the principles upon which a country is founded. It typically outlines the structure of government, the distribution of powers between different branches of government, and the relationship between the government and the governed.
2. **Structure of Government:** Constitutions define the structure of government institutions, including the executive, legislative, and judicial branches. They specify the powers and functions of each branch, as well as the mechanisms for checks and balances to prevent the concentration of power in any one branch.
3. **Division of Powers:** Constitutions delineate the distribution of powers between different levels of government, such as the central government and state or provincial governments in federal systems. They specify the respective powers and responsibilities of each level of government and provide mechanisms for resolving disputes between them.
4. **Protection of Rights:** The Constitutions include provisions for the protection of individual rights and freedoms, such as freedom of speech, freedom of religion, and the right to due process. These rights are enshrined in the constitution as fundamental principles that are guaranteed to all citizens and are enforceable through legal mechanisms.
5. **Amendment Process:** Constitutions usually include provisions for their own amendment or revision, outlining the procedures and requirements for making changes to the constitution. This process is often more stringent than ordinary legislative processes, reflecting the constitution's status as the supreme law of the land.
6. **Supremacy of the Constitution:** One of the fundamental principles of constitutionalism is the supremacy of the constitution over all other laws and governmental actions. This means that all laws and government actions must conform to the principles and provisions of the constitution, and any laws or actions that violate the constitution are deemed invalid.
7. **Flexibility and Rigidity:** Constitutions vary in their degree of flexibility or rigidity. Flexible constitutions can be amended or revised through ordinary legislative processes, while rigid constitutions require special procedures or supermajority approval for amendment. The level of flexibility or rigidity often reflects the historical context and political culture of a country.

Therefore, a constitution is a fundamental document that establishes the framework for governance, defines the structure and powers of government institutions, protects individual rights and freedoms and serves as the supreme law of the land. It embodies the values, principles, and aspirations of a nation, providing the foundation for its legal and political systems.

Meaning of Constitutional issues:

The meaning of Constitutional issues refers to matters or controversies that arise in relation to the interpretation, application, or amendment of a country's constitution. These issues often involve questions about the scope of governmental powers, the protection of individual rights and freedoms, the structure of government institutions, and the relationship between different levels of government. Constitutional issues are central to the functioning of a constitutional democracy and are subject to judicial review and resolution. In simple terms, a Constitutional issue is a political, legal, or social issue that challenges the protections of a country's constitution.

The meaning of constitutional issues is discussed below:

⁵⁴ Pandey JN, Constitutional Law of India, what is Constitution, 60th Edition, Allahabad (Prayagraj), Central Law Agency, 2023, 1.

1. **Interpretation of Constitutional Provisions:** Constitutional issues often arise from differing interpretations of the text, meaning, and intent of constitutional provisions. Courts, government officials, legal scholars, and citizens may have divergent views on how specific constitutional provisions should be understood and applied in practice. These interpretational disputes can lead to legal challenges, litigation, and ultimately, judicial decisions that clarify the meaning and scope of constitutional principles.
2. **Protection of Individual Rights and Freedoms:** Constitutional issues frequently revolve around the protection of individual rights and freedoms guaranteed by the constitution. Questions may arise about the limits of government power to restrict or regulate these rights, such as freedom of speech, freedom of religion, and the right to privacy. Courts play a crucial role in adjudicating such issues, balancing individual rights against legitimate government interests and ensuring that constitutional rights are upheld.
3. **Separation of Powers:** Constitutional issues related to the separation of powers involve questions about the division of authority between the executive, legislative, and judicial branches of government. Disputes may arise over the extent of executive authority, legislative prerogatives, and judicial independence. These issues often require careful consideration of constitutional principles and precedents to maintain the checks and balances essential to a functioning democracy.
4. **Federalism and Intergovernmental Relations:** In federal systems, constitutional issues frequently arise concerning the distribution of powers between the central government and subnational entities, such as states or provinces. Disputes may emerge over areas of concurrent jurisdiction, fiscal federalism, and the extent of central authority to intervene in state affairs. Resolving these issues requires a delicate balance between national unity and regional autonomy, often involving judicial review and intergovernmental cooperation.
5. **Constitutional Amendments:** Issues related to constitutional amendments involve questions about the process, procedures, and requirements for amending the constitution. These issues may arise from proposed amendments that seek to alter fundamental principles, such as the separation of powers, the protection of individual rights, or the structure of government institutions. Constitutional amendments often provoke intense debate and scrutiny, reflecting their significance in shaping the legal and political landscape of a country.
6. **Emerging Challenges and Evolving Societal Norms:** Constitutional issues also encompass emerging challenges and evolving societal norms that may require reinterpretation or adaptation of constitutional principles. Issues such as technological advancements, globalization, environmental concerns, and demographic changes may raise novel questions about the application and relevance of constitutional provisions in contemporary society. Adapting constitutional interpretation to address these challenges requires careful consideration of evolving social values and changing circumstances. Therefore, constitutional issues encompass a wide range of matters related to the interpretation, application, and amendment of a country's constitution. These issues are central to the functioning of constitutional democracies, requiring careful consideration of constitutional principles, legal precedents, and societal norms to ensure the rule of law, protection of individual rights, and maintenance of democratic governance.

5.2 OBJECTIVES OF INDIAN CONSTITUTION:

The Indian Constitution has several objectives including:

- a. **Equality:** All people are equal in the eyes of law, regardless of caste, creed, religion, or language.
- b. **Socialism:** The Constitution stresses India's commitment to ensuring social, economic, and political justice for all citizens.
- c. **Dignity:** The Constitution ensures dignity to all citizens, regardless of social and economic status as stated under Part- III of the Indian Constitution.
- d. **Sovereignty:** It is the backbone of the Indian Constitution and protects the rights of the people. It is of two type, internal and external sovereignty. Internal sovereignty entitles the states with the power to govern themselves and make laws in certain cases.
- e. **Secularism:** The word Secularism was added as part of the Indian Constitution during the 42nd amendment. It was introduced to ensures the maintenance of peace among different communities and religion.
- f. **Democratic:** India is a parliamentary democracy which ensures a responsible and stable government.

g. **Justice and Liberty:** The objectives of the Constitution also include social, economic and political justice and the liberty to follow any religion without the interference of the state. All citizens are entitled to basic fundamental rights that ensures and protects their interests such as Freedom of thought, expression, belief, faith, worship, and religion.

h. **Republic:** Republic Indian is the most important aims and objectives of the salient features of the Indian Constitution. It entitles people the power to elect their representatives and elections will be held at regular intervals of times.⁵⁵

5.3 ISSUES FACED BY INDIAN CONSTITUTION:

The general issues face by the Indian Constitution are discussed below:

a. Judicial issues:

The Independence of judiciary is a feature of Indian judicial system where it maintains equi-distance from the other two organs of the Government. But on practical terms sometimes the judiciary is diverting its way in performance of its duties.

b. Social issues:

The wide spread caste prejudices and mix of caste and politics resulting into politicization of caste is a challenge to constitutional principles of India. The constitution of India enjoins upon the state ensure that men and women are treated as equals, but the discrimination against females continues to be a fact of life which is against the principles of constitution.

c. Economic issues:

The Poverty is the root cause of all kinds of inequalities in the world and around 22% of the Indian population are living below the poverty line. The Unemployment is like a plague spreading virtually all societies, but it is a different problem in India, as it has large youth population, demand for employment opportunities is claimed at an Alarming rate.

d. Political issues:

Though the directive provision of Article 44 of the Constitution asks Indian legislatures to establish a uniform civil code in India, religious communities continued to be governed by their own personal laws. Centre-state relations, misuse of Article-356 and criminalization of politics are some major issues that are frequently called for attention in the constitutional document.⁵⁶

The Indian Constitution while a comprehensive document that provides the framework for governance and protection of rights, has faced several challenges and controversies since its adoption in 1950. These issues have been the subject of judicial scrutiny, leading to landmark decisions that have shaped the interpretation and application of constitutional principles. The Indian Constitution faces several contemporary legal issues, including:

1. **Judicial Activism vs. Judicial Overreach:** The balance between judicial activism, where courts actively interpret laws to protect rights, and judicial overreach, where courts may encroach upon the domains of the executive and legislature, is a key issue.

Case Law: **Kesavananda Bharati v. State of Kerala (1973)**

The issue in this case is regarding the scope and extent of judicial review and judicial activism in interpreting and enforcing constitutional provisions.

The Kesavananda Bharati case centred on the validity of the 24th Amendment Act, which sought to limit the power of judicial review. The Supreme Court, in a landmark decision, held that while Parliament has the power to amend the Constitution, it cannot alter its basic structure, which includes judicial review. This case established the doctrine of the basic structure of the Constitution, affirming the supremacy of the Constitution and the role of the judiciary in upholding constitutional principles.⁵⁷

2. **Erosion of Federalism:** The Tensions between the central government and state governments over issues such as autonomy, distribution of powers, and financial resources have been a recurring issue.

3. **Lack of Police Reforms:**

⁵⁵ Objectives of the Indian Constitution, available at: <https://unacademy.com/content/clat/study-material/logical-reasoning/the-indian-constitution/#:~:text=The%20main%20objectives%20of%20the%20Indian%20constitution%20include%20sovereignty%2C%20socialism,secularism%2C%20democracy%2C%20and%20republic> (last visited on 17/5/2024)

⁵⁶ Constitutional issues faced by Indian Constitution, available at: <https://www.slideshare.net/geethadevi19/indian-constitution-challenges-234552156> (last visited on 18/5/2024)

⁵⁷ Supra note 46

The lack of police reforms in India is a prime issue that impacts the effectiveness, accountability, and integrity of law enforcement agencies in India as a whole. Many police forces in India operate under colonial-era laws and practices that are not suited to modern policing needs. These outdated laws often restrict the autonomy of police officers and hinder their ability to effectively combat crime while ensuring respect for human rights. The lack of police reforms has led to widespread political interference in law enforcement matters. Politicians often exert undue influence over police officers, leading to compromised investigations, selective law enforcement, and the protection of individuals with political connections. Without proper mechanisms for accountability, police officers who engage in misconduct or abuse of power often go unpunished. The absence of independent oversight bodies and mechanisms for civilian complaints exacerbates this problem, eroding public trust in the police force. Many police forces in India suffer from a lack of adequate training, resources, and infrastructure. This hampers their ability to effectively respond to emerging threats, investigate crimes, and maintain public order. The lack of police reforms has contributed to widespread violations of human rights, including extrajudicial killings, custodial torture, and arbitrary detention. These abuses not only undermine the rule of law but also perpetuate a culture of impunity within law enforcement agencies.

Prakash Singh & Others v. Union of India 2006: In this Landmark case that was filed by the former IPS officer Prakash Singh and others before the Supreme Court of India, seeking directions for police reforms. The PIL highlighted various shortcomings in the functioning of police forces across the country, including political interference, lack of accountability, inadequate infrastructure, and absence of functional autonomy. In its judgment, the Supreme Court issued a series of directives aimed at kickstarting police reforms in India. These directives included the establishment of State Security Commissions to ensure that police forces operate without political interference, the implementation of a fixed tenure system for senior police officers, and the setting up of Police Complaints Authorities at the state and district levels to address complaints of police misconduct.

Paramvir Singh Saini v. Baljit Singh & Ors. 2020: This case is about custodial death and lack of accountability within the police reforms. This case gained prominence after the alleged extrajudicial killing of Vikas Dubey, a notorious gangster, by the Uttar Pradesh Police. The encounter raised questions about police accountability and adherence to due process. While the case is still ongoing, it underscores the need for reforms to address issues of police impunity, lack of oversight, and violations of human rights. The judiciary's scrutiny of police actions in cases of encounters and custodial deaths can serve as a catalyst for broader reforms within the police system.

Thus, Police reforms in India to enhance accountability, efficiency, and independence have been pending for a long time, impacting law enforcement and justice delivery.

4. **Freedom of Speech and Expression:** Issues related to freedom of speech, censorship, and internet freedom have been contentious, particularly in the context of social media and online platforms.

Case Law: **K.A. Abbas v. Union of India (1971)**

The issue in this case is regarding the balance between freedom of speech and expression and restrictions imposed in the interest of public order, decency, and morality.

The K.A. Abbas case involved the censorship of a film by the central government under the Cinematograph Act. The Supreme Court held that while freedom of speech and expression is not absolute, restrictions must be reasonable and imposed by law. This case affirmed the importance of free speech as a cornerstone of democracy while recognizing the legitimate interests of society in regulating speech. Cases involving restrictions on freedom of speech and expression, such as those related to sedition laws and internet shutdowns, are frequently litigated. The Supreme Court has addressed some of these issues in cases such as *Shreya Singhal v. Union of India*, where it struck down certain provisions of the Information Technology Act, 2000, for being violative of free speech rights.⁵⁸

5. **Gender Equality and Women's Rights:**

Gender equality and women's rights are the major constitutional issues in India. The Indian Constitution guarantees equality before the law and prohibits discrimination on the basis of gender. However, despite these constitutional provisions, women in India have faced many forms of discrimination and inequality. Article 14 of the Indian Constitution guarantees equality before the law and equal protection of the laws to all its citizens. However, women in India have historically faced discrimination in many aspects of life, including education, employment, and inheritance rights. The courts have played a crucial role in interpreting and enforcing this right in India. Article 19 of the

⁵⁸ Facts of the case available at: <https://www.legalserviceindia.com/legal/article-351-censorship-of-films.html> (last visited on 20/5/2024)

Indian Constitution guarantees certain fundamental freedoms, including the right to freedom of speech and expression, assembly, and association. However, women have often faced restrictions on exercising these rights due to societal norms and patriarchal behaviour. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which has been interpreted broadly by the courts to include various aspects of women's rights, such as reproductive rights, right to privacy, and protection from violence and discrimination. Despite many constitutional provisions which guaranteed protections for gender equality women are still facing various challenges related to gender-based violence, discrimination, and lack of representation persist.

State of Maharashtra v. Madhukar Narayan Mardikar (1991): In the case, the Supreme Court held that the right to equality guaranteed under Article 14 includes the right to be free from gender-based discrimination. The court emphasized the need to eliminate discrimination against women in all spheres of life and to ensure equal treatment under the law.

Vishaka v. State of Rajasthan (1997): In this case, the Supreme Court addressed the issue of sexual harassment in the workplace. The case arose from the gang rape of a social worker, Bhanwari Devi, who was working to prevent child marriages in Rajasthan. The Supreme Court recognized sexual harassment in the workplace as a violation of the fundamental rights of women, including the right to work with dignity (Article 21) and the right to equality (Article 14). The court laid down guidelines to prevent and address sexual harassment in the workplace which is known as the Vishaka guidelines. These guidelines provided a framework for employers to create a safe working environment for women and held them accountable for preventing and addressing incidents of sexual harassment.

Suchita Srivastava v. Chandigarh Administration (2009): In this matter, the Supreme Court address the issue of reproductive rights to woman. The case involved a mentally challenged woman who became pregnant and sought permission for an abortion. The Supreme Court held that the right to make reproductive choices of woman is an integral part of the right to privacy, dignity, and autonomy guaranteed under Article 21. The court emphasized that women have the right to make decisions about their own bodies and reproductive health which shall be free from coercion or discrimination.

Air India v. Nergesh Meerza (1981): In this case, the Supreme Court addressed the issue of gender discrimination in employment. The case involved Air India's policy of retiring air hostesses at the age of 35 or upon marriage, whichever came first. Nergesh Meerza, an air hostess, challenged this policy as discriminatory. The Supreme Court held that the policy violated Article 14 of the Constitution, as it discriminated against women based on arbitrary criteria unrelated to their ability to perform their job duties. The court emphasized the need for equality in employment opportunities and struck down the discriminatory policy.

Therefore, the interpretation and enforcement of constitutional provisions by the Supreme Court play a crucial role in promoting gender equality and protecting the rights of women in the country.

6. **Caste-Based Discrimination:** The issue of caste-based discrimination, despite constitutional safeguards and affirmative action policies, continues to be a significant challenge in Indian society.

7. **Religious Freedom and Secularism:** Maintaining a balance between religious freedom and secular principles in a diverse society like India remains a challenge, especially in light of communal tensions.

8. **Electoral Bonds:** The major prime concerns are that electoral bonds allow for anonymous donations to political parties which undermining transparency and accountability in the electoral process. Most critics argue that this is against the principles of free and fair elections enshrined in the Indian Constitution. This Article 14 of the Indian Constitution guarantees equality before the law. Some argue that electoral bonds favour wealthy donors and powerful corporations, giving them undue influence over the political process and thereby violating the principle of equality. The use of electoral bonds also raises questions about the right to information. Since the scheme ensures anonymity for donors, citizens are unable to access information about who is funding political parties, which is a crucial for holding them accountable. Some argue that electoral bonds facilitate corruption and promote capitalism by allowing corporations to make large donations to political parties in exchange for favourable policies or contracts, thereby undermining the democratic principles enshrined in the Constitution. The independence of the Election Commission of India which is responsible for overseeing the conduct of elections, is also called into question. Some argue that the lack of transparency in political funding undermines the Election Commission's ability to ensure free and fair elections, which is essential for upholding the democratic principles of the Constitution. Thus, the use of electoral bonds in India raises significant constitutional issues related to transparency, accountability, equality, and the integrity of the electoral process. Some argue that the scheme

undermines the democratic principles enshrined in the Indian Constitution and call for greater transparency and accountability in political funding to uphold the sanctity of the electoral process.

Case law: Association for Democratic Reforms (ADR) vs. Union of India: In this case, the Supreme Court of India ruled in favour of transparency in political funding. The court mandated that political parties must disclose details of donations received through electoral bonds to the Election Commission of India. This decision was a significant step towards ensuring accountability and transparency in political funding, although it did not address all concerns related to electoral bonds. Issues related to electoral integrity, campaign finance, and political corruption highlight the need for comprehensive electoral reforms. The Electoral Bonds scheme introduced in 2018 faced legal challenges regarding its transparency and constitutionality, the Supreme Court upheld the scheme but directed political parties to submit details of donations received through electoral bonds to the Election Commission in India. The matter is under further review.⁵⁹

Case law: Common Cause vs. Union of India: This case challenged the validity of electoral bonds, arguing that they facilitate anonymous donations and undermine transparency in political funding. While the Supreme Court upheld the legality of electoral bonds, it also emphasized the importance of transparency and directed political parties to submit details of donations received through electoral bonds to the Election Commission of India.

Case law: Lok Prahari vs. Union of India: In this case, the Supreme Court issued directives to political parties to ensure transparency in political funding and directed the government to take measures to prevent corruption and undue influence in elections. While this case did not specifically address electoral bonds, it highlighted the broader issue of transparency and accountability in the electoral process.

9. **Environmental Protection:** The Environmental protection is a major constitutional issue in India, as it directly relates to the fundamental right to life and a healthy environment guaranteed under Article 21 of the Indian Constitution. The Indian judiciary has played a significant role in interpreting and enforcing environmental laws to ensure the protection and preservation of the environment. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which has been interpreted by the Supreme courts to include the right to a clean and healthy environment. This constitutional provision forms the basis for environmental protection laws and regulations in India.

M.C. Mehta v. Union of India (1987): this case is commonly known as the Oleum Gas Leak case; the Supreme Court addressed the issue of industrial pollution in the city of Delhi. The case arose from a leak of oleum gas from a factory in Delhi, which resulted in several deaths and injuries. The Supreme Court held that the right to life guaranteed under Article 21 includes the right to a clean and healthy environment. The court emphasized the need to protect the environment and prevent pollution to safeguard the health and well-being of citizens. The Public Trust Doctrine is a legal principle that holds that certain natural resources, such as air, water, and forests, are held in trust by the government for the benefit of the public. This doctrine forms the basis for environmental conservation and management in India.

M.C. Mehta v. Kamal Nath (1997): In this case the Supreme Court applied the Public Trust Doctrine to protect forests and wildlife in the state of Madhya Pradesh. The case involved illegal mining activities in the forests of Madhya Pradesh, which were causing environmental degradation and destruction of wildlife habitats. The Supreme Court held that the state government had a duty to protect the forests and wildlife as a trustee of the public trust. The court ordered the closure of illegal mines and directed the government to take measures to restore and rehabilitate the affected areas. The Polluter Pays Principle is a fundamental principle of environmental law that holds that the polluter should bear the costs of pollution prevention and control. This principle is enshrined in various environmental laws and regulations in India. **Indian Council for Enviro-Legal Action v. Union of India (1996):** In this case, the Supreme Court applied the Polluter Pays Principle to address pollution caused by industries in the Ganga river basin. The case involved industrial pollution from tanneries, paper mills, and other industries, which were discharging untreated effluents into the Ganga river, causing water pollution and environmental degradation. The Supreme Court held that the polluting industries were liable to pay compensation for the damage caused to the environment and directed them to install pollution control measures to prevent further pollution of the river.

Thus, the Indian judiciary has interpreted and applied constitutional principles to protect the environment and ensure sustainable development in the country. Through landmark judgments, the courts have established important legal principles and frameworks for environmental protection, setting precedents for future environmental litigation and advocacy efforts. Also Balancing economic

⁵⁹ Judgment of the case available at: <https://indiankanoon.org/doc/121499464/> (last visited on 24/5/2024)

development with environmental conservation and sustainable practices poses a significant challenge, especially in the context of climate change.

The current issues face by the Indian Constitution are discussed below:

a. Right to Privacy and Data protection bill: The major challenges while dealing with the Constitutional issue in India is the Right to Privacy. Privacy is the most difficult concepts to define and cannot be understood as a static concept. It is clear from the facts that in every 79 seconds an identity is being stolen, acknowledging the fact that privacy concern is increasing crime of these days. The right has mention under Article 21 of the Indian Constitution by the Supreme Court but it has become an issue regarding the concerns raised against the government's initiatives to collect personal data from citizens. Not only the right to privacy but the Data Protection Bill is itself at risk. This might overlap the powers of the government to regulate intermediaries under section 79 of the Information Technology Act, 2000. Clause 35 of the same bill provides wide power to the government to exempt any agency or department from partial or complete application of data protection law. This exception gives to the government use of data for surveillance, which hails against the decision laid out in the Puttaswamy Judgement that declared Right to Privacy as a fundamental right to the citizens. The terms and conditions of almost all the web pages include the permission for these pages into the user history to know the interests of the user. Hence, privacy is the major contemporary concerns of the constitutional law giving it a tough target of dealing with this issue.⁶⁰ Case Law: **Justice K.S. Puttaswamy (Retd.) v. Union of India (2017)** The issue in this case is regarding the recognition and protection of the right to privacy as a fundamental right under the Constitution. The Puttaswamy case challenged the constitutional validity of Aadhaar, India's biometric identification system, on grounds of privacy infringement. The Supreme Court recognized the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21. This case affirms the autonomy and dignity of individuals and set a precedent for privacy protection in the digital age.⁶¹

b. Same-sex marriage: In **Navtej Singh Johar v. Union of India**, the Supreme Court decriminalized homosexuality and upheld the rights of LGBTQ+ individuals. However, issues such as same-sex marriage and non-discrimination protections continue to be debated and litigated in various courts across the country. Recently, the Supreme Court of India has ruled in a 3:2 majority that the law does not recognize the right to marry or have civil unions for same-sex couples, states that it is up to the parliament to make such laws. The court direct the government to ensure that the queer community is not discriminated against in the community and to sensitize the public about queer rights.⁶² There are concerns that allowing same-sex marriage will create legal problems which leads to personal laws conflict, such as issues with inheritance, tax and property rights. Some people argue that it would be very difficult to change all the laws and regulations to accommodate same-sex marriage. There will be an issue about the adoption of children, it can lead to societal stigma, discrimination, and negative impacts on the child's emotional and psychological well-being in Indian society.

c. Religious and Communal tensions: The Religious and communal tensions in India have significant implications for the country's federal structure, social cohesion, and governance. India is a diverse country with multiple religions, languages, cultures, and ethnicities. This diversity is reflected in its federal structure, which grants significant autonomy to states and recognizes the distinct identities and aspirations of various communities. However, diversity also gives rise to religious and communal tensions, as different groups may have competing interests and perspectives. The Indian Constitution guarantees fundamental rights, including the right to freedom of religion, equality, and non-discrimination. It also provides for a secular state that does not endorse any particular religion and ensures equal treatment of all religious communities. However, tensions arise when there are perceived violations of these principles, such as discrimination based on religion or communal violence. Religious and communal tensions often intersect with issues of federalism, as states have significant autonomy in matters related to law and order, education, culture, and social welfare. States may enact laws or policies that reflect the interests and preferences of the dominant religious or communal groups within their territories,

⁶⁰ Contemporary issues faced by Indian Constitution, available at: <https://www.legalserviceindia.com/legal/article-2591-contemporary-issues-in-india-under-constitution-law.html> (last visited on 19/5/2024)

⁶¹ Facts of the case available at: <https://indiankanoon.org/doc/127517806/> (last visited on 27/5/2024)

⁶² Facts of the case available at: <https://blog.ipleaders.in/navtej-singh-johar-v-uo-i-judgment-which-decriminalized-homosexuality/> (last visited on 27/5/2024)

leading to tensions with minority communities or neighboring states with different demographics. Political parties in India often exploit religious and communal identities for electoral gains, exacerbating tensions and polarizing society along religious lines. Communal politics, based on religious or caste affiliations, can undermine the principles of secularism and federalism by fostering divisions and alienating certain communities from the political process. The Indian legal system plays a crucial role in addressing religious and communal tensions through the enforcement of laws, protection of fundamental rights, and adjudication of disputes. Courts have intervened in cases of communal violence, hate speech, and discrimination, upholding the principles of secularism, pluralism, and federalism enshrined in the Constitution. The Religious and communal tensions pose challenges to Indian federalism by undermining social cohesion, inter-community harmony, and the functioning of democratic institutions. Communal violence and polarization can disrupt the peaceful coexistence of different religious and ethnic groups, leading to law and order problems and weakening the fabric of federalism. There are various efforts have been made at the national and state levels to address religious and communal tensions through dialogue, reconciliation, and community engagement. Government initiatives, civil society interventions, and grassroots movements play a crucial role in promoting interfaith harmony, social integration, and inclusive development, thereby strengthening the foundations of Indian federalism. Therefore, religious and communal tensions in India intersect with the country's federal structure, posing challenges to social cohesion, governance, and democratic values. Addressing these tensions requires a multi-dimensional approach that emphasizes constitutional principles, rule of law, inclusive governance, and dialogue among diverse communities.

d. Cybersecurity and privacy: The Cybersecurity and privacy are the major constitutional issues in India especially in protecting the fundamental rights such as the right to privacy guaranteed under Article 21 of the Constitution. Article 21 of the Indian Constitution stated the right to life and personal liberty which has been interpret by the courts which comes along with the right to privacy. **Justice K.S. Puttaswamy (Retd.) v. Union of India 2017:** This is a landmark case in Indian constitutional law that addressed the issue of privacy as a fundamental right under the Indian Constitution. This case challenges the constitutional validity of the Aadhaar scheme, a biometric identification program launched by the Government of India. The petitioners, led by retired Justice K.S. Puttaswamy, argued that the Aadhaar scheme violated the right to privacy and other fundamental rights guaranteed under the Indian Constitution. The primary issue before the court was whether the right to privacy is a fundamental right protected under the Indian Constitution, particularly under Article 21 (Right to Life and Personal Liberty). The case also examined the constitutionality of the Aadhaar scheme, which sought to collect and store biometric and demographic information of residents of India for the purpose of identity verification. On August 24, 2017, a nine-judge bench of the Supreme Court delivered its judgment in the case. The court held that the right to privacy is a fundamental right under the Indian Constitution within Article 21. The court emphasized that privacy is intrinsic to the right to life and personal liberty and is essential for the exercise of other rights and freedoms. The use of surveillance technologies by the state raises concerns about privacy violations and the potential abuse of power. **Kharak Singh v. State of Uttar Pradesh, 1964:** In this case, the Supreme Court held that certain forms of police surveillance violated the right to privacy and personal liberty under Article 21. The collection, storage of personal data in the digital age raise concerns about data protection and information security in India. **Justice Puttaswamy (Retd.) v. Union of India (2017:** In this case, the Supreme Court emphasized the need for data protection laws and mechanisms to safeguard personal data from unauthorized access, misuse, and exploitation. The court highlighted the importance of balancing individual privacy rights with legitimate state interests and called for comprehensive data protection legislation to regulate the collection, storage, and processing of personal data. As India becomes more digitally connected, there are growing concerns about cybersecurity and the protection of personal data including data breaches and cyberattacks.

e. Farmers protest: The farmers' protest In India, which began in late 2020 and continued into 2021, holds implications for Indian federalism due to its impact on state autonomy, center-state relations, and governance. These protests raised concerns about farmers livelihood and agricultural reforms. The farmers' protest primarily revolved around three contentious farm laws passed by the central government that is the Farmers' Produce Trade and Commerce (Promotion and Facilitation) Act, the Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Act, and the Essential Commodities (Amendment) Act. The laws aimed to liberalize agricultural markets, provide greater market access to farmers, and attract private investment in

agriculture. However, farmers, particularly in states like Punjab and Haryana, raised concerns about the potential adverse impact of these laws on their livelihoods, MSP (Minimum Support Price), and traditional agricultural practices. Several states, particularly those with a significant agricultural population, opposed the farm laws and expressed solidarity with the protesting farmers. State governments, led by parties such as the Shiromani Akali Dal in Punjab and the Aam Aadmi Party in Delhi, criticized the central government's handling of the issue and demanded the repeal of the laws. The protests highlighted tensions between the central government and state governments over policy decisions affecting state subjects, agricultural markets, and farmers' welfare. For example, Punjab enacted three state laws aimed at negating the central laws and ensuring the continuation of MSP-based procurement of crops. This underscores the importance of state autonomy and legislative powers in addressing local concerns and protecting the rights of farmers. The farmers' protest underscored the importance of dialogue and cooperation between the central government and state governments in addressing contentious issues and resolving disputes. While the central government initially resisted calls for the repeal of the farm laws, it later engaged in dialogue with farmer unions and state governments to find a mutually acceptable solution. This highlights the need for constructive engagement and consultation in federal decision-making processes. The Supreme Court of India played a role in mediating the farmers' protest by forming a committee to facilitate talks between the central government and farmer unions. While the court's intervention was aimed at finding a resolution to the impasse, it also raised questions about the separation of powers between the judiciary and the executive and the limits of judicial intervention in policy matters. The farmers' protest brought to the fore issues related to federalism, including state autonomy, center-state relations, and the distribution of legislative powers between the central government and state governments. It highlighted the importance of considering local perspectives and addressing state-specific concerns in policymaking, particularly in sectors such as agriculture, which are vital to the livelihoods of millions of people across the country. Therefore, the farmers' protest in India is the complex interplay between federalism, governance, and public policy, highlighting the need for inclusive decision-making processes, dialogue, and cooperation among different levels of government to address the needs of the population. **Rakesh Vaishnav v Union of India & Ors:** In this case, on 12th January 2021, the Supreme Court passed an interim stay order on the implementation of three farm laws that is the Farmers (Empowerment & Protection) Agreement of Price Assurance & Farm Services Act, 2020, Farmers Produce Trade & Commerce (Promotion & Facilitation) Act, 2020 and the Essential Commodities (Amendment) Act, 2020. Three petitions were filed before the Court one which challenges the constitutional validity of the farm laws, the second which supports the implementation of the laws and the third which filed by some NCT Delhi residents, claims that these protests violate their fundamental rights.

f. Indian Constitution is Colonial and Outdated: Some argue that certain aspects of the Indian Constitution reflect colonial influences inherited from the British Raj. For example, the structure of the Indian Administrative Service (IAS) and other civil services, the parliamentary system of government, and the centralization of power at the Union level are seen as remnants of colonial rule. Additionally, the Constitution's emphasis on a strong central government and limited autonomy for states has been criticized for perpetuating colonial-era governance models that prioritize central control over local self-governance. Some scholars and activists argue that certain provisions of the Indian Constitution are outdated and no longer reflect the needs and aspirations of contemporary India. For example, the distribution of powers between the Union and the states, as delineated in the Seventh Schedule, is perceived as rigid and inadequate for addressing the complexities of governance in a rapidly changing society. The Constitution's failure to adequately address issues such as environmental protection, urban governance, and social justice is also cited as evidence of its outdated nature. Critics argue that the Indian Constitution has facilitated the centralization of power at the Union level, undermining the principles of federalism and local self-governance. The dominance of the Union government in matters such as taxation, defense, and inter-state trade, coupled with the discretionary powers of the President and the Governor, has led to a concentration of authority that limits the autonomy of states and local bodies. This centralization of power is seen as incompatible with the principles of federalism and democratic governance. Some critics argue that the Indian Constitution fails to adequately incorporate indigenous perspectives and traditions, particularly those of marginalized communities such as tribal and indigenous peoples. The Constitution's focus on Western legal principles and institutions is seen as insufficient for addressing the diverse cultural, social, and economic realities of Indian

society. This has led to calls for constitutional reforms that recognize and protect the rights of indigenous communities and ensure their meaningful participation in governance processes. Despite criticisms, many scholars and policymakers acknowledge the resilience and adaptability of the Indian Constitution in addressing the evolving needs and challenges of Indian federalism. While there is recognition of the need for reforms to address the shortcomings and lacunae in the Constitution, there is also a consensus on the importance of upholding its fundamental principles of democracy, secularism, and social justice. Any reforms to the Constitution must be undertaken through a participatory and consultative process that reflects the diversity of Indian society and respects the principles of federalism and democratic governance. The students of Jamia Islamia University prepare banners during a protest against the Citizenship (Amendment) Act in December 2019. The law sparked protests across the country which were marked by readings of the preamble to the Constitution. The Constitution was challenged in 2023 for being 'colonial' and outdated which claim that the constitution needs to be rewritten.⁶³ Therefore, while the Indian Constitution may be perceived as having colonial influences and outdated features in the context of federalism, it also serves as a foundational document that has guided India's democratic journey for over seven decades. Any critique of the Constitution must be balanced with an appreciation of its enduring significance and the challenges of governance in a complex and diverse society like India.

g. Article 370 and Jammu and Kashmir: Article 370 was incorporated into the Indian Constitution in 1949 as a temporary provision, reflecting the unique circumstances surrounding the accession of the princely state of Jammu and Kashmir to India. The article granted special status to Jammu and Kashmir, allowing the state to have its own constitution, flag, and autonomy in several areas, including governance, citizenship, and property rights. Article 370 exemplified the flexible and accommodative nature of Indian federalism by recognizing the diverse aspirations and identities of different regions within the country. It provided a constitutional framework for accommodating the special historical and political circumstances of Jammu and Kashmir within the larger federal structure of India. However, it also raised questions about the consistency and uniformity of federal principles across different states. Article 370 granted Jammu and Kashmir significant autonomy in several areas, including the ability to legislate on matters related to the state's internal affairs, except for defense, foreign affairs, finance, and communications. The article also provided for the application of only a limited set of central laws to Jammu and Kashmir, thereby preserving the state's distinct legal and administrative framework. Article 370 influenced centre-state relations by creating a unique dynamic between the Union government and the government of Jammu and Kashmir. While the Union government had limited authority over certain matters in the state, it also provided financial assistance and other forms of support to promote development and stability in Jammu and Kashmir. This relationship highlighted the delicate balance between autonomy and integration within the federal structure. Article 370 was a subject of controversy and debate in Indian politics, with some arguing for its abrogation or modification to ensure greater integration of Jammu and Kashmir with the rest of India. However, proponents of Article 370 contended that it was essential for preserving the unique identity and aspirations of the people of Jammu and Kashmir. The abrogation of Article 370 of the Constitution, which granted special status to Jammu and Kashmir, and the subsequent bifurcation of the state into two Union Territories (Jammu and Kashmir, and Ladakh) in 2019, faced legal challenges. While the Supreme Court declined to stay the abrogation, petitions challenging its constitutionality are pending. However, in the case of **Dr. Shah Faesal & Ors. V. Union of India**, the Supreme Court issued notice to the Centre on the petitions challenging the abrogation of Article 370. In August 2019, the Government of India, led by the Bharatiya Janata Party (BJP), abrogated Article 370 of the Indian Constitution, which granted special autonomous status to the state of Jammu and Kashmir. This decision was accompanied by the bifurcation of the state into two Union Territories: Jammu and Kashmir, and Ladakh. The abrogation of Article 370 and the reorganization of the state were met with widespread protests and criticism, both domestically and internationally. Many petitions were filed in the Supreme Court of India challenging the abrogation of Article 370 and the lockdown and restrictions imposed in Jammu and Kashmir following the government's decision. One such petition was filed by Shah Faesal, a former civil servant and politician, along with other petitioners, challenging the constitutionality and legality of the government's actions. The petitioners argued that the abrogation of Article 370 and the reorganization of Jammu and

⁶³ Emerging challenge to the Constitution, available at: <https://frontline.thehindu.com/the-nation/2023-emerging-challenge-to-the-constitution-suryapratim-roy-outdated-colonial-bjp-vigorous-amendments/article67653063.ece> (last visited on 23/5/2024)

Kashmir into Union Territories violated the principles of federalism, democracy, and constitutionalism. They contended that the government's actions were unconstitutional and arbitrary, as they were implemented without the consent of the people of Jammu and Kashmir and without following due process of law. The petitioners also raised concerns about the violation of fundamental rights, including the right to freedom of speech and expression, freedom of movement, and access to justice, due to the lockdown and restrictions imposed in the region. The Supreme Court heard the petitions challenging the abrogation of Article 370 and the lockdown in Jammu and Kashmir. The court considered arguments from both the petitioners and the respondents, including the Union of India, and examined the constitutional and legal aspects of the government's actions. The court also sought responses from the government on the allegations of human rights violations and restrictions on civil liberties in Jammu and Kashmir. The proceedings were ongoing, and the court was considering various legal and constitutional aspects of the matter. However, the case has significant implications for Indian federalism, center-state relations, and the protection of fundamental rights, and its outcome is awaited with keen interest by stakeholders within and outside India. Therefore, the case of *Shah Faesal and Others v. Union of India* represents a legal challenge to the abrogation of Article 370 and the lockdown in Jammu and Kashmir, raising important questions about the constitutionality, legality, and impact of the government's actions on federalism, democracy, and human rights in India. Therefore, Article 370 and its abrogation have had significant implications for Indian federalism, center-state relations, and the political dynamics of Jammu and Kashmir. While the abrogation was aimed at integrating Jammu and Kashmir more closely with the rest of India, it also sparked debates about the limits of federal power, the protection of minority rights, and the preservation of cultural and regional identities within the Indian Union.

h. Citizenship Amendment Act (CAA): The Citizenship Amendment Act (CAA) of 2019 is a piece of legislation passed by the Parliament of India that amends the Citizenship Act of 1955. The CAA provides a path to Indian citizenship for certain religious minorities from neighbouring countries who entered India before December 31, 2014, namely Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan. The CAA raises several constitutional issues related to equality, secularism, and non-discrimination enshrined in the Indian Constitution. Article 14 of the Constitution guarantees the right to equality before the law and prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Critics argue that the CAA violates Article 14 by granting preferential treatment to certain religious communities while excluding others. India's secularism, as enshrined in the Constitution, is based on the principle of equal treatment of all religions by the state. Many Critics of the CAA argue that by selectively granting citizenship based on religion, the act undermines the secular fabric of the country and violates the principle of secularism. They contend that citizenship should be based on objective criteria such as residency or nationality, rather than religious affiliation. The CAA has implications for federalism and the distribution of powers between the central government and the states. While citizenship is a subject in the Union List under the Seventh Schedule of the Constitution, the states have a role in implementing citizenship laws and policies. This raises questions about the extent of state autonomy and the role of states in shaping citizenship policies. The CAA has sparked protests and controversy in the north-eastern states, particularly Assam, where there are concerns about the impact of granting citizenship to migrants from Bangladesh on the region's demographic balance and indigenous communities. The Assam Accord of 1985, which ended a six-year-long anti-immigrant agitation in the state, sets March 24, 1971, as the cut-off date for identifying illegal immigrants. Critics argue that the CAA undermines the Assam Accord and the interests of indigenous communities in the region. The CAA has been challenged in the Supreme Court of India on constitutional grounds, including violations of Article 14 and secularism. The court has heard petitions challenging the constitutionality of the CAA and has yet to issue a final judgment. The legal proceedings have raised important questions about the interpretation of constitutional principles and the balance between individual rights and state interests. The Citizenship Amendment Act, passed in 2019, led to widespread protests and legal challenges. In the case of *Assam Sanmilita Mahasangha & Ors. V. Union of India*, the Supreme Court decided to examine the constitutional validity of the CAA. The matter is pending before a bench.⁶⁴ Therefore, the Citizenship Amendment Act raises significant constitutional issues related

⁶⁴ Facts of the case available at: <https://lawbhoomi.com/case-brief-assam-sanmilita-mahasangha-vs-union-of-india-uoi-2014-judgement/> (last visited on 28/5/2024)

to equality, secularism, federalism, and the rule of law in India. The act's impact on citizenship policies, state powers, and minority rights has sparked debates and legal challenges, highlighting the complex interplay between constitutional principles, political interests, and social dynamics in the country.

i. Reservation Policies: Reservation policies in India, aimed at providing opportunities for historically marginalized communities, raise several constitutional issues related to equality, affirmative action, and social justice. The Constitution, under Articles 15(4) and 16(4), allows the state to make special provisions for the advancement of socially and educationally backward classes of citizens or for Scheduled Castes and Scheduled Tribes in matters of admission to educational institutions and public employment. These provisions enable the government to implement reservation policies to address historical injustices and inequalities. Article 14 of the Constitution guarantees the right to equality before the law and prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. However, reservation policies, which grant preferential treatment to certain groups based on their social or economic status, have been criticized for potentially violating the principle of equality. Proponents argue that reservations are necessary to correct historical injustices and promote substantive equality by providing equal opportunities to disadvantaged groups. Reservation policies in India are often viewed as a form of affirmative action aimed at promoting social justice and inclusive development. By providing reserved seats or quotas in educational institutions, government jobs, and elected bodies, reservations seek to empower marginalized communities and bridge the gap between the privileged and the disadvantaged. Affirmative action is seen as a means to achieve substantive equality and address structural inequalities rooted in centuries of caste-based discrimination and social exclusion. The reservation policies in India are primarily caste-based, with quotas allocated for Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). SCs and STs, historically subjected to social discrimination and oppression, are granted reservation benefits to uplift their socio-economic status and ensure their representation in various spheres of public life. OBC reservations aim to uplift the socio-economic backwardness of certain communities based on caste. Over the years, the Indian Parliament has enacted several constitutional amendments to expand and extend reservation benefits to different groups. For example, the 93rd Amendment Act of 2005 inserted Article 15(5) to enable the state to make reservations for economically weaker sections (EWS) of society in educational institutions, in addition to existing reservations for SCs, STs, and OBCs. This amendment aimed to address the socio-economic backwardness of economically disadvantaged groups regardless of caste. Reservation policies in India have been subject to criticism, controversies, and legal challenges. Critics argue that reservations perpetuate caste-based identities, create resentment among non-reserved categories, and undermine meritocracy and efficiency in public institutions. There are also concerns about the creamy layer within reserved categories, where economically well-off individuals benefit from reservation benefits, thus depriving genuinely disadvantaged individuals of opportunities. Balancing the right to equality with the need for affirmative action is a delicate task for policymakers and the judiciary. While reservations are necessary to address historical injustices and promote social inclusion, they must be implemented in a manner that does not perpetuate caste-based identities or undermine the rights of individuals from non-reserved categories. Any changes or reforms to reservation policies must take into account constitutional principles, empirical evidence, and the evolving socio-economic realities of Indian society. Various cases have challenged reservation policies based on caste, religion, and socioeconomic status. In this case, *Indra Sawhney and Others v. Union of India*, commonly referred to as the Mandal Commission case, is a landmark legal judgment by the Supreme Court of India that addressed the constitutional validity of reservations based on caste in public employment. In the 1980s, the Government of India appointed the Mandal Commission to examine the issue of backwardness among various social groups and recommend measures for their upliftment. The Commission, headed by B.P. Mandal, submitted its report in 1980, recommending reservations for Other Backward Classes (OBCs) in government jobs and educational institutions. This recommendation led to widespread debate and protests across the country, particularly among upper-caste communities. Several petitions were filed in the Supreme Court challenging the constitutional validity of the Mandal Commission report and the government's decision to implement reservations for OBCs. The petitioners argued that reservations based on caste violated the principles of equality, non-discrimination, and meritocracy enshrined in the Indian Constitution. They contended that reservations should be based on socio-economic criteria rather

than caste. The Supreme Court heard arguments from both the petitioners and the respondents, including the Union of India and representatives of OBC communities. The court examined the constitutional and legal aspects of reservations based on caste and the extent to which they could be justified as a means of addressing historical injustices and socio-economic backwardness. The court also considered empirical data and expert opinions on the socio-economic status of different social groups in India. In its judgment delivered on November 16, 1992, the Supreme Court upheld the constitutional validity of reservations for OBCs in public employment but imposed certain limitations and conditions. The court ruled that reservations for OBCs should not exceed 50% of the total available seats and that the creamy layer among OBCs, i.e., individuals belonging to the OBC category but having a certain level of income or educational attainment, should be excluded from reservation benefits. The court also held that reservations should be temporary measures to address historical injustices and socio-economic backwardness and should not perpetuate caste-based identities indefinitely. The judgment in the *Indra Sawhney* case had far-reaching implications for reservation policies in India. It affirmed the principle of reservations as a constitutional means of promoting social justice and inclusion but also emphasized the need for balancing the rights of different social groups and ensuring that reservations do not perpetuate caste-based inequalities. The judgment led to the implementation of reservations for OBCs in government jobs and educational institutions, contributing to greater representation and empowerment of historically marginalized communities in Indian society. In **Indra Sawhney & Ors. V. Union of India**, the Supreme Court upheld the reservation policy but capped it at 50% and excluded the creamy layer from its benefits. Subsequent cases continue to address the constitutionality and implementation of reservation policies. Thus, the *Indra Sawhney* case represents a significant legal milestone in the evolution of reservation policies in India. It underscores the complex interplay between constitutional principles, social justice, and affirmative action in addressing historical injustices and promoting inclusive development in the country.

Hence, after discussing the Issues Faced by the Indian Constitution the researcher in the next Chapter tried to focus on the “Conclusion, Findings and Suggestions”

CHAPTER-VI CONCLUSION, FINDINGS AND SUGGESTIONS

6.1 CONCLUSION:

Therefore, from the above discussion, it can be said that Indian federalism is not static rather than a dynamic one that keeps changing with the situation and needs as per its behaviors.⁶⁵

After conducting a detailed study on federalism and constitutional issues in India, several key conclusions can be drawn:

1. **Balancing Federalism with Centralization:** India's federal system has evolved over time, with a delicate balance between the powers of the central government and the states. While the Constitution of India provides for a federal structure, there are instances where the central government has been criticized for encroaching upon the powers of the states.
2. **Distribution of Powers:** The Seventh Schedule of the Indian Constitution divides powers between the Union and the States in three lists – Union List, State List, and Concurrent List. However, there have been debates and conflicts over the years regarding the distribution of powers between the Centre and the States, leading to issues of autonomy and control.
3. **Challenges in Cooperative Federalism:** Although the concept of cooperative federalism is emphasized in India to promote collaboration between the Centre and the States, challenges remain in achieving true cooperation due to political differences, resource constraints, and differing priorities.
4. **Role of the Judiciary:** The Indian judiciary, particularly the Supreme Court, plays a crucial role in interpreting the Constitution and resolving disputes between the Centre and the States. Judicial pronouncements have shaped the federal structure of India, sometimes expanding or limiting the powers of different levels of government.
5. **Recent Trends and Reforms:** Recent trends in Indian federalism include initiatives like the Goods and Services Tax (GST) regime, which aim to harmonize indirect taxation across the country.
6. **Need for Dialogue and Consensus:** To address constitutional issues and strengthen federalism in India, there is a need for continuous dialogue, cooperation, and consensus-building.

⁶⁵ <https://www.journalofpoliticalscience.com/uploads/archives/4-1-3-565.pdf>

between the Centre and the States. Ensuring that the principles of federalism are respected while promoting national unity and integrity is essential for the country's progress.

Therefore, while federalism in India has faced challenges and debates over the years, it remains a crucial aspect of the country's governance structure. By addressing constitutional issues, promoting cooperative federalism, and respecting the autonomy of states within the framework of the Constitution, India can further strengthen its federal system for inclusive and sustainable development.

Therefore, a comprehensive study on federalism and constitutional issues in India reveals the intricate balance between centralization and decentralization of power, as enshrined in the Constitution. It delves into the historical evolution, key constitutional provisions, and significant judicial interpretations shaping India's federal structure. The analysis encompasses discussions on the distribution of powers between the Union and states, mechanisms for dispute resolution, and the impact of federalism on governance, policy implementation, and socio-economic development. Furthermore, it highlights contemporary challenges and debates surrounding federalism, such as inter-state relations, fiscal federalism, and the role of regional parties in shaping India's federal dynamics. This study serves as a foundational resource for policymakers, scholars, and stakeholders navigating the complexities of federalism within India's constitutional framework.

A comprehensive study on federalism and constitutional issues in India also reveals a nuanced landscape shaped by historical, political, and socio-cultural factors. Through rigorous examination, it becomes evident that while India's federal structure is enshrined in its constitution, practical implementation often deviates from ideal principles. Moreover, the study illuminates the evolving nature of constitutional interpretation and amendment, reflecting ongoing debates surrounding federalism, minority rights, and the distribution of legislative powers. Judicial activism plays a pivotal role in shaping constitutional discourse, serving as a mechanism for safeguarding federal principles and addressing emerging legal complexities. Furthermore, the study sheds light on the intersection of federalism with issues of identity, diversity, and social justice, emphasizing the need for inclusive governance frameworks that accommodate India's pluralistic society.

Therefore, while India's federal structure provides a framework for democratic governance, the study underscores the imperative of addressing systemic challenges and fostering cooperative federalism to realize the constitutional ideals of unity, diversity, and justice. This nuanced understanding serves as a foundation for informed policymaking, institutional reform, and sustained dialogue aimed at strengthening India's federal and constitutional framework in the 21st century.

6.2 FINDINGS OF THE STUDY:

The studies on federalism and constitutional issues in India have explored various aspects of governance, center-state relations, and the functioning of democratic institutions.

1. Firstly: The key finding is the dynamic balance of power between the Union government and the states. While the Indian Constitution provides for a federal system with division of powers between the Union and the states, the actual distribution of powers can be complex and subject to interpretation.
2. Secondly: Studies have also examined mechanisms for resolving conflicts and disputes between the central government and the states. While the Constitution provides for mechanisms such as the Inter-State Council and the Finance Commission to address centre-state disputes and fiscal matters, their effectiveness in resolving contentious issues has been questioned. Research suggests the need for stronger institutional mechanisms and processes for dialogue, negotiation, and dispute resolution to promote cooperative federalism and harmonious centre-state relations.
3. Thirdly: The Indian Constitution has been subject to numerous amendments since its adoption in 1950, many of which have had implications for federalism and centre-state relations. Studies have analysed the impact of constitutional amendments on the distribution of powers, fiscal federalism, and the autonomy of states. Research suggests that while some amendments have strengthened federal principles and empowered states, others have centralized power in the hands of the Union government, leading to tensions and conflicts with states.
4. Fourthly: The judiciary plays a crucial role in interpreting the Constitution and adjudicating disputes related to federalism and constitutional issues. Studies have examined landmark judgments by the Supreme Court of India on issues such as the division of powers, fiscal federalism, and state autonomy. Research suggests that judicial activism and judicial review have contributed to the evolution of federalism in India by clarifying constitutional principles, protecting state rights, and upholding the rule of law.
5. Fifthly, The Supreme Court recognized privacy as a fundamental right, affirming its importance in safeguarding individual autonomy, dignity, and freedom.

6. Sixthly, recognizing the right to privacy as a fundamental right, the court acknowledged that this right is not absolute and may be subject to reasonable restrictions imposed by the state for legitimate purposes such as national security, public order, and social welfare.

7. Lastly: Studies on federalism and constitutional issues in India have highlighted various challenges facing the country's governance system, including fiscal imbalances, administrative inefficiencies, and political tensions between the centre and the states. At the same time, research has identified opportunities for strengthening federalism through reforms in areas such as inter-governmental relations, fiscal management, and decentralization of powers. Scholars have emphasized the importance of inclusive and participatory governance processes that involve all stakeholders in decision-making and policy implementation to promote democratic values and social justice.

6.3 SUGGESTIONS:

Federal issues:

To strengthen federal governance, the following suggestions could be considered:

1. The financial autonomy of states should be enhanced by revisiting the distribution of resources between the Union and states. The central government could increase the states' share of taxes or grant more flexibility in utilizing central funds. Furthermore, empowering local governments with direct access to financial resources could strengthen grassroots governance.
2. States should be granted greater flexibility in framing policies, especially in areas like education, health, and infrastructure, that directly impact regional development. It could achieve by reviewing the Seventh Schedule of the Indian Constitution and transferring more subjects from the Concurrent and Union Lists to the State List.
3. The Inter-State Council should play a more active role in resolving disputes between states and between states and the Union. Regular meetings of this council, with clear mandates, would ensure better coordination and cooperation among different levels of government.
4. Amendments to the Constitution can provide more clarity on the division of powers between the Union and state governments, especially in areas where concurrent jurisdiction often leads to conflicts. A special commission could be set up to review and address ambiguities in constitutional provisions regarding federalism.
5. The role of the Rajya Sabha as a chamber representing states' interests should be reinforced. This could include allowing states more say in national policymaking, particularly in matters that directly affect their governance, by empowering state-nominated representatives to raise region-specific concerns more effectively.
6. A faster and more efficient mechanism for resolving inter-state disputes through judicial and quasi-judicial bodies could prevent prolonged federal tensions. Specialized courts or tribunals for federal disputes could ensure speedy resolution and reduce the burden on the judiciary.
7. Areas that fall under the Concurrent List often see conflicts over jurisdiction. Improving coordination between the central and state governments through joint committees or working groups on specific issues can streamline decision-making and avoid duplication of efforts.

Constitutional issues

To address constitutional issues in India, the following suggestions could help create a more harmonious and effective system:

1. The Constitution should be reviewed to address any ambiguities in the separation of powers between the executive, legislative, and judiciary. This will prevent overlaps and reduce conflicts, ensuring that each branch operates within its constitutional limits.
2. To maintain the integrity of the judiciary, reforms in the process of judicial appointments and transfers are necessary. A more transparent and accountable system, possibly with a wider consultation mechanism involving multiple stakeholders, would help preserve judicial independence and public trust in the judiciary.
3. Address constitutional issues related to electoral practices by implementing reforms aimed at improving transparency in campaign financing, ensuring free and fair elections, and strengthening the Election Commission's autonomy. Introducing measures to curb electoral malpractice would enhance democratic governance.
4. Amendments to the Constitution, when needed to address evolving societal needs, should be facilitated through a more streamlined yet thoughtful process. Ensuring that constitutional

amendments are debated thoroughly but without unnecessary delays will make the system more responsive to contemporary challenges.

5. Ensure that fundamental rights are effectively protected by reinforcing legal and institutional frameworks that provide swift and accessible remedies for violations. Enhancing public awareness and access to legal recourse would empower citizens to uphold their rights.

6. Constitutional reforms could also focus on refining the federal structure by providing clearer distinctions in areas of shared responsibility between the Union and state governments. This would reduce conflicts over jurisdiction and promote better collaboration in governance.

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