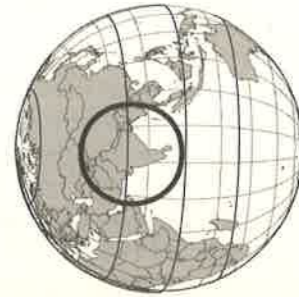


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- 11 Sven Leunig, *Föderale Verhandlungen: Bundesrat, Bundestag und Bundesregierung im Gesetzgebungsprozess* (Frankfurt am Main: Lang, 2003); and Hans-Peter Schneider, "Die Aufgabenverteilung zwischen Bund und Ländern nach dem Grundgesetz: Eine Ausprägung des Subsidiaritätsprinzips?" *Die Entwicklung des Staates der Autonomen in Spanien und der bundesstaatlichen Ordnung in der Bundesrepublik Deutschland*, ed. Jutta Kramer (Baden-Baden: Nomos, 1996), pp. 37–47.
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## India

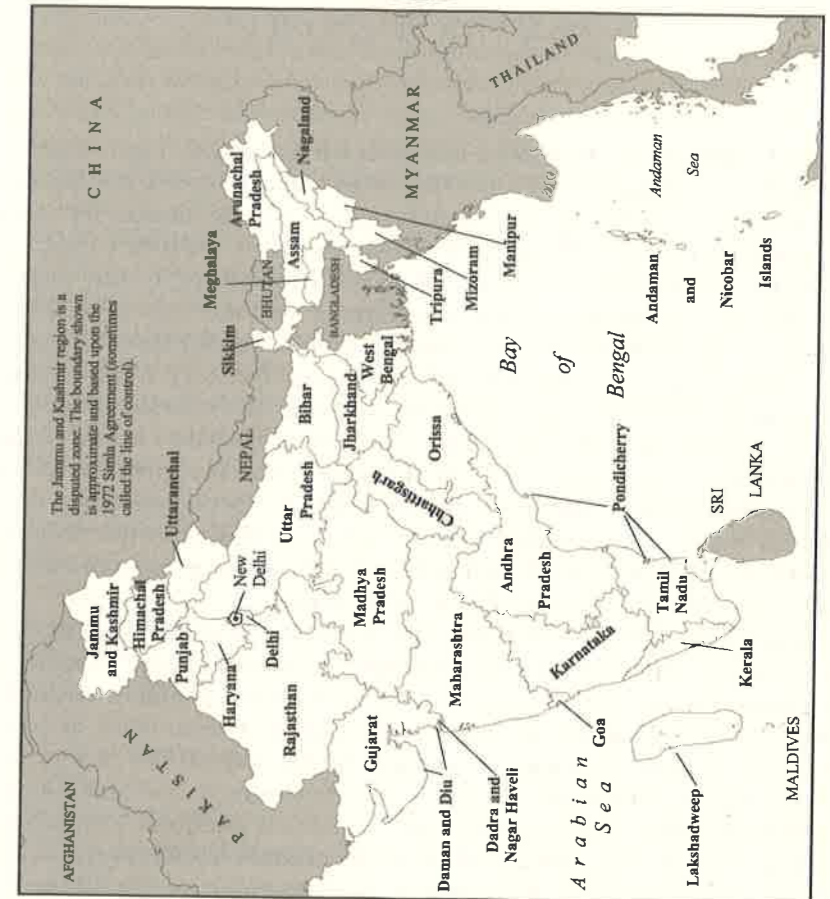
Capital: New Delhi  
Population: 1 Billion  
(2002)

Boundaries and place names are representative only and do not imply any official endorsement.



500 0 500  
Kilometers

Source: Times Atlas of the World; ESRI Ltd.; CIA World Factbook



## Republic of India

AKHTAR MAJEED

India's Constitution, which came into force on 26 January 1950, when India became a republic, is the world's longest, with 395 articles (divided into 22 parts), 12 schedules, and three appendices. The framers, following the tradition of detail found in the Government of India Act 1935, rejected brevity. The Constitution is, in fact, a detailed legal code dealing with all important aspects of the constitutional and administrative system of India. It establishes a "Union of States," which now consists of 28 states, six "union territories," and one National Capital Territory. It also defines the powers of the executive, legislative, and judicial branches of government; provides a standard by which the validity of the laws enacted by the legislature is tested; and establishes the judiciary as the guardian of the Constitution.<sup>1</sup> The Constitution is generally flexible but rigid in many of its "federal" matters that pertain to the states, and any change in the "federal" provisions requires a special two-thirds majority in Parliament and ratification by at least half of the legislatures of the states.

Having a land area of 3,287,263 square kilometres and a population of more than a billion, India is an extremely plural society with 18 national languages and some 2,000 dialects, a dozen ethnic communities and seven religious groups (fragmented into a large number of sects, castes, and sub-castes), and some 60 socio-cultural subregions spread over seven geographic regions. The population is 83 percent Hindu, 11 percent Muslim, 2 percent Christian, 2 percent Sikh, and 1 percent Buddhist. The country is also poor, with a per capita gross domestic product of US\$2,840 in 2001, although this figure does reflect accelerated economic growth during the 1990s.

Consequently, the Constitution, reflecting concerns about centrifugal forces that might fragment India, establishes a rather centralized polity in which the Union government is vested with sufficient powers to ensure not only its dominance, but also its ability to rule in a unitary fashion if neces-

sary and politically feasible. Equally important, the country's diversity and socio-economic conditions, coupled with the ideological influences of socialism, drove the Constitution toward a kind of organically unitary federalism in the name of justice, equality, and rights protection.<sup>2</sup> Only a strong centre, thought many of the founders, could effectively drive economic development and ensure equity across territorial jurisdictions, religions, languages, classes, and castes. Hence the trend generally was toward ever more centralization under the Congress Party from independence to the 1980s. During this decade, however, Union-state relations became more rancorous, the Congress party began to decline, and a coalition government, the National Front, assumed power in New Delhi as a result of the 1989 elections in part because centralized federalism driven by a monopoly party for some 40 years had fallen far short of achieving the objectives set forth in the Constitution. Since 1989, coalition governments at the Centre, proliferating regional and state parties across the country, and liberalization of the economy have served to decentralize the federal political system in many respects.

The Constitution also establishes a Westminster-style parliamentary federation in which, politically, emphasis is placed on the power of the lower house of parliament, the *Lok Sabha*, and the government's primary responsibility is to this house rather than to the upper house of the states (*Rajya Sabha*). However, unlike Australia and Canada, which also are parliamentary federations, India is a republic that jettisoned the British monarch upon independence. At the same time, while India's Constitution rejects presidentialism, the country does have an elected president, who, moreover, formally appoints the prime minister and the governors of the constituent states. Additionally notable is the survival and comparative success of India's Constitution and federal democratic arrangement compared to the fates of those implemented by other British colonies – such as the East African Federation, Malaysia, Nigeria, Rhodesia and Nyasaland, and the West Indies – that attempted to establish postindependence constitutional federalism and democracy.

### HISTORICAL BACKGROUND AND DEVELOPMENT

During British colonial rule, the Government of India Act 1919 had introduced a system of "dyarchy" in the provinces in which subjects were classified as central or provincial. The latter were divided into (1) transferred subjects administered by the governor and his Council of Ministers responsible to the Legislative Council and (2) reserved subjects administered by the governor and his Executive Council.<sup>3</sup> However, the Government of India remained, with the governor general in council, responsible only to the British Parliament (through Great Britain's secretary of state for India).

The central legislature consisted of the Council of Ministers (six members) and the Legislative Assembly (144 members). Each had a large number of unelected and nominated members.<sup>4</sup> It was a unitary system in which the central legislature could legislate on any matter.

The Government of India Act 1935 divided powers between the Centre and the provinces, providing for the concurrent exercise of power over some matters. The British governor general could also assign residual powers to either the Centre or the provinces. This act established a federal system of government in place of the unitary one. The constituent units of the federation included the governors' provinces and the 562 Indian (princely) states. Provinces were established as per administrative requirements and exigencies. The governor general had powers to legislate on a reserved subject or a subject of special responsibility by means of a temporary ordinance or a permanent act. It also was possible for the governor general, in case of a breakdown of the constitutional machinery in a province, to assume all or any of the powers entrusted to the province. The federal legislature consisted of the British monarch (represented by the governor general) and two houses: the Legislative Assembly consisting of 500 members and the Council of States consisting of 260 members. A seven-member federal court exercised exclusive original jurisdiction in any dispute between the federation and the constituent units or between these units.

In 1946 a Constituent Assembly was established to frame the Constitution of India.<sup>5</sup> It completed its work on 24 January 1950, with the Constitution coming into effect on 26 January 1950. The British Parliament passed the India Independence Act 1947 on 18 July 1947, and India became independent on 15 August 1947, being divided in the process into two independent dominions: India and Pakistan. The Indian Independence Act 1947 terminated the paramountcy of the British Crown over India's princely states and granted their independence; however, by 1948 all the princely states had acceded to India. In 1956, on the recommendations of the States Reorganization Commission, all 27 states were reorganized on a linguistic basis into 14 states, each of which had a dominant regional language. Subsequent reorganizations increased the number of states to the present 28, in addition to six territories administered directly by the Union government.

#### *Constitutional Nation Building*

The leaders of India's Freedom Movement, the founding fathers of the Constitution, reconciled many diverse forces and ideologies and agreed on a set of principles as the basis of the Indian Constitution: universal adult franchise, democratic liberal-federal republicanism, secularism, universal and fundamental rights, state intervention against inherited inequalities,

and social justice. To give effect to these principles, the federal Union was formed to (1) put in place a mechanism of federal governance with a strong parliamentary centre, (2) guarantee cultural autonomy to regions with strong linguistic, religious, tribal, and/or territorial identities, (3) create a mixed economy with sectors demarcated for state and private enterprise, and (4) reduce regional and economic disparities through fiscal federalism and planning.<sup>6</sup>

The Constituent Assembly decided not to use the term "federalism" in the Constitution; in fact, amendments to describe India as a federation were defeated in the Assembly (and the word "federal" is still rarely used in official documents). If one asks what the principal aims of the drafters of the Constitution were with regard to federalism, the answer is that they were not thinking of federalism in the usual sense at all. If one examines the debates in the Constituent Assembly and its working committees, one finds that the overriding aim of the members of the Constituent Assembly was to build a united polity out of a highly fragmented and segmented society.<sup>7</sup> With this in mind, they placed the residual powers in the hands of the Union. They also granted more powers to the Union because the Constitution was being finalized in the aftermath of the partition of India into India and Pakistan. Their second aim was to develop this highly undeveloped country, to eliminate poverty, illiteracy, backwardness, and obscurantism, and to build a modern nation-state.

The impetus for national unity, as represented by the Freedom Movement, was so strong that the subnational identities of citizens were given little consideration. Only later was it realized that federalism could help solve conflicts rooted in territorially based ethnic, religious, linguistic, and other characteristics. In a very limited sense, Indian federalism can be called asymmetrical because there are special provisions for Kashmir, Nagaland, and Meghalaya. Otherwise, states cannot choose their own governmental and political arrangements, and the movement of more and more subjects from the Constitution's State List to the Concurrent List during the twentieth century partly reflected attempts to make things more symmetrical nationwide. However, even though mobilization at the grass roots is working to the advantage of women and backward sections of society, the overall progress of more recent decentralization efforts is slow.

#### MAIN FEATURES OF THE CONSTITUTION

The purpose of the Constitution is to identify the sources of constitutional authority and the objectives it seeks to establish and promote. The Objectives Resolution of the Constituent Assembly (22 January 1947) had declared that all powers and authority of the Sovereign Independent India,

its constituent units, and its organs of government are derived from the people and that adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes. The Preamble lays down the objectives of constituting India as "a Sovereign, Socialist, Secular, Democratic Republic" and of securing to all the citizens justice, liberty, equality, and fraternity.

The Forty-Second Amendment Act 1976 inserted "Socialist" into the Preamble out of political expediency during the Emergency of 1975-77. Demands to insert "Socialist" into the Preamble during the framing of the Constitution were rejected by the Constituent Assembly after B.R. Ambedkar pointed out that the Directive Principles in Part IV were declared to be "fundamental in the governance of the country" and that the state was mandated to implement them by applying the principles in making laws. Referring, in particular, to these provisions of the Constitution, Ambedkar had observed that if these Directive Principles were not socialistic in their direction and in their content, then it was difficult to understand what socialism was.<sup>8</sup> Socialism, as rationalized today, aims at eliminating inequality and exploitation and at providing a decent standard of life for all citizens, which is precisely what these Directive Principles seek to ensure for the governance of the country.

#### *Sovereignty and Citizenship*

The institutions of governance derive their authority from the Constitution, and they function within the limits demarcated by it. It is the people of India, according to the Preamble, who have given to themselves this Constitution, and it is the people of India who have resolved to constitute India as a sovereign democratic republic. This implies that sovereignty lies with the whole people of India. The Constitution describes India as "a Union of States" and implies that its unity is indestructible. The Constitution prescribes not only the structure of the Union government but also that of the state governments. It does not envisage dual citizenship; there is only one citizenship for the whole of India.

#### *Flexible and Rigid*

The Constitution is partly rigid and partly flexible because the procedures for its amendment are neither very easy nor very difficult. Only for a few of the constitutional provisions (dealing with federal provisions) does the amendment process require ratification by state legislatures, and even in these cases, ratification by only half of them suffices. The rest of the Constitution may be amended by a majority of not less than two-thirds of the members of each house of Parliament present and voting (Art. 368).

#### *Cabinet Government*

Both for the Union and the states, a "cabinet-type" system of parliamentary government has been instituted in which the executive is continuously responsible to the legislature. The Union Cabinet is composed of the prime minister and his Council of Ministers. The president (who is the head of state) formally appoints the prime minister and, on the latter's advice, appoints other ministers.<sup>9</sup> The president is aided and advised, in the exercise of his functions, by the Council of Ministers (Art. 74). Similarly, the governor (appointed by the president) is the head of a province or state and similarly appoints the chief minister and the Council of Ministers for his or her state. The prime minister for the Union and the chief minister for a state remain in office as long as they enjoy the confidence of the majority in the legislature (lower house). The president and a governor are the constitutional heads, and the executive power is vested in the prime minister and the chief minister and in their Councils of Ministers.

#### *Independence of the Judiciary*

There is a single integrated judicial system for both the Union and the states that administers both the Union's and the states' laws. The Supreme Court has "original jurisdiction" (Art. 131) in any dispute between the Government of India and any state or states as well as between two or more states. For the appointment of judges (by the president), there are rigid qualifications, and the chief justice of India has to be consulted in the appointment of judges of the Supreme Court of India and of the high courts of the states. A judge of the Supreme Court remains in office until he or she attains the age of 65 years, resigns, or is removed by impeachment on grounds of proved misbehaviour or incapacity. The conduct of the judges is beyond the subject of discussion in the legislature unless the process is in motion for a judge's removal from office through a rigid impeachment procedure by the Parliament. The judiciary has been given the power to declare a law to be unconstitutional if it is beyond the jurisdiction of the legislature according to the distribution of powers provided for by the Constitution or if it is in contravention of the fundamental rights or of any other mandatory provisions of the Constitution (Art. 13). The judiciary can thus look into matters respecting the jurisdiction of the legislature but not into the "wisdom" of legislative policy.

#### *Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties*

The fundamental rights, in Chapter III (Arts 14-32) of the Constitution, are "justiciable," inviolable, and binding on the legislature and the executive.

A citizen has a right to seek judicial protection if any right is violated, and any act of the legislature or order of the executive at any level of governance can be declared null and void if it violates the fundamental rights of the citizens. The Constitution elaborates these rights as: the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies. Six freedoms are conferred under the right to freedom in Article 19: speech and expression, peaceable assembly, association and unionization, cross-country movement or mobility, residence and settlement anywhere in India, and profession, occupation, trade, or business.

Part IV (Arts 36-51) of the Constitution provides for Directive Principles of State Policy, which are to supplement the fundamental rights in achieving a welfare state. These are in the nature of general directions or instructions to the state, embodying the objectives and ideals that the Union and state governments **must** bear in mind while formulating policy and making laws. The principles are not justiciable; that is, they are not legally enforceable by any court, and the state cannot be compelled through the courts to implement them. The principles are aimed at the establishment of a social and economic democracy in consonance with the nature of a welfare state, as promised in the Preamble to the Constitution. These principles emphasize that the Indian polity is a welfare state with a duty to ensure for its citizens social and economic justice and the dignity of the individual. They comprise ideals, particularly economic and social, for which the state is expected to strive, which it has mostly done. They are intended as "instruments of instruction" in the governance of the country.

The Forty-Second Amendment Act 1976 incorporated a set of Fundamental Duties in a separate part added to Chapter IV (Art. 51-A). These duties are intended to encourage modern and scientific values and a feeling of common nationality. Just as the Directive Principles are addressed to the state, the Fundamental Duties are addressed to the citizens. Examples of these citizen duties are obligations "to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem" and "to safeguard public property and to abjure violence."

#### *Basic Structure Doctrine*

The Preamble to the Constitution specifies certain objectives that reflect the basic structure of India's Constitution and that cannot be amended, as the Supreme Court of India emphasized in *Keshavanada Bharati v State of Kerala* (1973). In this case, the Court opined: "The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:

(1) Supremacy of the Constitution; (2) Republican and Democratic form of Government; (3) Secular character of the Constitution; (4) Separation of powers between the legislature, the executive, and the judiciary; (5) Federal character of the Constitution."<sup>10</sup>

Elements of the above ruling were reinforced in *Indira Nehru Gandhi v Raj Narain* (1975)<sup>11</sup> and in *Minerva Mills Ltd. v Union of India* (1980).<sup>12</sup> In 2000 the Supreme Court reinforced the principle of separation of powers between the legislature, the executive, and the judiciary and emphasized the principle of an independent judiciary.<sup>13</sup> The Court also has elaborated other items. Most notably, it has upheld as part of the "basic structure" (1) the democratic form of life, as distinct from mere adult franchise, (2) guarantees of fundamental rights, and (3) the secular nature of the state, such that there is no state religion.

#### THE STATES IN THE UNION

The Constituent Assembly of India set up a federal system by encompassing the provinces in a federal union and placing them all on the same legal footing. Use of the term "union" indicates that Indian federalism did not come into existence due to some mutual agreement or compact among the constituent units and that these units have no freedom to secede from the union. The reason there are no provisions or safeguards for the protection of states' rights is that the states were not sovereign entities when the Union was formed. Given that the Union is not the result of any agreement between the states, there is no concept of equality of states' rights and, consequently, no equality of representation of states in the Council of States (the second chamber of the Union Parliament). The second chamber is thus not a "federal" chamber. The states did not exist prior to the Constitution except as administrative divisions of a unitary state. They have no powers or rights of their own apart from those delegated to them by the central authority. Therefore, the states cannot claim any inviolability as regards their territory, boundaries, area, or even name.

Indeed, in contrast to Article IV, Section 3, of the US Constitution, under Article 3 of India's Constitution, Parliament is empowered by ordinary legislative processes to (1) form a new state by separating territory from any state, or by uniting two or more states or parts of states, or by uniting any territory with a part of any state, (2) increase or diminish the area of any state, or (3) alter the boundaries or name of any state. The states have no say in the matter except if the proposed bill affects the area, boundaries, or name of any state, in which case the bill is referred to the legislature of the affected state so that it can express its opinion within a specified time. The president thus ascertains the views only of the state legislature on the proposal before the Union Parliament. The states are not indestructible units.<sup>14</sup>

The division of powers between the Union and the states reflects the distribution of responsibilities between them. The Union has been assigned the duty of nation building, maintenance of unity, protection of territorial integrity of the country, and maintenance of constitutional-political order throughout the country. The states are to cooperate with the Union in performing these functions and in discharging their own constitutional duties with regard to local issues. But as soon as any subject ceases to be "local," the Union may intervene to legislate on the matter.

Article 257(1) of the Constitution elaborates that "the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose." Under this provision, the Union can issue a direction only where some action of a state government is likely to prejudice the exercise of the executive power of the Union, as noted by the Supreme Court in *State of Rajasthan v Union of India* (1977).<sup>15</sup> When matters fall within state jurisdiction, such as the maintenance of law and order, Article 257(1) cannot be applied.

The power of the Union government to give directions to the state governments is fortified by Article 365. If a state government flouts directions provided by the Union government, the president can conclude that "a situation has arisen in which the Government of [a] State cannot be carried on in accordance with the provisions of this Constitution." If one carefully analyzes this provision, the operative word appears to be *cannot*, implying an impossibility of governance rather than any difficulty in governance. It is clear that a presidential proclamation under Article 356 is for emergencies; it is not to be made based upon a consideration that is extraneous to the purpose for which the power is conferred – that is, a breakdown of constitutional machinery in a state. Such a provision should not be seen as contrary to the federal principle. For the federal Constitution to function, the Union executive must have the power to give directions to the state executives, as the executive authority of the federation also extends to states.

The status of the states under the Constitution can be summed up as follows:

- 1 The Constitution does not grant to any state the right of secession.
- 2 The states have no a priori rights or powers but only rights or powers expressly granted to them by the Constitution. Even the residual powers are vested in the Union government. In the field of concurrent powers, Union law prevails over a state law that conflicts with a Union law.
- 3 There is a single constitution for both the Union and the states. No state has the right to adopt its own constitution. Part VI of the Constitution provides the framework for the government of the states.
- 4 There is a single unified judiciary for the whole country and an integrated civil service under the supervision and control of the All-India Services.

- 5 There is a single citizenship for the people of the country and no separate citizenship for the people of any state.
- 6 The governors of states are appointees of the Union government (i.e., of the president), and besides being the constitutional head of state, a governor also is the eyes and ears of the Union in the state.
- 7 The Constitution guarantees individual rights and rights of certain groups, such as scheduled castes, scheduled tribes, and minorities, but not of states as such. It does not concede even the right of equal representation to the states in the upper house of the Union Parliament.

In turn, the Constitution requires the Union to (1) protect every state against external aggression and internal disturbance and (2) ensure that the government of each state is carried on in accordance with the Constitution.

The Union government can acquire the features of a unitary system in an emergency, in which case its legislative power extends to state subjects. Even in normal circumstances, the Council of States can, by a two-thirds vote, transfer a subject from the State List to the Union List if such legislation is necessary for the "national interest." There is likewise a kind of paramountcy of the Union in provisions for the suspension of state governments and the imposition of President's Rule. Union-state cooperation, as worded in Part XI of the Constitution, leaves ample scope for conflict over interpretation of definitional phrases such as "national interest" and "Union's direction." Article 263, therefore, allows the president to establish an Inter-State Council to work out modalities for continuing cooperation and to forge procedures for coordination between the Union and the states as well as among the states themselves. The text of Article 263 is so phrased as to allow the council to discuss, debate, and recommend suitable policy measures on any subject, whether characterized as "national" or as "public." There is scope for enlarging the ambit of the council, as it would be lawful for a presidential order "to define the nature of the duties to be performed by it and its organization and procedure." As an advisory body, the council may inquire into disputes that "have arisen between states"; investigate and discuss subjects "in which some or all of the States, or the Union and one or more of the States, have a common interest"; or recommend better coordination of policy and action on any subject necessitating interaction between the Union and the states.

However, all of the foregoing does not mean that states are mere appendages of the Union. In the sphere allotted to them, the states are supreme and have an independent constitutional existence. The Constitution is in the nature of a covenant among the people as such, and the states are the creation of this Constitution. The Constitution therefore guarantees individual rights and freedoms and singles out minorities for double protection, first under provisions of general rights and freedoms (Arts 14, 19, 20-23) and again

under provisions specifically pertaining to freedom of religion and cultural and educational rights (Arts 15, 16, 25-30). In addition, government can engage in affirmative action, or positive discrimination, by making special provisions "for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."<sup>16</sup>

#### THE CONSTITUTIONAL AMENDMENT PROCESS

Three procedures for amendment are detailed under Article 368: amendment by simple majority, by special majority, and by ratification by the state legislatures.

*Amendment by simple majority.* A number of articles in the Constitution are of a transitory nature and can be changed by Parliament through a law enacted by a simple majority. Examples include changes in the names and boundaries of the states, creation or abolition of the legislative councils in the states, and changes in the salaries and allowances of the president, governors, and judges of the Supreme Court and high courts, among others.

*Amendment by special majority.* Under this procedure, an amendment to the Constitution may be initiated only by the introduction of a bill for this purpose in either house of Parliament. After the bill is passed in each house by a majority of the total membership of each house and by a majority of not less than two-thirds of the members present and voting, and after it has received the president's approval, the Constitution stands amended.

*Ratification by the state legislatures.* For the amendment of certain other provisions of the Constitution (mainly the "federal" provisions), a bill has to be passed by each house of Parliament by a majority of the total membership of each house and by a majority of not less than two-thirds of the members present and voting. The amendment then must be ratified by the legislatures of not less than one-half of the states before being presented to the president for assent. This requirement of ratification by one half of the state legislatures can be viewed as an additional check on the Parliament's constitutive authority.

The following provisions of the Constitution fall under this latter category: (1) election of the president (Art. 57), (2) extent of the executive power of the Union (Art. 73), (3) extent of the executive power of the states (Art. 162), (4) the Union judiciary (Ch. IV of Part V), (5) high courts in the states (Ch. V of Part VI), (6) any of the lists in the Seventh Schedule, (7) the representation of states in Parliament, and (8) provisions dealing with amendment of the Constitution.

India's Constitution is not a covenant, or compact, between the states; rather, the states are the creation of the Constitution and subsequently of Parliament. Consequently, the states do not have an inherent right to share in the amending process, except insofar as the Constitution provides for state legislative participation in the matters listed above - all of which impinge significantly upon the states. In turn, in all cases but one, the states cannot initiate a move for any constitutional amendment, the exception being that the Constitution leaves to the initiative of the state legislatures the creation or abolition of a second chamber in a state legislature.

#### DUAL POLITY: LOCAL PANCHAYATS AND MUNICIPALITIES

The Seventy-Third and Seventy-Fourth Amendments (1992), which introduced Parts IX and IXA of the Constitution, give constitutional status to local bodies, both urban and rural, as almost a third order of government, but the character of India's federal polity remains otherwise unaltered. These local governments have been granted some powers but must depend mostly on financing from the state governments in order to perform the functions assigned to them. Part IX of the Constitution outlines the framework of institutions of rural self-government: a three-tier system of units known, in ascending order, as the village, intermediate, and district *panchayats*.<sup>17</sup>

Part IXA sets forth the framework of urban local government. Three types of institutions of local self-government have been provided for urban areas, namely *nagar panchayats* for transitional areas (i.e., areas that are being transformed from rural to urban), municipal councils for small urban areas, and municipal corporations for large urban areas. Every state is obliged to constitute such units. Local government remains an exclusive state subject. The Seventy-Third and Seventy-Fourth Amendments outline the scheme by which the states can bring their laws on local government into conformity with these amendments.

The Constitution provides for the direct election of local bodies every five years. The noteworthy provisions include: (1) the reservation of local legislative seats for women and for scheduled castes and tribes, (2) a state election commission to conduct elections, (3) a state finance commission to ensure the financial viability of these institutions, and (4) devolution of powers and responsibilities to the local bodies with respect to (a) the preparation of plans and implementation of schemes for economic development and social justice, (b) the subjects listed in the Eleventh Schedule for the *panchayats* and in the Twelfth Schedule for the municipalities, (c) devolution of financial powers to the local bodies, and (d) endowment of these

institutions with powers, authority, and responsibility to prepare plans for economic development. Thus these local bodies are empowered to raise revenue with which to undertake various community-welfare programs.

Variations exist from state to state in terms of structure, number of levels, degree of autonomy, length of term, and so on, but today this local-government system is functional in almost all of the states.

#### DIVISION OF POWERS

The states derive their powers, including their fiscal powers, directly from the Constitution. They are not dependent on the Centre for their legislative or executive authority. The states exercise powers in the administrative, legislative, and financial spheres, and they have their own civil services as well.

The Constitution regulates in elaborate detail the legislative and administrative relations between the Union and the states as well as the distribution of revenues between them. It has been noted that the Constitution tilts in favour of the Union in the distribution of powers and revenue sources. The outcome is that the Union is invested with wider jurisdiction for the operation of its legislative and executive authority than are most other federal systems.

Several considerations support this assessment. First, the Union has exclusive power to legislate on the 97 subjects on the Union List and concurrent power to legislate on the 47 subjects on the Concurrent List. Second, although the Union shares with the states the power to legislate on subjects on the Concurrent List, Union law has priority over any state law in the event of a conflict between the two. Third, the residual powers, as in Canada but unlike in the United States and Switzerland, are vested in the Union. Fourth, the Union Parliament can make laws on subjects on the State List if (1) the *Rajya Sabha* (upper chamber of Parliament), by a resolution passed by not less than two-thirds of the members present and voting, declares that it is expedient or necessary, as a matter of national interest, to do so (Art. 249); (2) a proclamation of national emergency is in operation (Art. 250); (3) the legislatures of one or more states pass resolutions to that effect (Art. 252); or (4) the Union law is to give effect to "any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body" (Art. 253).

In this way, the Union may legislate in the field of the states in specified circumstances. The powers of the Union are such as to enable the Indian central state to fulfil its basic national obligations of (1) safeguarding the nation's unity and integrity, (2) promoting economic development and growth, (3) adopting social-reform measures, (4) promoting higher education, science, and technology, (5) fostering social security and the welfare

of labour, and (6) advancing trade, commerce, industries, agriculture, banking, and the like. For this reason, all subjects deemed to be of national importance and subjects said to require uniformity of treatment throughout the country are included on the Union List. These include defence and foreign affairs; citizenship; railways; posts and telegraphs; telephone, wireless, and other like means of communication; currency, coinage, and foreign exchange; interstate trade and commerce; banking; insurance; patents and copyrights; standards of weights and measures; industries; oil-fields and mines; census matters; and the higher judiciary.

The Concurrent List contains items that enable the Union to undertake measures of social reform and economic planning and growth. These include criminal law and procedure and civil procedure; marriage and divorce; adoption; succession (inheritance); forests; protection of wild animals and birds; adulteration of foodstuffs and other goods; economic and social planning; trade unions; social security; employment and unemployment; labour welfare; education; weights and measures; price control; factories; electricity; and acquisition and requisitioning of property. The general principle behind these items is that Parliament can initiate policy on matters in which central initiative is considered necessary to secure nationwide uniformity or to guide and encourage state efforts.

The subjects that by their very nature require variation in treatment in order to suit local conditions and circumstances are located on the State List. The state legislature has the exclusive power to make laws for any subject contained on the State List, albeit within limits. The state law must not be repugnant to any provision of a law made by Parliament that is within Parliament's authority. In the event of a conflict between the two, the law made by Parliament prevails, and the state law, to the extent that it conflicts, is void. This means that state legislation can be subordinated in its own field or in the field of concurrent power.

The broad powers given to the Union under the Union and Concurrent Lists and the limited powers given to the states under the State List must not be seen in terms of the "either-or-federalism" of the past, which rested on a dichotomy between the Centre and the states and construed the division of powers as being a zero-sum game, such that any gain for one order of government was thought to come at the expense of the other. The two should no longer be seen as competing centres of power but as co-partners in the task of nation building.

#### *Administrative Relations*

The primacy of the Union over the states in the legislative field is carried over into the administrative arena as well, the basic constitutional premise being that the executive power is co-extensive with the legislative power.



The Constitution directs that the executive power of every state be so exercised as to ensure compliance with, and not to impede or prejudice, the exercise of the executive power of the Union, and the Union has the power to give such directions to a state as may appear necessary for the purpose of ensuring compliance with Union laws (Art. 256). However, the Supreme Court has held that this does not empower the Union to interfere in any matter pertaining to the exclusive concern of a state.<sup>18</sup> The president, with the consent of the state government, may entrust to that government, or its officers, functions in relation to any matter falling within the domain of the federal executive. A law made by Parliament that applies in any state may confer powers and impose duties upon the state or its officers and authorities (e.g., the power of subordinate legislation to help carry out the law).

The governor of a state may also, with the consent of the Government of India, entrust to his or her state functions in relation to any matter as may appear to the Union government to be necessary for the matter's administration. When the Union government, in the exercise of its executive power, issues any directions to a state government (under Articles 256-57 of the Constitution), it becomes the duty of the governor to keep the Union government informed of how such directions are being implemented by the state government. The governor becomes an "agent" of the Union when a proclamation of emergency under Article 356 is in operation. Under this article, the president may by proclamation assume to himself the executive powers of the state and declare that the powers of the state legislature shall be exercised by or under the authority of the Union Parliament. When a proclamation of emergency is in operation, the Union executive is empowered to give directions to any state on how the executive power thereof is to be exercised.

There are other institutional arrangements whereby the Union may exercise superintendence, direction, and control over state administrations. The head of the state executive is the governor, who is appointed by the Union president. The governor acts not merely as the constitutional head of state, but also as the agent of the Centre – that is, as its eyes and ears in the state. The Union government may bring a state under President's Rule via Article 356 if it is satisfied on its own that such a measure is necessary or if it receives a report from the governor that the state government "cannot be carried on in accordance with the provisions of this Constitution." In such a situation, the powers and functions of the state government are assumed by the Union government. Article 356 provides the Centre with the possibility of dismissing any state government that it deems politically unacceptable – in addition to providing a way out when no political party or coalition of parties is able to command majority support in the state legislature.<sup>19</sup> However, in a 1994 judgment having far-reaching consequences,

the Supreme Court held that the Court can examine whether the president issued a proclamation based on bad faith (*mala fides*) or on irrelevant considerations because the Court is not precluded from calling upon the Union government to disclose to the Court the material upon which the president formed his or her judgment.<sup>20</sup> In this way, the Court sought to contain the Union government's attempts to ride roughshod over the states by threatening them with dismissal.<sup>21</sup>

Another institutional device by which the Union can secure the superintendence, direction, and control of the state administrative apparatus is by superimposition of the All-India Services on the corresponding state services, the provincial civil service, and the provincial police service.

#### *Financial Relations*

Fiscal federalism in India can be traced back to the Government of India Act 1919. This act sought to secure for the provinces a greater measure of financial autonomy by abolishing the "divided heads" of revenue and effecting a complete separation between the central and provincial heads. Under the 1919 Act, heads of specific revenue departments were assigned wholly to the provinces, while the Centre retained responsibility for the revenues administered by the remaining department heads. The framework set up in 1919, however, remained unaltered until the Government of India Act 1935. Subsequent reviews of the financial situation kept the structure of Centre-state relations unchanged while altering their respective shares of centrally collected revenue. A principal objective of these endeavours was to equip the provincial governments with greater financial resources. It was not until the enactment of the Constitution in 1950 that a Finance Commission was appointed to overhaul the financial system of the Indian federation and make recommendations about the distribution of revenues between the Union and the states under Articles 273 and 275.

The Constitution clearly demarcates the revenue resources of both the Union and the states, with financial autonomy being secured for the Union government as well as, to a lesser degree, for the states.<sup>22</sup> The Union's sources of revenue are listed in entries 82 to 92A of the Union List; those of the states are indicated in entries 45 to 63 of the State List. An important feature of India's financial framework is revenue sharing between the Union and the states. This takes several forms. There are duties levied by the Union but collected and appropriated by the states, such as stamp duties and excise duties on medicine and toilet preparations. There also are taxes levied and collected by the Union but whose proceeds are assigned wholly to the states – for example, succession (inheritance) duties; estate duties; and as per Article 270, which was added to the Constitution under the Eightieth Amendment (2000), terminal taxes on goods or passengers

carried by railway, sea, or air, taxes on the consignment of goods in the course of interstate trade, and taxes on railway fares and freights involving interstate trade. Certain taxes are levied and collected by the Union and distributed between the Union and the states. An important example is taxes on income other than agricultural income. Other taxes and duties are levied and collected by the Union and may be distributed between the Union and the states if Parliament so provides by law. Among these are excise duties other than duties on medicines and toiletries. Finally, Parliament is empowered to make such grants as it deems necessary to providing financial assistance for any state in need. Such grants can be block grants or specific categorical grants.

The Constitution provides that the distribution between the Union and the states of the net proceeds of taxes that are to be divided between them and the allocation between states of the respective shares of such proceeds shall be done on the recommendations of a Finance Commission that is appointed by the president every five years. The commission also recommends the principles that should govern grants-in-aid to the states. The grants are both a means to assist development schemes in states lacking adequate financial resources and an instrument to exercise control and coordination over the states' welfare schemes.

There is a clear vertical imbalance between (1) the powers of taxation assigned to the Union and the states and (2) the social and economic responsibilities assigned to the states. That is, the states' responsibilities exceed their own-source revenues. This arrangement is intended to permit each order of government to do what it is thought to do best; that is, it recognizes that the Centre is perhaps in the best position to collect certain kinds of taxes and to expend and redistribute tax revenues for equitable purposes nationwide, while states and their local governments are in the best position to manage developmental programs and to deliver most services because they are closest to the people. Furthermore, the Finance Commission, the Planning Commission, and the National Development Council provide mechanisms for periodically correcting this imbalance and for allowing the states to better discharge their responsibilities. These forums cater to the grievances of the states, which they redress to the extent possible.

In recognition of the limitations on the financial resources of the states and the growing needs of states and local communities in a welfare state, the Constitution contains specific provisions empowering Parliament to set aside a portion of its revenue for the benefit of the states, the proportion being determined by states' needs. The resources of the Union are not meant exclusively for the benefit of Union activities, although the mandate of each of these bodies (i.e., the Finance Commission, Planning Commission, and the National Development Council) has differing implications

for the states' ability to set their own developmental priorities. As conceived, the Union and the states together form one organic whole for the purposes of utilizing the resources of India as a whole. The Union is intended to play the role of equalizer between the greatly disparate states that constitute the Indian Union.

#### *Provisions for Financial Emergency*

The Constitution provides that while a proclamation of emergency is in operation, the president may by order modify or suspend the provisions relating to the distribution of revenues between the Centre and the states as may be specified in the order. While a proclamation of financial emergency under Article 360 is in operation, the Union is empowered to give directions to any state to observe such canons of financial propriety as may be specified in the directions. Such direction may include a provision requiring the reduction of salaries and allowances of state officials and a provision requiring all money bills to be reserved for consideration by the president after they are passed by the legislature of the state. While a state is under President's Rule (Art. 356), the powers of the state legislature are exercisable by the Union Parliament, including the power to adopt the state budget and pass the money bills. In this way, during an emergency, the constitutional barriers between the Union and the states are scaled down, and the Indian federation can function more or less like a unitary state.

#### MECHANISMS OF CONFLICT MANAGEMENT

There are both formal institutional and informal political arrangements for Centre-state coordination. Among the formal mechanisms are the Planning Commission, Finance Commission, National Development Council, Inter-State Council, National Integration Council, zonal councils, tribunals for adjudicating specific disputes, and various commissions and committees to look into specific aspects of Union-state relations. The informal mechanisms include ministerial and departmental meetings, conferences of constitutional functionaries and of political executives, and the governors' and chief ministers' conferences that are convened by the president and the prime minister. These informal arrangements are aimed at laying down procedural norms of conduct, particularly over such issues as the sharing of central taxes and the Union's intervention in states' affairs, and at evolving a common policy on such transgovernmental issues as the environment, communications, and health. Similarly, such informal mechanisms evolve conventions of governance on questions of states' rights, interstate trade and commerce, sharing of river waters, interstate communications, and other matters.

For resolving interstate disputes, the Constitution provides for an Inter-State Council (ISC). Article 263 states:

If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of (a) inquiring into and advising upon disputes which may have arisen between States; (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure.

The first Inter-State Council (ISC), composed of six Union Cabinet ministers and all the state chief ministers, was constituted in 1990. This council has been entrusted with the tasks of (1) inquiring into and advising upon disputes between states, (2) investigating and discussing subjects in which the Union and the states have a common interest, and (3) recommending steps for coordinating policy and action with respect to these common-interest subjects. Given that the ISC is an advisory body, it is difficult to assess the efficacy of its policy performance. With the Union government becoming weaker since 1989, with different political parties ruling at the Centre and in several states, and with the Union government enjoying majority support in the Parliament without the major party being in the majority, and with the exigencies of coalition politics, the Union government has to share power with the states. The bargaining power of the states with the Centre has increased markedly, and they no longer need a mechanism like the ISC to bargain with the Centre.

However, subject-specific councils have been established from time to time by the Union government, such as the Central Council of Health, Central Council of Local Self-Government, Transport Development Council, Central Council of Indian Medicine, Central Family Welfare Council, All-India Council of Technical Education, and University Grants Commission. These councils have been set up to investigate and discuss subjects of common interest between the Union and the states or between two or more states and to make recommendations for coordinating policy and action relating to their respective subject areas.

It was the start of central planning in the country that encouraged the establishment of institutions such as the Planning Commission, National Development Council (NDC), Finance Commission, and zonal councils. Whereas the Planning Commission was to make use of national expertise at various levels of government in devising national development plans, the NDC (comprised of the prime minister, chief ministers of states, and members

of the Planning Commission) was to review and finalize the development plans made by the Planning Commission. The five zonal councils are advisory bodies on issues pertaining to each region's development planning.

After the States Reorganisation Act 1956, five zonal councils were set up, each composed of the chief ministers of the states in a council's zone, the development ministers and chief secretaries of these states, and a member of the Planning Commission, with each council headed by the Union's home minister. The zonal councils are intended to foster the psychological integration of the country by mitigating regional consciousness; helping the Union and state governments to evolve uniform social and economic policies; assisting with effective implementation of development projects; and evolving a degree of political equilibrium among the regions of the country. It was hoped by the first prime minister of India that, without becoming a fifth wheel of the coach and without disrupting close relations between the Union and the states, the zonal councils would help to solve day-to-day problems and assist in economic planning. The idea is integration through decentralization, but in reality the councils have met with only limited success.

Informal arrangements are in place that, at times, can be more effective. These include intergovernmental conferences, such as those convening state governors, chief ministers, and ministers of various departments. With the emergence since the late 1980s of Union coalition governments, which have the supportive presence of various regional parties, such informal arrangements have generally become more effective than the formal mechanisms of intergovernmental conflict resolution.

#### THE FEDERATION AT WORK

The division of powers between the Union and the states has not been static but has fluctuated with political and socio-economic circumstances, such that several patterns are discernible in the actual implementation of the Constitution during the past 55 years.

#### *Planning*

During the early periods of the republic, one ideological input was added to a political context characterized by the hegemony of one party (i.e., the Congress party) under leaders of mass appeal in their respective states and beyond: namely, economic planning for a socialistic pattern of society and, later on, for building democratic socialism. This was the goal that was said to transcend party lines and cut across state boundaries. Therefore, planning soon came to be looked upon by some observers as a threat to federalism in India since the planning process necessarily meant central

initiative and leadership in plan formulation, along with centralized superintendence, direction, and control of the states in plan execution and performance evaluation.

In 1950 a Planning Commission was set up, with the prime minister as its ex officio chairman, to prepare five-year plans for social and economic development and to secure the "most effective and balanced utilisation of the country's resources" that would "initiate a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life." Besides the prime minister, the ministers of finance, home, and defence are members of the commission. Additionally, there are several full-time members who are experts in finance, agriculture, economics, and the like.

In deference to the federal nature of the polity, the National Development Council was set up in 1952 to involve the states in the formulation of the plans and "to strengthen and mobilise the efforts and resources of the nation in support of the plans." More specifically, the NDC reviews the implementation of the national plan from time to time and recommends measures for achieving the aims and targets set out in the plan. The prime minister is the ex officio chairman of the NDC, while the members of the Planning Commission and the chief ministers of all 28 states are its ex officio members.

The NDC is required to supervise the work of national planning, to recommend measures for achieving plan targets, and to consider important questions of social and economic policy affecting national development. The state governments submit their five-year plans to the Planning Commission, which prepares the national plan. After its approval by the central government, the plan is executed by the NDC. The recommendations of the NDC are taken into consideration by the Planning Commission before the plan is given final shape. The process represents the principle of cooperative federalism. While its terms of reference originally mandated the NDC to review the implementation of the national plan from time to time, in practice the NDC makes recommendations pertaining to the overall size and structure of the plan. Also, the NDC ensures a coordinated implementation of the plan. Because of the coordinated approach of involving the Union and the states, the NDC is able to promote a balanced development in different regions of the country.

The NDC is a policy-making body, and its recommendations are not just advisory suggestions but policy decisions and policy directives. It is a national forum for planning that gives informal sanction to the underlying concept of cooperation between the Union and the states. It brings the states into an organic relationship with the Union because, through national planning, states become an integral part of the Union's body politic. The NDC occupies an important position in the Indian federal set up

because it consists of the chief executives of the central and state governments and, therefore, its advice can hardly be distinguished from a clear mandate. The NDC was visualized as a bridge between the two orders of government and, by becoming organizationally and operationally strong, it has started to play this role.

The draft of the plan is prepared by the Planning Commission in consultation with Union ministries and state governments, and after approval by the Union Cabinet, it is placed before the NDC for approval. Thus mutual cooperation is institutionalized in the NDC, which is the highest national forum for planning. It has in practice embodied and given informal sanction to the underlying concept of partnership and cooperation between the Union and the states over the whole range of development issues, thereby bringing the state governments into an organic relationship with the organization of planning at the national level.

Resource transfers authorized (under Art. 275) on the recommendations of the Finance Commission are known as statutory grants; those authorized (under Art. 282) on the recommendations of the Planning Commission are known as discretionary grants. When grants to the states are recommended by the Finance Commission – which is a statutory body – the Union government is constitutionally obligated to authorize the grants; hence the Union's authority with respect to grants does not add to its powers. But discretionary grants recommended by the Planning Commission – which is not a statutory body – are at the discretion of the Union government and thus political in nature. As such, they are criticized for causing the states' abject dependence on the Union – a dependence that is said to further enable the Union government to discriminate between states.<sup>33</sup> Plan grants, provided for under Article 282, are 50-50 matching grants, which means that the Union government issues a grant equal to the sum that the state has raised through its own resources. It also means that states have to fall in line with Union policies, priorities, and preferences in issuing matching grants and also dovetail their own funds to Union allocations.

#### *Vertical Federalism*

Because the Union grants are routed through central ministries to their counterparts in the states, each Union ministry is in a position to use the strings of financial power to superintend, direct, and control the corresponding state department. In this way, besides the territorial or horizontal federation set up by the Constitution, a sort of vertical federation has come into being. The central ministries and corresponding state departments each constitute a separate single unit for planning, programming, and funding plan projects in a manner similar to what some American scholars have called picket-fence or stovepipe federalism.

Besides the projects approved for the states in the national plan, there are some projects known as "Centrally sponsored schemes" that must necessarily be located in one or another state. These schemes are financed by the Union but executed by the state concerned under the technical guidance and supervision of the related Union ministry. That is, the Union decides the fund allocation, while the states essentially act as spending agencies. In these schemes, programs are cost-shared, such that the Union necessarily influences the functions within the states' spheres of jurisdiction through its matching grants.

The Union government's discretion in choosing locations for public-sector undertakings, which encompass most of the infrastructure industries, such as steel, electricity, heavy engineering, and fertilizers, has been cause for interstate rivalry in view of the many impacts such undertakings have on the local economy and on employment potential. The choice of one site in preference over another is yet one more case in which the Union can exercise discretion in its patronage of the states. Even though most of these schemes relate to state subjects, the Union is able to transform them into subjects of Union jurisdiction because their funding is at the discretion of the Union government. Given past experience, therefore, state officials see these schemes as restrictions on state autonomy.

#### NEW TRENDS AND THE GROWING ROLE OF STATES IN NATIONAL POLITICS

Unitarian federalism, as Union-state relations came to be described during the long years of one-party Congress rule at the Centre, was the consequence of the dominance of one party in both the Union and the state governments. Since 1989 there have been coalition governments at the Centre, sustained by support from parties in power in various states.<sup>24</sup> Therefore, the system of one-party domination that fostered and sustained unitary federalism for some 40 years has been replaced by more competitive party politics rooted in regionally based and state-based political parties. One-party hegemony subsumed regional politics and regional political forces that were bound to bubble up to the surface with the end of this hegemony.

What is now called competition in India's transactional federalism actually developed as a result of the emergence of coalition politics and power sharing. In this way, the Union and the states under the impact of competitive party politics and increasing regionalism have become more like coordinate centres of power. Howsoever strong the position of the Union in planning, programming, and financing, the execution of plans and projects rests in the hands of the state governments. No other large federal government is as dependent as India's on theoretically subordinate, but

actually rather distinct, units responsible to a different order of government for so much of the administration of what are recognized as national programs. In the final analysis, the authority organically exercised in New Delhi is influence rather than power.

Under the Constitution, the relationship between the Union and the states is that between the whole and its parts rather than between a centre and its periphery; otherwise, the image created would be that the centre of authority is in New Delhi, while the states are at the periphery. Nevertheless, the different units of the constituent federal system are to a degree subsidiaries of the Union government. The mechanisms of intergovernmental relations in India are tilted in favour of the Union government. There are intergovernmental institutions meant to ensure some uniformity in administrative relations, but these mechanisms have not been employed in improving the system of governance. The Supreme Court has on occasion put pressure on the state governments to follow certain principles in respect of governance or the welfare of the people, but this does not, in any way, take away the rights of the states to improve their own systems of administration. The hegemony of the Union's governmental institutions over the state governments is meant to bring about some uniformity of standards in administrative procedures.

In some respects, states have also acquired a certain say in matters that used to be the domain of the Union, one reason being that regional parties share political power at the Centre. In terms of foreign affairs, for instance, states that have performed well economically, and that have attracted foreign direct investment, have influenced the foreign economic policy of the Union. States are now more conscious of their role in foreign affairs with neighbouring countries as well as in international organizations, such as the World Trade Organization, World Bank, and Asian Development Bank. Nevertheless, this remains an area in which the states still have little autonomy. It is true that in recent years chief ministers of the states have embarked on foreign junkets, but these initiatives have required concurrence from the Centre. Although bilateral and multilateral international donors finance projects run by state governments, all such projects must be sanctioned by the central government because, ultimately, only it can provide sovereign debt guarantees. Thus intergovernmental relations reflect the tendencies of both conflict and cooperation. Moreover, these relations are always changing, thus requiring the country to continue rethinking its federalism.<sup>25</sup>

The states have been demanding a greater role for the Finance Commission than for the Planning Commission on the grounds that the latter is a political body and is likely to be susceptible to greater central-government control. With the introduction of economic liberalization and the "New Economic Policy," it seems that now the Centre also shares the views of the

states on this point. If the "disinvestment" and withdrawal from various fields of activity continues, the Union government is bound to reduce the role of the Planning Commission. In the fiscal sphere, it may force the states toward more competitive performance, producing greater disparities among them.

Issues of fiscal federalism have been thorny even though intergovernmental jurisdiction over taxation is clearly demarcated on the Union and State Lists in the Seventh Schedule of the Constitution. Given that more than 60 percent of the resource transfers from the Union to the states are made through the Planning Commission and the central government's ministries, rather than via the Finance Commission, Union intervention in the states' development programs has increased. Economic planning and development require coordinated efforts, and for these, cooperative federal arrangements are needed, which are best provided by the concerted ventures of the National Development Council and the Inter-State Council. In the past, these institutions have attempted to even out the imbalances in the growth of different states by giving preference to backward areas. Now some of the better-performing states are complaining that rewarding backwardness in effect punishes the stronger states for performing well.

The Indian Constitution would seem, in the end, to create a "cooperative union" of states rather than a dual polity. Planning for the mobilization of national resources and their most effective and balanced utilization for the social and economic development of the country as a whole now appears to be an integral part of this concept. Through substitution and through centralized planning, the Union had extended its role into areas that lie constitutionally within exclusive state fields. What is being observed now is federal restructuring through politically developed rules and conventions, without disturbing the basic scheme of the Constitution. The actual working of cooperative federalism in India has entailed the Union's exercising its influence rather than its constitutional authority. Exigencies of coalition politics have forced the Union and state governments to share power. The Union has more often played the role of a facilitator in interstate disputes than that of an arbitrator. A redistribution of powers — through decentralization and the devolution of authority from the Union to the states and from the states to the *panchayats* and municipalities — is serving to facilitate the attainment of the objectives of the Constitution: unity, social justice, and democracy.

All this suggests steps in the direction of cooperative federalism, although the future course of Indian federalism is, as always, subject to change. Will the states continue to assert themselves in their efforts to become full co-partners with the Union government or even dominant in the system, or will the federal system recentralize, and, if so, will this be the

case for an extended period of time? In addition, what impact will the liberalization of India's economy have on the federal system? Will a growing, internationally integrated national economy benefit all states equally, produce greater competition between states, and/or increase economic and fiscal differences between states?

The Constitution envisages a "creative balance" between the need for an effective centre and the need for effectively empowered states. The federal system that has emerged has become a sound framework for the working of the Constitution. Overcoming many problems of maintaining balance, the system has survived even though many of its federal features have been eroded over time. Despite great odds and great complexity, India has survived because it is united as a nation with the voluntary and natural agreement of its constituent units. Largely, this is because the Constitution has provided a mechanism not only for resolving intergovernmental disputes, but also for maintaining a workable, if not always stable, constitutional balance between the key orders of government.

## NOTES

- 1 For the text of the Constitution with some commentary, see P.M. Bakshi, *The Constitution of India*, 5th ed. (Delhi: Universal Law Publishing, 2003). See also M.V. Pylee, *Our Constitution, Government and Politics* (New Delhi: Universal Law, 2002); Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (New Delhi: Oxford University Press, 1999); and B. Shiva Rao, *The Framing of India's Constitution: Select Documents* (New Delhi: Indian Institute of Public Administration, 1968).
- 2 Neera Chandhoke, *The Concept of Civil Society* (New Delhi: Oxford, 2003); Akhtar Majeed, ed., *Nation and Minorities: India's Plural Society and its Constituents* (New Delhi: Kanishka Publishers, 2002); Zoya Hasan, *Politics and the State in India* (New Delhi: Sage, 2000); Partha Chatterjee, *State and Politics in India* (New Delhi: Oxford, 1997); and Balveer Arora and Douglas Verney, *Multiple Identities in a Single State: Indian Federalism in a Comparative Perspective* (New Delhi: Konark, 1995).
- 3 N. Gangulee, *The Making of Federal India* (London: James Nisbet and Co., 1936).
- 4 D.D. Basu, *Introduction to the Constitution of India*, 3rd ed. (New Delhi: Wadhwa, 2002), pp. 6–7.
- 5 The Assembly is indirectly elected by members of the provincial legislative assemblies. The number of representatives from a province and from each religious community within a province is to be proportional to the province's population in the ratio of 1 representative per 2 million people, and the representatives are to be elected by the method of proportional representation with a single transferable vote. D.D. Basu, *Introduction to the Constitution of India*, 2nd ed. (New Delhi: Prentice Hall, 1995), p. 19.

- 6 Jawaharlal Nehru (India's first prime minister), moving the Resolution on Aims and Objectives of the Constitution, 13 December 1946, Constituent Assembly. Also, Sir Aladi Krishnaswami Ayyar, 25 July 1847, Constituent Assembly. *Constituent Assembly Debates* (CAD), vol. 1 (New Delhi: Lok Sabha Secretariat, 1999), pp. 57-9.
- 7 Sarvepalli Radhakrishnan (India's second president) and Frank Anthony, 1 December 1946, Constituent Assembly. *Constituent Assembly Debates*, vol. 1, pp. 37-41.
- 8 *Constituent Assembly Debates*, vol. 5, pp. 494-95.
- 9 As a practical matter, state governors are actually appointed by the prime minister and the home minister.
- 10 *Keshavanada Bharati v State of Kerala*, All-India Reporter (AIR) 1973 Supreme Court (SC) 1461. See also H.M. Seervai, *Constitutional Law of India*, vol. 2 (Bombay: N.M. Tripathi, 1993), p. 1355; and Austin, *Working a Democratic Constitution*, p. 258.
- 11 AIR 1975 SC 2299, quoted in J.N. Pandey, *Constitutional Law of India* (Allahabad: Central Law Agency, 2003), 71.
- 12 AIR 1980 SC 1789, quoted in Pandey, *Constitutional Law of India*, p. 319.
- 13 *State of Bihar v Bal Mukund Sah*, AIR 2000 SC 1296, quoted in Pandey, *Constitutional Law of India*, p. 147.
- 14 By comparison, the US Constitution, "in all its provisions, looks to an indestructible Union, composed of indestructible States." *Texas v White*, 74 US (7 Wall.) 700 (1869).
- 15 AIR 1977 SC 1361. See also Alice Jacob and Rajeev Dhavan, "The Dissolution Case Politics at the Bar of the Supreme Court," *Journal of the Indian Law Institute* 19 (1977): 355-97; and Rajeev Dhavan, *President's Rule in the States* (Bombay: N.M. Tripathi, 1979), pp. 126-58.
- 16 Article 15(4). Scheduled Castes and Tribes are backward communities that constitute some 24 percent of India's population and are identified in Schedules 5 and 6 of the Constitution.
- 17 George Mathew, ed., *Status of Panchayati Raj in the States and Union Territories of India, 2000* (New Delhi: Institute of Social Sciences, 2000).
- 18 *S.R. Bommai v Union of India*, 3 SCC (1994), and *State of Rajasthan v Union of India*, AIR 1977 SC 1361, both quoted in A.G. Noorani, *Constitutional Questions in India* (New Delhi: Oxford, 2000), pp. 268 and 253 respectively.
- 19 Amal Ray and John Kincaid, "Politics, Economic Development, and Second-Generation Strain in India's Federal System," *Publius: The Journal of Federalism* 18 (Spring 1988): 147-67.
- 20 *S.R. Bommai v Union of India*, 3 SCC (1994).
- 21 *State of Rajasthan v Union of India*, AIR 1977 SC 1361.
- 22 See M. Govinda Rao, "Indian Fiscal Federalism from a Comparative Perspective," *Multiple Identities in a Single State*, ed. Arora and Verney, *Multiple Identities in a Single State*, pp. 272-316.

- 23 *Report of the Commission on Centre-State Relations* [the Sarkaria Commission], vol. 1 (Nasik: Government of India Press, 1988), p. 387.
- 24 "Emerging Issues in Indian Federalism," *Publius: The Journal of Federalism* 33 (Fall 2003): entire issue; M. Govinda Rao, *Development, Poverty and Fiscal Policy: Decentralisation of Institutions* (New Delhi: Oxford, 2002); and Akhtar Majeed, ed., *Coalition Politics and Power Sharing* (New Delhi: Manak Publishers, 2000).
- 25 Rasheeduddin Khan, *Rethinking Indian Federalism* (Shimla: Inter-University Centre for Humanities and Social Sciences, Indian Institute of Advanced Studies, 1997).