REPUBLIC OF INDIA
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India became independent from British colonial rule on 15 August 1947. Besides the British-Indian provinces, 562 princely states became part of independent India. The Constitution of India was adopted by the Constituent Assembly on 26 November 1949, and it came into force on 26 January 1950. At the time the Constitution was adopted, India had 14 states and six union territories. Beginning in 1956, and after several reorganizations of the states (the latest in November 2000), India now has twenty-eight states and seven union territories.

When, in 1858, the British Crown took over the administration of India after a century of colonial rule by the British East India Company, a highly centralized form of government was established with the governor general functioning as the agent of the British government. This centralizing trend was evident even in independent India's Constitution as it envisaged "a strong Centre."[i] However, in the last half century or more of India's history, several developments have taken place, leading India towards an evolving federalism within a federal-unitary continuum. With the 1989 transformation of the party system from a one-party to a multiparty configuration, India has grown increasingly federal.

In this chapter I examine the historical development of the division of powers between the union[ii] and state governments as well as the recommendations of various official reviews concerning the devolution of state powers and responsibility. I also look at constitutional amendments and examine the role of subnational units and local governments, which has generated considerable debate in India. I then look at whether the union government can directly deal with local government institutions through the direct allocation of funds to substate units (such as district *panchayats*). In closing, I deal with the question of decentralization and division of responsibilities, which is still a hot subject between the union and the states, and between the states and the local governments.

SOCIOCULTURAL CONTEXT AND THE EVOLUTION OF THE FEDERAL POLITY

India covers an area of 32,87,263 square kilometres. Its population, according to the latest Census (2001), is 1,027 million.[iii] The per capita GDP is US$2,900, and the literacy rate is 65.38 percent. India's uneven development is evident in the disparities between states - some (Kerala, Goa, Mizoram) are fully literate, while others are not (the literacy rate in Bihar, for example, is below 50 percent).

On the basis of interactive patterns between caste, tribe, ethnicity, religion, ecology, language, history, and administration, India has 91 macro regions (eco-cultural zones), 4,635 communities, and as many as 325 languages or dialects. The Constitution lists twenty-two "scheduled languages." The national official language is Hindi and it is spoken by about 30 percent of the population. English is the associate official language. The Constitution enjoins states to take special care of linguistic minorities by providing them educational instruction in their mother tongue at the primary stage.

All major world religions, including indigenous faiths, are present in India. Hindus constitute 82.8 percent (including 8.08 percent indigenous people), Muslims 11.7 percent, and Christians 2.3 percent. Indigenous reformist religions in India include Sikhism (2 percent), Buddhism (0.8 percent) and Jainism (0.4 percent). The Directive Principles of State Policy (Article 44) have set a common civil code as a desirable constitutional goal for the federation.

According to Article 25 of the Constitution, the personal laws of Sikhs, Jains, and Buddhists are part of Hindu personal law.

The Constituent Assembly, which drafted and approved the Constitution, was indirectly elected by the provincial legislatures in 1946. These legislatures had been elected in 1936 through a franchise granted on the basis of property ownership and educational qualifications under the Government of India Act, 1935. No one was excluded on ethnic grounds. Suffrage was made universal by the Constitution in 1950.

The Indian Constitution is first and foremost a social document. It seeks to build a multicultural federal nation through the harmonious construction of the principles of social, economic, and political justice; liberty of thought, expression, belief, faith, and worship; equality of status and opportunity; and the promotion of fraternity among all, thus assuring the dignity of the individual and the unity and integrity of the nation. As the Constitution provides, such a federal nation must be founded on parliamentary democracy, secularism, federalism, and a market-driven but government-regulated economy. The principles of secularism are applied to ensure the subjective neutrality of government as well as the non-discriminatory, free growth of a civic-political nation. Individual or citizenship rights are duly mediated through minority community rights. Discrimination in any form is prohibited. However, for the purpose of attempting to integrate deprived and marginalized groups into the mainstream, the government, in keeping with the principle of social justice, practises affirmative action.

The Constitution defines India as a "Union of States" and has created a federal structure. Although the term "federal" does not appear in the Constitution, it often arose in Constituent Assembly debates. The Constitution makers wanted the Constitution to be federal if necessary but not necessarily federal. In several judgments the Supreme Court of India has used the epithet "federal" to characterize the "basic structure" of the Constitution. This "basic structure" has been declared unamendable since the 1973 *Keshavananda Bharati* case.[iv]

The union is a composite whole, the integrity and sovereignty of which must be maintained by each structure of government. The Constitution of India includes some special integrated features, for example, a single constitution (excepting Jammu and Kashmir), single citizenship, a single integrated judicial system, a detailed outlining of structures and processes at the union and state levels, as well as *panchayats* (village councils) and municipalities and a unique set of All-India Services. As of now, there are three All-India Services: the Indian Administrative Service, the Indian Police Service, and the Indian Forest Service. The union recruits members of the All India Services, but they are placed under various state cadres whose responsibility is to serve both the state and the union.[v] This provides administrative synergy to the federal union of India.

Current federal provisions are in many ways a culmination of the devolution process developed under the act that laid down, in a limited manner, a system of responsible government in the provinces. However, it was the Government of India Act, 1935, that prescribed a federal structure. The act made a threefold division of the federal powers - a legislative list of exclusive federal powers (List I), a legislative list of exclusive provincial powers (List II), and a list of concurrent legislative powers (List III). However, the concurrent list was not applicable to the "federated states" (i.e., the provinces of British India, which had exclusive legislative power with respect to all subjects not included in the instrument of accession as federal subjects). It retained the element of centralization by allowing the federal government to encroach upon List II in times of emergency and, when requested to do so by two or more states. In cases of conflict between List I and List II, the former was given precedence over the latter. In a dispute between

"entries [i.e., subarticles] in List III and entries in List II the former would prevail as far as the federal legislature was concerned."[vi] The residuary (or residual) powers of legislation in the act were vested in the governor general. The act also provided for the creation of an inter-provincial council to resolve interprocedural conflict. Judicial review was permissible by the Federal Court of India and the Judicial Committee of the Privy Council in London.

Since the 1949-50 Constitution of India came into being, several amendments have been effected to bring about changes in the original distribution of powers and responsibilities.[vii] Broadly, these amendments cover four areas: (1) enlarging the ambit of the federal government's powers; (2) bringing items from the state list within the fold of the concurrent list (specifically, items that had produced excessive diversity of laws or had became too technical to be effectively handled by the states); (3) introducing a new part into the Constitution - one that devolves functions at the substate level, and (4) making cosmetic changes to the phrases and explanations of constitutional provisions, thus avoiding ambiguities in the judicial construction and interpretation of specific provisions. Some important amendments affecting federal distribution of powers include the Constitution (Sixth Amendment) Act, 1956, which affected the states' competence to levy taxes on items related to interstate trade and commerce. Parliament was assigned regulatory powers in this regard. Further amendments were introduced in Articles 269 and 286 in order to empower Parliament to formulate principles and to impose restrictions on the sale or purchase of goods of special importance (public and national). This amendment severely crippled the volume of states' revenues earned through sales tax levies.

The Constitution (Seventh Amendment) Act, 1956, inserted a new article, 258A, which gave state governors the power to entrust to the union government (or its officers) functions related to the "exclusive power of the state." The Seventh Schedule deleted Entry 33 of List I and Entry 36 of List II, related to the acquisition and requisitioning of property. These were reinserted in the concurrent list as Entry 42. Minor modifications regarding historical monuments were introduced in Entry 67 of the union list, Entry 12 of the state list, Entry 40 of the concurrent list, and Article 49 of the Constitution.

The Constitution (Forty-Second Amendment) Act, 1976, effected many crucial changes in the Constitution of India, relating to almost every aspect of governance. However, from the perspective of the distribution of powers and responsibilities, the most important was the insertion of a new article, 257A, by which the union Parliament assumed powers to deploy armed forces to any state. Although subsequently deleted by the Constitution (Forty-Fourth Amendment) Act, 1978, it is now inserted in List I. It should be reiterated that law and order is a state subject. Nevertheless, it is no longer deemed necessary for the federal government to seek a state's consent for the deployment of forces in that state. The rationale is to restore civil authority in the state, thereby protecting the integrity of the federation.

The Constitution Act, 1978, further transferred Entries 11 (education), 19 (forests), 20 (protection of wild animals and birds), and 29 (weights and measures) from the state list to the concurrent list. In addition, Entry 25 was rephrased as "Education, including technical education, medical education and universities subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."

The Constitution (Seventy-Third Amendment) Act, 1992, and the Constitution (Seventy-Fourth Amendment) Act, 1992, defining *panchayats* (village councils) and municipalities as "institutions of self-government" became Part IX of the Constitution in 1993. The Eleventh and Twelfth Schedules, which were added to the Constitution along with these amendments, have a suggested list of twenty-nine subjects to be transferred by the states to the *panchayats* and

eighteen subjects to be transferred to the municipalities. These changes are not mandatory, but all the state conformity acts have more or less incorporated them. By an act of Parliament on 12 December 1996 the provisions of the 73rd Amendment were also extended to the tribal areas (Fifth Schedule).

FEDERALISM UNDER THE INDIAN CONSTITUTION

The founding fathers of the Indian Constitution drew from Euro-American federal traditions and from their own intellectual exposure to the theories of dual federalism and cooperative federalism. This was critically tempered by the then continuing federal administrative arrangements under the Government of India Act, 1935, and by concern for the future requirements of Indian nation building.

From this emerged the Indian model of federalism, unique in many respects, particularly with regard to its in-built mechanisms of centralization and regionalization. The union is a framework of federal nation building wherein the autonomy of the constituent units is moderated circumstantially and in accordance with the changing imperatives of the "national"[viii] and larger "public interests."

In order to resolve the question of distribution of powers, the Constituent Assembly, through several expert committees, devised the notion of "domain specification," whereby the extent of powers and authority of each unit was determined on the basis of territoriality and functional manageability of an item (besides its co-relationship to the maintenance of national unity and integrity). We find both a hierarchical and non-hierarchical, non-centralized distribution of powers within the federal Constitution of India. The purpose was to provide union by an organic linkage to ensure unity of purpose and commonality of interests and destiny. The proposed union had to be indestructible.[ix]

But a strong federal government cannot assume an authoritarian outlook, and therefore great faith was reposed in parliamentary democracy, particularly its central point that power must be exercised responsibly and under legislative sanction and scrutiny. This brings us to the notion of "consultation," or "consent," within the Indian Constitution, which acts as a check to the arbitrary use of certain exclusive powers of the union. This has three forms: (1) express consultation with the state (Article 3); (2) indirect or designated consent of the upper house of Parliament (i.e., the Council of States, known as the Rajya Sabha) (Article 249); and (3) majoritarian consent, appertaining to many constitutional provisions, the amendment of which cannot be effected unless approved by not less than half the total states of India (Article 368).

THE DISTRIBUTION OF POWERS AND RESPONSIBILITIES

Indian federalism is known for the "differential loadings" and varied arrangements of power distribution. The Seventh Schedule of the Constitution broadly divides and distributes competences, treating states on an equal basis. Articles 370, 371, 371A-G further modify this generality in order to provide for special arrangements of power distribution between the federal government and a particular class of states. The purpose of this is to accommodate features of regional and ethnic governance. In many respects these articles restrict the applicability of federal laws in a "special class" of states. The powers of these governors are different from those of their counterparts in the other Indian states. In many such cases, federal law is subject to the legislative sanction and approval of the concerned legislatures. The Fifth and Sixth Schedules of

the Constitution provide for the creation of autonomous councils for tribal-ethnic people. Regional or autonomous councils cut into the legislative, administrative, and financial domains of the concerned state.

As one moves down the administrative institutional arrangements of Indian federalism, the locus of power distribution also changes. At the federal and state levels, legislative authority emanates from the Constitution itself, and the legislative distribution of competences is generally based on the recognition of the principle of sovereignty of some exclusive jurisdiction. The executive authority of each government (federal government and states) has been made co-extensive with its legislative competence. Legislative and executive authorities are complemented by the constitutionally ordained financial capacity of each unit. As the capacities are constitutionally protected, the power relationships between the federal government and the states are difficult to change by other organs of government, including the judiciary. The judiciary is expected to provide the interpretation of the boundary and domain of powers but not to reallocate competences either by way of interscheduling legislative entries or constricting the functional field of each entry in the schedule. Nonetheless, the Supreme Court has ruled that the Parliament was competent to levy wealth tax on agriculture, even though the latter is, as such, a state subject.x The apex court's interpretation in another case was that entries in the State List must be given a "broad and plentiful interpretation" and should not be limited by invocation of residuary powers because that would "whittle down the power of the State and might jeopardize the federal principles."[xi]

However, at the intrastate level, the legislative competence of the autonomous regional councils is only minimally defined and protected by the Constitution. The councils' rule-making powers usually emanate from legislative and other validating acts of the respective state legislatures. And, at the lowest level of governance (district and below), the local government institutions are to prepare plans and implement schemes for economic development and social justice.

Another notable feature of the distribution of powers is that, while the legislative powers are horizontally distributed on the basis of territoriality, functional manageability, and financial viability between the federal government and the states (and, to a limited extent, between the states and autonomous councils), the administrative and financial competences are functionally arranged. Administrative devolution includes the delegation of executive power in accordance with the administrative and functional imperatives of the subject in question. This devolution varies from subject to subject, on a case-to-case basis. Examples include national highway-building responsibility and disaster management. However, this devolution is in addition to the constitutionally assigned executive powers of the units.

Financial distribution is made either on the basis of a tax division formula, as prescribed in the Constitution, or on the basis of recommendations of the statutory body (the Finance Commission). Discretionary grants are made to the units on the recommendations of the non-statutory body (the Planning Commission), which was created by an executive order of the union government.

General Distribution of Legislative Competence

The federal government and the states derive their respective legislative authority mainly from Articles 245 and 246. Article 245 provides for the territorial extent and limit to the laws made by the federal government and the states. Besides the federation-wide application, the

federal laws also have extraterritorial jurisdiction. The same is not the case with state laws. State laws are applicable only within the territorial boundary of the state. Similarly, in no circumstances, except as per constitutional provision, can the legislative competence of a state be circumscribed by the federal Parliament. Encroachment on each other's competences is permissible, but it must be incidental, and it must qualify the judicial doctrine of "pith and substance." It is "true intent" that validates or invalidates an act made by the federal or state legislature.[xii] Moreover, the Indian judiciary has made an interesting concession with regard to the question of state occupancy of the federal government's space in a concurrent list subject. The state occupancy is valid until the federal government itself occupies that field.[xiii]

Article 246 empowers the Parliament of India to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. But it shares its power with the states on the entries of List III of the schedule (which lists matters subject to concurrent jurisdiction) and retains exclusive control over residuary items not covered in any of the lists. And the states exercise their plenary exclusive authority over the matters of List II, known as "the state list." The judiciary has given the residuary powers the widest possible construction in order to validate the federal government's imposition of taxes that are not mentioned in any of the taxing heads of the three lists.

Judicial stress has recently been on first defining the ambit of the states' powers, as found under Lists II and III and in other parts of the Constitution.xiv Those found to be outside the constructed ambit of the states' powers belong to the federal government. Entry 97 of List I ("any other matter not enumerated in List II or List III, including any tax not mentioned in either of those lists") and Article 248 elasticized the power domain of the federal government. Thus, the court has upheld the legislative competence of the federal government to impose an expenditure tax (distinguished from the state power to impose a luxury tax). The Terrorist and Disruptive Activities (Prevention) Act, 1987 (since repealed), which allows the deployment of armed forces for the purpose of maintaining public order (either upon state request or federal initiative), has also expanded the scope of List I, enabling the federal government to encroach upon what was formerly state jurisdiction.

The Powers of the Union

So far as the constitutional allocation of union (federal) legislative fields is concerned, List I has ninety-seven entries. A careful examination of these entries reveals that the list has been so arranged that, in each entry, a principal function is laid down and then followed by a detailed description of the enabling capacities that will result in its effective performance.

A major field is national protection, referring to the maintenance of the country's internal and external security and defence. For the federal government to effectively perform this function, its enabling capacities must include raising and maintaining national armed forces (naval, air, and army) and central police reserves; prosecution of war; deployment of armed forces in aid of the civil power to maintain public order; preventive detention; Central Bureaus of Intelligence and Investigation; and the manufacture, purchase, and procurement of arms and ammunition.

As an aspect of the exercise and execution of sovereignty, the union has exclusive control of foreign affairs and treaty making. The ambit of this power includes subjects such as diplomatic, consular, and trade representation, as well as membership and participation in multilateral forums such as the United Nations. Above all, the federal government has exclusive

power to implement international treaties, agreements, and conventions. Implementation confers upon the federal government the power to modify domestic laws, including state laws, and to make changes in the existing pattern of federal power distribution. On the other hand, the states' competences in this regard are extremely limited. States can, within the overall regulatory and supervisory control of the federal government, negotiate with foreign countries to attract foreign direct investment. Foreign trade and commerce, import and export across the custom frontiers, and the definition of custom frontiers falls under federal, not state, jurisdiction. These federal powers and functions extend to foreign jurisdiction, citizenship, naturalization and aliens, and extradition and immigration.

The federal power to establish national networks and national communication includes growth, development, and management of federally designated railways, airways, highways, and waterways, including regulatory control over shipping and navigation, maritime shipping and navigation, lighthouses, and ports (concurrent jurisdiction). Over these the states do not have any regulatory authority, except the constitutional obligation to maintain state railways and highways. The carefully worded Entry 31 places practically everything relating to telecommunications within the domain of the federal government. This includes post and telegraphs, telephones, wireless, broadcasting, and other like forms of communication. So far as Entry 31 is concerned, states have absolutely no function, not even an auxiliary one.

A large number of national economic functions fall within the purview of the federal government. It exercises exclusive power over national currency and coinage, banking and insurance, public bonds issued by public-sector undertakings, stock exchanges, foreign loans and central debt, interstate trade and commerce, industries, mines and minerals, and natural resources such as oil fields (among others).

The functions of the federal government in relation to the organization, constitution, and maintenance of federal agencies include: elections to Parliament, elections to state legislatures and to the offices of president and vice-president; the election commission; the constitution, organization, jurisdiction, and powers of the Supreme Court and other high courts; and the extension or inclusion of the jurisdiction of a high court from any union territory.

The power of the federal government with regard to education and educational institutions relates to coordination and determination of standards in institutions for higher learning and technical institutions. The determination of standards extends the government's power, enabling it to exercise control over institutions of higher learning that were established exclusively by the states.

In order to ensure the performance of the above functions, the Constitution empowers the federal government with taxing heads, such as, inter alia, non-agricultural income tax, custom and export duties, excise duties, corporation tax, taxes on capital assets, estate duty, stamp duties, taxes on the movement of goods, and consignment tax. However, the proceeds of many of these taxes are shared with the states. In this context it is important to note that federal taxes have been so allocated as to avoid double taxation and to ensure a single system of collection and appropriation. The federal union of India is also an economic union. Therefore, as far as possible, exclusive federal boundaries between the federal government and the states have been avoided. For example, taxes on transaction of goods and on consignment of goods are levied and collected by the Government of India and, subsequently, assigned to the states (Article 269).

The Exclusive Legislative Powers of the States

While List I contains ninety-seven entries, the list of exclusive state legislative powers contains sixty-six. Some important entries include public order; police administration; state civil services; public health and sanitation; local communications; local government functions (such as relief for the disabled and unemployed); agricultural development, including aquaculture and fisheries development; horticulture, sericulture, and so on; regulation of mines and minerals development (subject to List I provisions); and regulation and development of industries other than those that fall within federal government competence. The states' tax base includes items such as land revenue, agricultural income, succession and estate duties, tax on land and buildings, sales tax and consumption taxes, select excise duties, and other nominal toll taxes.

Concurrent Jurisdiction of the Union and States

In order to promote the diversity of laws, social traditions, and federal experimentation, the Constitution of India provides for areas of concurrent jurisdiction with equal competence for the federal government and the states. But where laws conflict, it is federal law that prevails. The concurrent field contains important subjects, such as: criminal law and procedure; civil law, property, and contracts; preventive detention vis-à-vis state security; maintenance of public order; maintenance of essential supplies and services; marriage and divorce; forest and wildlife protection; economic and social planning, including population control and family planning; social security and social insurance; labour welfare; education, including technical education, medical education, and universities (subject to the provisions of Entries 63, 64, 65, and 66 of List I); and trade and commerce in, and the production, supply, and distribution of, any product declared by the federal government to be of national and public interest (e.g., oil seeds and oils, raw cotton, raw jute, coal, steel, iron ore, petroleum, etc.). The concurrent list contains forty-seven entries in all.

Revenue Sharing and Distribution

The Constitution of India provides for a variegated system of revenue distribution. All taxes and residual heads under the federal exclusive list are levied by the federal government, but such taxes are not necessarily collected and appropriated by the federal government. Taxes exclusively assigned to the federal government include custom duties, corporation tax, taxes on the capital value of assets, and surcharges on income tax and fees (as mentioned in List I). The rest of the tax heads are subjected to differential modes of collection and appropriation. Stamp duties on bills of exchange, cheques, promissory notes, and so on, along with excise duties (as mentioned in the union list), are levied by the federal government but are collected and appropriated by the states within their territories. Taxes levied and collected by the federal government but whose proceeds are assigned to the states in which they are levied include succession duties, estate duties, terminal taxes, taxes on railway fares and freights, taxes on the stock exchange, and a central sales tax on newspapers. Taxes on the interstate consignment of goods are levied and collected by the federal government, with the proceeds going to the states. The federal government does not receive any revenue from these taxes.

Income tax and excise duties are levied and collected by the federal government, but the proceeds are divided (or rather redistributed) among states on the basis of a combination of specific criteria for fiscal equalization laid down by the Finance Commission. This combination generally includes population size, volume of industrial labour, per capita income, relative status

of the state's economy and development, poverty index, and other such indices of development and underdevelopment. The states' percentage share in the allocation pool varies from case to case. In practice, the overwhelming concern has been distribution on the basis of relative population, poverty, and level of development.

Besides this sharing of revenues among the states, Article 275 provides for grants-in-aid to such states as Parliament may deem in need of assistance (particularly regarding the promotion of welfare of tribal areas). Grants are also sanctioned to meet the cost of such development schemes as may be undertaken by the state with the federal government's prior approval.

The Tenth Finance Commission of India (1995-2000) has provided for the sharing of 26 percent of the gross proceeds from federal taxes and duties (excluding stamp duty, excise duty on medical/toilet preparations, central sales tax, consignment tax, and cesses levied for specific purposes) in lieu of their current share in income tax, basic excise duties, special excise duties, and grants in lieu of tax on railway passenger fares. The states continue to receive 3 percent of all federal taxes and duties over and above this 26 percent. The objectives of federal grants are to compensate for the states' residuary fiscal needs in order to correct regional disparities, to promote social welfare schemes, and, above all, to seek a fine balance between the states' resources and their developmental needs.

LOGIC OF THE DISTRIBUTION OF POWERS AND RESPONSIBILITIES

Exclusive Powers of the Union

The Constitution of India generates a highly complex notion of a strong federal union. It assigns certain exclusive powers (in terms of legislative initiative and executive control) to the federal government, the exercise of which has a transforming impact on the polity. But interestingly, these powers are subject to varying degrees of federal concurrence, an in-built constitutional mechanism of checks and balances, and parliamentary accountability. In the arena of distribution of powers and responsibility, the notion of a strong union government can hardly be termed unfederal. Moreover, any perceptive analysis of Indian federalism must also take into consideration the important historical fact that the Indian federation is not the result of a compact between two or more pre-existing sovereign entities but, rather, has evolved from the sovereign will of the people to live together as one organic political union. Therefore, one Constitution, single citizenship, and one common and closely integrated framework of administration and justice are the hallmarks of Indian federalism.

Parliament has, by virtue of Article 3 of the Constitution, the exclusive power to form federal units. Any legislative proposal in this regard cannot be introduced, however, without obtaining prior presidential sanction (i.e., federal government sanction), which, in turn, must ascertain the views of the affected states before approving the introduction of such a bill in Parliament. In practice it is rarely possible for the federal Parliament to ignore the views of the states. The federal government, in effect, cannot concede to the demands of regional groups/communities for a separate state unless such a proposal is received from the state(s) in which these groups are currently located.

At the time the Constitution was adopted, India's fourteen states and six union territories were defined by the historical context of their governance and administration. However, after about five years the State Reorganization Commission was established and the states were

reorganized on the basis of linguistic and cultural homogeneity; financial, economic, and administrative considerations; and, of course, preservation and strengthening of the unity and security of the nation. Since 1956 several reorganizations of the states have taken place, the latest in November 2000.

Constitutional Amending Powers

The Constitution of India empowers the union Parliament (and not the states) to initiate and effect changes in the Constitution. However, many constitutional provisions cannot be amended unless they are ratified by no less than half the states of the union. These include: the election of the president; the extent of the federal government's executive powers; presidential power to promulgate ordinances during a parliamentary recess; matters pertaining to the Constitution, organizational powers, and the authority of the Supreme Court and other high courts; distribution of legislative powers among the federal government and the states; the representation of the states in Parliament; and Article 368 (relating to the amendment procedure). Another significant aspect of the Constitution is the judicially innovated and constructed "doctrine of basic features of the Constitution" -- features that are solely determined, defined, and interpreted by the judiciary and cannot be amended.

Centralizing Powers under Emergency Powers

The emphasis upon the union in India's federal polity constitutionally validates the centralization of powers in the federal government under certain special circumstances, thus temporarily allowing it to assume the competences of the states. These emergency situations include "war or external aggression or armed rebellion" (Article 352); "internal disturbance"; emergence of a situation in which the current state government cannot function or discharge its constitutional duties "in accordance with the provision of this constitution" (Article 356); and instances in which the "financial stability or credit of India or of any part of the territory thereof is threatened." During financial emergencies the federal government may reserve for further consideration all the state's money and finance bills as well as "reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a state."

Emergency powers also have a crucial impact on the legislative competence of the states. Article 356 of the Constitution vests powers in the president to assume all or any of the functions of the state government. Similarly, Article 353(b) widens the ambit of the legislative competence of Parliament. The federal balance can be thereby transformed, with the federal government assuming authority not only for its own defined areas but also for areas not defined by the Constitution in the first instance. However, there are indirect measures to protect the interests and authority of the states through such procedures as legislative scrutiny of the application and implementation of emergency powers; judicial review of the federal government's decision to proclaim an emergency; limitation of the period of each emergency proclamation; and the provision that every proclamation must declare its intent (thereby allowing scope for judicial review), based on and supported by objective and verifiable documents and evidence. Such a declaration must clearly state what powers it seeks to reallocate and resituate. If it does not do this, then the legislative competence and executive authority of the state may remain intact.

The chapter in the Constitution dealing with emergency provisions has generated considerable argument. States perceive it as an encroachment on their autonomy and as a

convenient tool enabling the federal government to impose its own political design upon them. Criticism has focused mainly on the federal government's misuse of Article 356. It is often argued that such a provision goes against the spirit of federalism as states do not possess any relevant legal role in decision making regarding the use of the emergency provision and the dislocation of federal balance. When this situation is analyzed, it becomes clear that what the states question is not the spirit of the emergency provision but, rather, the unquestioning acceptance of the power of the federal government. In this regard, it may be safely argued that the intended logic and rationale of the emergency provision was not the dislocation of the federal balance but, rather, the strengthening of the union as an integral whole and the protection of its internal and external sovereignty. Thus the emergency provisions have, as the founding fathers had hoped, a safety-valve function by which territorial integrity is kept intact, constitutional political order is maintained across the units, and electors (citizens) are protected from the arbitrariness of elected state representatives.

Since the Constitution has not provided any in-built mechanism to prevent the misuse of emergency powers, the Supreme Court has time and again set out certain requirements. These include procedural transparency, such as the governor's report - a "speaking document" substantiated by objectively ascertainable facts; the convention of issuing a warning to erring states before implementing emergency powers; consulting as much as possible with concerned state governments before resorting to Article 356; and other such measures. However, above all, the emergency provision of the Constitution functions as a federal aid mechanism the purpose of which is to help the states in times of fiscal, natural, and political crises**.** Once this is realized, it can hardly be argued that the emergency provision is an unfederal feature of the Indian Constitution.

The Union's Legislative Power in the "National Interest"

Another interesting aspect of Indian federalism is the federal government's capacity to assume, through an act of authorization and consent, the responsibility for legislative construction and policy planning in relation to the state list. Thus, under the authorization of the Council of States, Parliament is competent to legislate on subjects enumerated in the state list. Such legislation must serve the "national interest"; however, what constitutes national interest is the definitional prerogative of the federal government. Over the years various judicial verdicts have attempted to lay down certain objective criteria for establishing substantive linkages between the subject and larger "national" imperatives. Usually the federal government's encroachment upon the state's jurisdiction is permitted with regard to: (1) those items that have a consequential bearing on India's defence and security; (2) maintenance and growth of national communications grids; (3) implementation of international obligations and treaties entered upon by India; and (4) those items that have grown to such a size and taken on such a degree of specialization that they require increased managerial skills and finances to regulate their development (e.g., heavy industry, petroleum, and subjects relevant to the execution of certain special directives found in the various parts of the Constitution - public order in terms of crimes that cut across states is a case in point).

In this context it is also important to bear in mind the basic constitutional fact that the federal government has been assigned certain regulatory powers to standardize norms and to harmonize rules pertaining to those items with translocal effects. Thus it is quite feasible for the federal government to issue guidelines concerning the use and exploitation of natural resources,

including oil fields; protection and preservation of the environment; and the conservation of soils, rare species, and other such entities that require regulated behaviour. Federal guidelines may also relate to those issues having interstate ramifications. These include issues such as labour migration, cross-border movement of crime and criminals, human trafficking, drug trafficking, and the sharing of river waters. The federal government may also issue guidelines to states on those subjects that broadly relate to and affect the growth of a national human development index. Federal guidelines may be either in the form of directives or in the form of ministerial/departmental advice. If a directive is issued, state compliance is necessary. Non-compliance may attract some constitutionally corrective legal action, such as that available under the emergency provisions and in other articles of the Constitution.

This brings us to the question of the obligatory duties and functions of the states. The states' obligatory functions emanate from the nature and content of the administrative relationship between the federal government and the states. Thus, Article 256 enjoins the states to exercise their executive power in such a manner "as to ensure compliance with the laws made by Parliament and any existing laws which apply to that state." To ensure compliance, the federal government may issue necessary directions, which a state must follow in its executive and administrative conduct of its constitutional affairs.

Consensual Centralization and Mutual Delegation of Powers

Another facet of Indian federalism is that it allows for the consensual centralization and mutual transfer of functions between the federal government and the states. In other words, the distribution of powers and responsibilities may, by mutual consent, be either centralized or decentralized. Thus, under Article 252 Parliament may, on the resolutions of two or more states, assume the legislative competence of framing rules and regulations on those matters within the competence of the states referred to in those resolutions. Usually such transfers relate to matters with transboundary implications and that require uniformity of outlook and common legal treatment. This is legislation by delegation. States embark upon such authorizations in order to use the greater expertise, resources, and machinery of the federal government. Such delegation is made freely and voluntarily by the governments involved and lasts so long as the delegated authority is not withdrawn. However, parliamentary law enacted under delegation cannot be amended by any of the concerned states: it can only be amended or repealed by Parliament.

Mutual delegation also takes place substantially in relation to federal executive power. Consequently, with the consent of the state, the federal government can entrust to a state government, either conditionally or unconditionally, the performance of functions in areas that fall within its exclusive executive and administrative competence.

This delegation from the federal government to the states has two important features. First, conferment of powers on states has, in actual practice, led to states exercising a large measure of executive authority in domains originally allotted to the federal government. The federal government on its own administers only a few matters, such as defence, foreign affairs, taxes assigned to it under List I of the Seventh Schedule, imports and exports, and foreign exchange. Second, it is usually the federal government that bears the administrative costs incurred by the state in its execution of delegated authority. In other words, delegation under Article 258 is generally a remunerated delegation. Also, as stated above, the cooperative structure of the federal-state relationship makes delegation a two-way process. Thus Article 258A, inserted by the Seventh Amendment Act, 1956, provides that the "Governor of a state

may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the state extends."

Asymmetrical Distribution of Competence

Articles 370, 371, and 371A-I make special provisions with regard to the exercise of regional autonomy and legislative competence to meet the regional problems and demands of some states (e.g., Jammu and Kashmir, Mizoram, Nagaland, Sikkim, Assam, Manipur, Andhra Pradesh, Maharashtra, Gujarat, etc.). These provisions also restrict the application of many federal laws in these states. Articles 371A and 371G, among others, make it abundantly clear that no act of Parliament can affect the religious and social practices of Nagas, Mizos, and other such ethnic communities; their customary law and procedure; the administration of civil and criminal justice in accordance with their respective customary laws; and the ownership and transfer of land and its resources unless so decided by a resolution of the concerned legislative assembly.

Similarly, Article 370, referring to the State of Jammu and Kashmir, renders inoperative many provisions of parliamentary acts and the general distribution of competence found under the Indian Constitution. In other words, many constitutional requirements and laws made thereunder would not apply to that state unless so resolved by the state assembly. The federal Parliament's jurisdiction is restricted to the matters enumerated in the union list (List I) and certain matters in the concurrent list (List III). Parliament's exercise of powers is, under Article 3 (relating to the formation of states and their boundaries) and Article 253 (relating to international treaty or agreement affecting the disposition of any part of the state's territory), inapplicable without the express consent of Jammu and Kashmir State.

Concurrence of the state is further required for application of Articles 352 (national emergency) and 365 (failure to comply with a union directive). Though Articles 356 and 357 are applicable to the State of Jammu and Kashmir, the meaning of the phrase "failure of constitution machinery" is construed as flowing not from the language of the Indian Constitution but, rather, from that of the state Constitution: "In Jammu and Kashmir two types of Proclamations are made: (a) the 'Governor's Rule' under section 92 of the Constitution of Jammu and Kashmir, and (b) the 'President's Rule' under Article 356 as in the case of the other states."[xv] Constitutional amendments made under Article 368 cannot be extended to Jammu and Kashmir, except under a Presidential Order issued under Article 370(1). These examples make it clear that the Constitution of India does allow for a variety of arrangements pertaining to autonomy.

Distribution of Competence at the Intrastate Level

The Sixth Schedule of the Indian Constitution institutionalizes the notion of regional autonomy by making provisions for the creation of regional councils, constituted for the purpose of promoting community autonomy and governance, especially for those ethnic communities that are territorially concentrated. Interestingly, this schedule introduces the notion of autonomous regional and district councils as substate units of administration and governance. These councils, constituted largely on the basis of adult suffrage, have developmental and regulatory functions, which include the allotment and use of non-reserved land; dairy development; agriculture promotion; fisheries; communications; primary and secondary education; primary health and sanitation; hospitals and dispensaries; industry, trade, and commerce; and money lending. Other

functions include identity-specific rights such as the regulation of the tribal practice of *jhum* (shifting agriculture), appointment or succession of chiefs or headmen, property inheritance, marriage and divorce, social customs, and the administration of justice in accordance with customary law by a specially created village council.

In order to partially compensate for their administration costs, the autonomous councils are empowered to assess and collect land revenue and to impose taxes on: (1) professions, trades, callings and employment; (2) animals, vehicles, and boats; (3) the entry of goods into a market for sale therein as well as tolls on passengers and goods carried in ferries; and (4) the maintenance of schools, dispensaries, or roads. Another source of revenue for the councils is royalties on the prospecting for or extracting of minerals in that region. Provisions have also been made to restrict the application of federal and state laws on the areas in which a council possesses the competence of framing and executing rules.

Local Governments

If the provisions in Article 243-243 ZG (as added by constitutional amendment in 1993) are made fully operational, the institutions of local self-government (i.e., local bodies at the district level and below) will become the third tier of governance. This will make India a multilevel federation, even if these bodies do not have law enforcement (police) or judicial powers. Some policy makers and intellectuals are of the view that *panchayats* must hold police and judicial powers, thus creating district governments.

While the Constitution suggests that states must transfer forty-seven subjects to the domain of local self-government institutions, the union government has taken no measures to institute greater power sharing. This has created an unhappy situation for the states. Moreover, in the absence of a clear demarcation of powers and responsibilities in states where autonomous area councils exist, conflicts do occur between these councils and local government bodies.

The rural and urban division of districts by the seventy-third and seventy-fourth amendments to the Constitution Act, 1992, has created serious problems in administration and governance. Management and administration of institutions in a district, maintenance of services, transfer of administrative staff, and several other related issues are creating unfavourable situations for the *panchayats* and municipalities. It is a matter of concern that the states in general are not devolving functions, functionaries, and finances to local governments.

The National Commission to Review the Working of the Constitution (2003) recommended further amendments to the Constitution in order to make *panchayats* effective "institutions of self-government."[xvi] Its thrust was to devolve to *panchayats* exclusive functions and the financial resources (separate tax domains) that would enable them not only to become viable local government institutions but also to prepare plans and to implement schemes for economic development and social justice.

Resolution of Federal Conflicts

One of the underlying features of cooperative federalism is the mediation and resolution of interstate conflicts. The Constitution of India grants a mediation function to the federal government. Article 262 states: "Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-state river or river valley." The mediation may follow either course: it may be informally

negotiated through the federal departments or through the Prime Minister's Office. But when the administrative-political negotiation fails, the federal government may constitute a tribunal (a semi-judicial body) to resolve the issue legally and technically after a thorough examination of mutually competing claims by the states. While the scope of Article 262 is restricted to a specific issue, the federal government's creation of an interstate council is significant. This council's scope covers anything related to federal-state and interstate relations. Article 263 provides that, if at any time it appears to the president (i.e., in effect, the federal government) that the public interest would be served by the establishment of a council, then it shall be lawful for the president, by order, to establish such a council and to define the nature of its duties as well as its organization and procedure. This council would be charged with the duty of: (1) inquiring into and advising upon disputes which may have arisen between states; (2) 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; and/or (3) making recommendations on any such subject, particularly regarding the better coordination of policy and action with respect to that subject. The first council was constituted as recently as 1990, and its first meeting was held in 1996.

CONTEMPORARY DEBATES ON THE DISTRIBUTION OF POWERS AND RESPONSIBILITIES

The federal debate in India has largely centred around whether the federal system should be made up of a "strong centre versus weak states" or a "strong centre with strong states." The "strong centre versus weak states" proposition has two dimensions. The first is that the centre is already strong, to the cost of the states. Therefore, the federal government must devolve a large measure of autonomy - pertaining to legislative competence and fiscal capacity - to the states. This argument takes an absolutist position on federalism, viewing the role of the federal government as restricted to the discharge of certain limited functions. It prefers a minimalist federal government with maximalist states. The fallacy inherent in this type of argument is the belief that one level of government can be made strong at the cost of the other. The second dimension of the "strong centre versus weak states" proposition is integrationist and holds that a strong union is imperative in order to assert national strength and to keep the nation intact. Ingtegrationists believe that the states should be the subservient partners of a strong federal government. In this view, federalism as a theory embracing both autonomy and integration is lost.

The second proposition, "strong union with strong states," seeks to balance the power equation in such a way that neither the union nor the state is weak but, rather, that both gain equally from each other. How to fairly balance the power equation between the federal government and the states has led to the establishment of several review bodies concerned with federal-state relations. The first such body was the Administrative Reform Commission (ARC, 1968), which was appointed by the Government of India. The foremost concern of this commission was to depoliticize the structure of federal relations, particularly its administrative and financial aspects. It took up the issue of planning and development, listing three main reasons for the poor economic position of the states: (1) the own-source financial resources of the states are comparatively inelastic; (2) functions allocated to the states are such as to lead compulsively to expanding responsibilities, particularly in the context of ambitious development plans; and (3) foreign aid and deficit financing both tend to strengthen union rather than state resources.[xvii]

ARC recommended a new approach to union-state financial relationships based on the following principles: (1) arrangements for devolution should be such as to allow the states' resources to correspond more closely to their obligations; (2) devolution should be in a manner that enables an integrated view of the plan as well as non-plan[xviii] needs of both the union and the states; and (3) advancement of loans should be related to what the team referred to as "the productive principle."[xix]

ARC also recommended unifying the Finance Commission and the Planning Commission into a single central institution, which would handle plan and non-plan grants to the states. It also suggested that the system of attaching patterns of assistance to plan schemes should be discontinued: "re-appropriation should normally be permitted freely at the discretion of the states from one scheme to another and from one head of development to another;" the states should be free to use block amounts or block federal grants at their discretion, and "for programmes of crucial importance the concept of tied assistance should be systematically introduced and rigorously implemented."[xx]

In sum, ARC hardly questioned the notion of a strong union, but it did attempt to federalize the notion through fine tuning functional decentralization, recognizing the autonomy and the competence of states in select areas, and introducing transparency into the federal administrative organization.

It was the report of the centre (union)-state relations inquiry committee (the Rajamannar Committee), set up in 1971 by the State of Tamil Nadu, that, for the first time, critically questioned the notion of a strong union. The committee strongly favoured autonomy for the states and sought to unburden the union of many of its responsibilities as well as its occupancy of many fields that, in other federations, ordinarily belong to constituent units. It sought to adjust legislative relations through the redefinition and redistribution of entries in the Seventh Schedule. Other legislative recommendations included vesting the residuary powers of legislation and taxation in the states, granting the state legislature the power to amend acts of the federal Parliament, and instituting mandatory consultation with the states with respect to any federal government decision affecting state interests. On financial matters it favoured widening sharable taxes by placing corporation tax, custom and export duties, tax on the capital value of assets, and excise duties under state jurisdiction. It also recommended merging the surcharge on income tax with the basic rate of income tax. All grants (plan and non-plan) were to be made only on the recommendation of the Finance Commission. The Planning Commission was to be placed on an independent basis. Article 365 (one of the emergency powers) was to be deleted, and non-compliance with a union directive was not to be treated as a "failure of constitutional machinery."

The most exhaustive, insightful, and balanced treatment of the entire gamut of federal power sharing and distribution is found in the report of the Commission on Centre-State Relations, chaired by Justice R.S. Sarkaria (1988). Unlike the ARC and Rajamannar Committee reports, the report of the Sarkaria Commission strove to situate the union framework of the Indian polity within the grand design of federalism as a "living theory." In other words, it tried to strike a fair balance between autonomy and integration on a case-to-case basis. It attempted to resolve the conflicted domain of the federal government's prerogatives and states' rights within the overall framework of the Indian Constitution. Another interesting aspect of the report was that it made the exercise of authority under various federal provisions of the Constitution as transparent and as objective as possible. Instead of effecting too many amendments to the Constitution, it favoured the growth of norms and conventions, a kind of federal political culture

in which conflict would be resolved through negotiation. In the commission's opinion, "it is neither advisable nor necessary to make any drastic changes in the basic character of the Constitution."[xxi] This is because "the working of the Constitution ... has demonstrated that its fundamental scheme and provisions have withstood reasonably well the inevitable stresses and strains of the movement of a heterogeneous society towards its development goals."[xxii]

Major recommendations of the Sarkaria Commission included: (1) "residuary powers of legislation in regard to taxation matters should continue to remain exclusively within the competence of Parliament, while the residuary field other than that of taxation, should be placed in the concurrent list. The Constitution may be suitably amended to give effect to this recommendation";[xxiii] (2) "ordinarily, the centre should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for state action within the broader framework of the policy laid down in the Union law";[xxiv] "(3) on overlapping and concurrent jurisdictions, prior consultation with states must be a matter of regular practice" (however, it ruled out making consultations with states a matter of constitutional obligation); (4) parliamentary legislation with respect to the matters on the state list under the authority of Article 252 must be limited to a specific term; (5) Article 356 should be used very sparingly, as a matter of last resort, and then only after issuing a warning (a governor's report on this subject should be a "speaking document," which means that it must contain adequate reasoning); (6) reconstitution of the Inter-State Council (which is referred to as the Inter-Governmental Council) and the zonal councils to promote the spirit of cooperation between the federal government and the states; (7) that, "[b]y an appropriate amendment of the Constitution, the net proceeds of corporation tax may be made permissibly sharable with the states";[xxv] and (8) the creation of a body known as the National Economic and Development Council.

The Sarkaria Commission made several other significant recommendations pertaining to, among other things, different constitutional heads and federal functionaries, socioeconomic planning, language, and interstate disputes. Its significance lies in the fact that its report has become the standard official reference for resolving federal conflicts. It has also laid down a norm of federal conduct, especially in the arena of federal-state relations. The commission report has been exhaustively discussed by the Inter-State Council, and its recommendations (minus fifty-three out of a total of 247) are currently at various stages of implementation and execution.

Finally, given a liberalizing and globalizing economy, an assertive and participatory society, and the completion of over fifty years of a working Constitution, in the year 2000 the Government of India appointed another commission to review its functioning and to suggest measures for improvement. This commission submitted its report on 31 March 2003. Many of its recommendations with regard to the distribution of powers and responsibilities are in agreement with the Sarkaria Commission report. Some important recommendations include: (1) inclusion of a new subject, "Management of Disasters and Emergencies, Natural or Man-made," in the concurrent list of the Seventh Schedule; (2) listing of the services to be taxed by the states; and (3) the establishment of an authority known as the Inter-State Trade and Commerce Commission to carry out the objectives of Articles 301-304 (i.e., the provisions dealing with trade, commerce, and intercourse within the territory of India).[xxvi]

CONCLUDING OBSERVATIONS

The "union model" of Indian federalism, following the initial reluctance of the Government of India during the pre-1989 period, is showing signs of resilience and flexibility. The federal government is strong, but attempts are under way to strengthen the states through various federal mechanisms for the transfer and sharing of powers. Since the 1990s federalism in India has moved from a situation of conflict to a reliance upon consensus, working through federal forums such as the Inter-State Council. In this context it must be emphasized that the coalition party system of governance at the federal level, by giving direct representation to powerful regional parties in the Union Cabinet of the Government of India, has also eased tensions between the federal government and the states. Regionalism and the regionalization process have carved out their own space, which has facilitated regional participation in decision making on federation-wide issues. Moreover, the federal government seems to have become receptive to accommodating the states' viewpoints when it comes to the federal dispensation of national power and resources. Imperatives of good governance and fiscal discipline on the part of the union and the states are also increasingly underlined.

One sees a perceptible change in the official understanding of federal unity and integrity**.** Regionalism or provincialism within the permissible limits of autonomy and integration is no longer treated as a threat to federal unity. Despite several shortcomings, the third tier of local government has de facto been successfully added to the federal structure in order to generate a perspective from below. This will surely have a positive impact on the refederalization of the power distribution within India. However, the constitutional provision of "autonomous regional councils" is yet to be realized in its full potential as one of the federal modes of substate governance. Such is also the case with the power distribution at the intrastate level. States, in contrast to their claims for autonomy in their federal-state relations, seem to be reluctant to devolve powers and functions to their intrastate institutions. As a result of the growing frustrations of the union and local government institutions in this regard, there has even been a move to get the union government to directly fund the district *panchayats*.[xxvii] On the one hand, the union cannot bypass the state in order to deal with the local governments; on the other hand, people perceive federalism as one of the instruments of their empowerment, and, as a result of the current democratic upsurge, the non-devolution of powers and finances to the local governments is unlikely to last much longer. In short, decentralizing the "eminent domain" of the federal government in order to ensure federal unity through regional accommodation is a critical issue in India today.

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i D.D. Basu, *Introduction to the Constitution of India* (New Delhi: Wadhwa and Co., 1997), p. 59.

ii "Union" and "federal" are used interchangeably in this chapter. The term "centre" is also commonly used in India to denote "union" or "federal."

iii Government of India, *India 2003: A Reference Annual* (New Delhi: Publications Division, Ministry of Information and Broadcasting, 2003).

iv *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; *S.R. Bommai and others v. Union of India*, AIR 1994 SC 1918:(1994) 3SCC1. The basic features of the Constitution as spelled out by the Supreme Court include supremacy of the Constitution, democracy, rule of law, republican structure, separation of powers, federalism,

secularism, judicial review, independence of the judiciary, free and fair elections, emergency provisions, the essence of fundamental rights, directive principles of state policy, freedom of the press, the concept of justice, and the limited amending power of Parliament.

v Government of India, *India 2003,* p. 38.

vi Sangh Mittra, *Indian Constitutional Acts: East India Company to Independence* (New Delhi: Commonwealth Publishing, 2003), p. 298.

vii For details of each amendment act, see M.V. Pyle, *Constitutional Amendments in India* (Delhi: Universal Law Publishing Company, 2003). As of today there have been 102 amendments to the Indian Constitution.

viii Like the word "community" the term "nation" has also acquired a meaning in Indian parlance that does not entirely conform to Western usages (e.g., "civic-nation," or "cultural" nation). When the reigning ideological discourse uses the term "nation" in India, it always means composite multicultural secular nationalism. See R.S. Dinkar, *Sanskriti ke char adhyaya,* Foreword by Jawaharlal Nehru (Patna: Udayachal, 1956). Dinkar uses the term *samasik rashtrawad*, which, in Hindi, means "composite nationalism."

ix B. Shiva Rao, ed., *The Framing of India's Constitution: Select Documents* (New Delhi: The Indian Institute of Public Administration, 1998).

x *Union of India v. H.S. Dhillon*, AIR 1972 SC 1061.

xi *International Tourism Corporation v. State of Haryana*, AIR 1981 SC 774.

xii *D.C. Wadhwa v. State of Bihar*, AIR 1987 SC 579.

xiii *Western Coalfields v. Special Area Development*, AIR 1982 SC 697.

xiv P.M. Bakshi, *The Constitution of India* (Delhi: Universal Law Publishing Company, 2004).

xv D.D. Basu, *Introduction to the Constitution of India*, 19th ed. (New Delhi: Wadhwa and Company, 2002), p. 256.

xvi *Report of the National Commission to Review the Working of the Constitution*, vol. 1 (New Delhi: Universal Law Publishing Company, 2003), pp. 238-242.

xvii Administrative Reforms Commission, *Report of the Study Team on Centre-State Relationships*, vol. 1 (New Delhi: Government of India, Ministry of Home Affairs, 1967), p. 17.

xviii Ibid., 21-22. "Plan needs" are the needs of development-related programs and projects; "non-plan needs" are those of public establishment, including salaries.

xix Ibid. The "Productive Principle," as applied to loans, would mean that a loan should be used only for those activities that would increase output (say, goods and services).

xx Ibid., 15-44.

xxi *Report of the Commission on Centre-State Relations*, part 1 (Nasik: Government of India Press, 1987), p. 544.

xxii Ibid.

xxiii Ibid., 31.

xxiv Ibid., 66.

xxv Ibid., 315.

xxvi *Report of the National Commission to Review the Working of the Constitution,* vol. 1, pp. 234-235.

xxvii United Progressive Alliance, *Common Minimum Programme* (New Delhi: 27 May 2004), p. 9; see also "Power to Panchayats" (editorial), *Times of India* (New Delhi), 1 July 2004, 14; "States Oppose Direct Funding of Panchayats," *The Hindu* (New Delhi), 1 July 2004, 1.