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**CHALLENGES OF DIVERSITY AND FEDERALISM
IN AN ERA OF GLOBALISATION**

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India, Canada, Australia and the United States of America are all federations among several others in the world. A federation connotes a State where the legislative and executive powers are distributed between a central/federal authority and several regional/provincial/State authorities. There is no such thing as a standard or a model federal State. Each federal State, whether it is the USA, Canada, Australia or India, is the product of a distinct historical process. Just because the USA happens to be the earliest of the federations, it would be wrong to treat it as a model and judge every other federal constitution on the touchstone of that constitution. So long as the scheme of a constitution answers a broad division of powers as aforesaid, it can be characterised as a federal constitution. The expressions federation, quasi-federation, confederation, federacy, consociation or associated states are, in my humble opinion, descriptive in nature to denote the various entities yielded by distinct and different historical processes.

India:

India presents a classical instance of the existence of a 'federal situation' -- an expression coined by Prof. Sawyer (Modern Federalism). Its size, its population, its regional, linguistic, cultural and racial diversity give it the characteristic of a sub-continent. Even so, its insularity over the years led to the evolution of a composite cultural unity, a feeling of common heritage and a sense of oneness.

Prior to the establishment of British rule in the 19th century, India's history was one of brief periods of political unity and stability followed by spells of dissension, chaos and fragmentation. Whenever a strong monarch at Delhi conquered different outlying States to the south, east or west and sought to impose a highly centralised governance, it proved counter-productive, triggering off a chain-reaction of divisive forces. Their rule never lasted for long. If one takes the situation obtaining in the 18th century, India was divided into a number of independent States. The Moghul rule at Delhi had disintegrated. The East India Company extended its rule by might of arms as well as by diplomacy. In 1858, when British rule was established in India, two-thirds of the country came under

direct British rule while the remaining one-third comprised more than 500 princely States. The British discovered that these princely States could indeed be sources of strength and accordingly allowed these princely States to continue. The princely States were "autonomous" in a very limited sense. They were under the thumb of British government in all important matters.

While some steps were taken towards the dispersal of the governing power from 1871 (Mayo scheme) onward, the first meaningful step in the direction of a federal structure for India was the enactment of the Government of India Act, 1935. It distributed the legislative power -- and the executive power which is co-extensive with the legislative power -- between the Centre and provinces, with a concurrent list thrown into the bargain.

While the Constituent Assembly convened in 1946 to draft a Constitution for a free India and was yet to commence its exercise in earnest, partition of the subcontinent was decided upon and effected. This circumstance brought about a qualitative change in its approach. As stated in the Second Report of the Union Powers Committee (July 5, 1947), "now that partition is a settled fact, we are unanimously of the view that it would be injurious to the interests of the country to provide for a weak central authority which would be incapable of ensuring peace, of co-ordinating vital matters of common concern ... and that the soundest framework of our Constitution is a federation with a strong Centre." This decision must be understood in the context of the fact that the India that came into existence as a result of partition was no less multicultural, multilingual and multiethnic -- in short, a pluralistic society -- than the British-India. Almost one-half the population of India spoke Hindi, while the other half spoke different languages like Marathi, Bengali, Telugu, Tamil, Kannada, Malayalam, Gujarati and Punjabi. While the Hindu religion was the dominant religion of the country, about 12 per cent of the population professed Islam, besides a sizeable number of Christians and Sikhs.

Accordingly, the Constitution of India that emerged from the Constituent Assembly and which was brought into force w.e.f. 26th January, 1950, created a federal State but with a strong Centre. A perusal of the Seventh Schedule to the Constitution which sets out the distribution of legislative power between the Centre and the States, discloses the said approach. Defence of India, armed forces, atomic energy, foreign affairs, treaty-making power including the power to make war and peace, citizenship, railways, airlines, major waterways including major ports, trade and commerce with foreign countries, banking, insurance, the constitution, organisation and jurisdiction of the Supreme Court and High Courts, taxes on income, central excise and customs duties were also placed in the Union List. (Of course, quite a few of the taxes and duties levied and collected by the federal government have to be made over to States, either partly or wholly as provided in Articles 268 to 272.) The State List contains no less important legislative heads. They include maintenance of public order, police, local government, public health, intoxicating liquors, communications, agriculture,

land, industries and mines, taxes on agricultural income, taxes on lands and buildings, duties of excise on intoxicating substances, sales tax, taxes on motor vehicles, taxes on luxuries and entertainments and stamp duties. Certain entries in the State List are, however, made subject to specified entries in the Union/Central List. For example, in the case of industries, entry 24 in the State List is made subject to entries 7 and 52 of the Union List which means that the Parliament can, by making a declaration that it is expedient in the public interest to assume control of a particular industry, assume control of that industry, which then stands transferred from the sphere of the States to that of Centre. The Concurrent List comprises procedural laws (both civil and criminal), personal laws governing Hindus, Muslims and others and economic and social planning, forests, price control of essential commodities, and so on. Insofar as the Concurrent List is concerned, the Parliament has again been given a predominant position. Any law made by the Parliament with reference to any subject in the Concurrent List prevails over a State enactment on the same subject notwithstanding the fact whether the State enactment is earlier to or subsequent to the Parliamentary enactment unless, of course, such State enactment receives the assent of the President of India, in which event it prevails over the parliamentary enactment in that particular State. The residuary power is vested in the Centre by Article 248. In addition to this, Articles 249 to 253 empower the Parliament to make laws even with respect to subjects in the State List in certain specified situations e.g., when an emergency declared under Article 352 is in force, or where two or more States request the Parliament to make a law, or for giving effect to international agreements. Article 356 empowers the President (Central Government) to dismiss a State government and to dissolve the State legislature, if he is satisfied that a situation has arisen where the government of that State cannot be carried on in accordance with the Constitution. Above all, Article 3 empowers the Parliament to form a new State by separating territory from one or more States, to increase and diminish the area of an existing State and to alter the boundaries or the name of an existing State. The only limitation upon this power is to obtain the views of the affected Legislature. All this does not, however, mean that the Indian Constitution is not federal in character. As has been held by the Supreme Court of India in *S.R. Bommai v. Union of India*, 1994 (3) SCC page 1 (at page 216), "the fact that under the scheme of our Constitution greater power is conferred upon the Centre vis-a-vis the States does not mean that States are mere appendages of the Centre. Within the sphere allotted to them, States are supreme. The Centre cannot tamper with their powers." It may also be noted that the judicial power of the State is not distributed between the Centre and the States. We have only one judicial system, with the Supreme Court at the apex. More importantly, our Constitution recognises only one citizenship -- and for good reason, since the object was to weld a bewildering array of castes, communities, tribes, religious and linguistic groups -- in short a multicultural, multireligious and multiethnic society -- into one nation.

The above feature, viz., vesting more powers in the federal government while adopting a federal constitution, is indicative of the desire to maintain and

preserve unity in diversity and not to make States mere appendages of Centre. There is no validity in the comment that India is a quasi-federation or that while India is a federation in normal times, it becomes a unitary State when an emergency is proclaimed under Article 352. This is perhaps equally true of both Canadian and Australian federations.

With a view to preserve the diversity linguistic, religious, regional and ethnic -- the founding fathers wisely incorporated a Bill of Rights in part III of the Constitution. Articles 14 to 16 guarantee to all citizens of India equality before the law and equal protection of laws irrespective of religion, race, caste, sex, descent or place or birth. Article 19 guarantees to all the citizens of India freedom of speech and expression, freedom of peaceful assembly, freedom of association, freedom to move freely throughout India, freedom to settle or reside in any part of India and the freedom to practice any profession or to carry on any occupation, trade or business. Article 21 declares that no person -- not merely citizens -- shall be deprived of his life or personal liberty except according to the procedure established by law. Articles 25 to 30 are very important. Article 25 declares that "subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion." Article 26 declares that every religious denomination or any section thereof shall be free to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in the matters of religion and to own and acquire properties and manage them. Article 27 prohibits the State from levying any taxes for promoting any particular religion. Article 28 declares that no religious instruction shall be imparted in any educational institution wholly maintained out of State funds and says further that no one shall be required to take part in any religious instruction in any educational institution recognised by or receiving aid out of the State funds. Article 29 (1) declares in express terms that "any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same" and further that "no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them." Article 30 entitles all linguistic and religious minorities "to establish and administer educational institutions of their choice." It must be remembered that by virtue of Article 13, no law can be made inconsistent with the provisions of the above fundamental rights (Bill of Rights). Construing the above articles, the Supreme Court has declared in *S.R. Bommai v. Union of India* [1994 (3) SCC 1] that secularism is a basic feature of the Constitution, which means that said feature can't be curtailed or abolished by the Parliament acting in exercise of its constituent power (power to amend the Constitution), and further, that if any government of the State acts in derogation of the said concept, it would be permissible for the President of India to dismiss that State Government under Article 356 on the grounds that government of that State is not being carried on in accordance with the Constitution. Article 32, contained in the said part, it is necessary to point out, has made the said rights

enforceable by the Supreme Court whose own power too -- the power of judicial review -- has been held to constitute one of the basic features (unamendable) of the Constitution.

It is perhaps not possible to devise a constitutional scheme more clear and effective to preserve and promote the religious, ethnic, linguistic and regional diversity. It is also conceded by all discerning persons that the Supreme Court has been zealous and vigilant in discharging the obligation placed upon it by Article 32.

Post-Constitutional Developments:

Within a decade of the commencement of the Constitution (1950), a number of new States were carved out on the basis of language out of the existing States. New States like Maharashtra (Marathi), Andhra Pradesh (Telugu), Tamilnadu (Tamil), Gujarat (Gujarati), Karnataka (Kannada), Kerala (Malayalam), Orissa (Oriya) and Punjab (Punjabi) were formed besides West Bengal where Bengali language is spoken. In the course of time, the north-east was divided into as many as seven States keeping in mind the cultural, ethnic and linguistic diversity. We have thus Mizoram (Mizos), Nagaland (Nagas), Meghalaya (Khasi and Jaintia Hill tribes), Assam (Assamese language) and so on.

For the two decades following independence, the Congress party was in power both at the Centre and the States (except for a brief stint of the communist party in Kerala) and the sway of Jawaharlal Nehru was absolute. During this period -- and even thereafter whenever there was a strong Prime Minister -- measures were adopted to avail of all avenues to strengthen the Central Government. Under entry 52, regulation and development of all major industries was taken over. Control of all important minerals and mineral development was similarly taken over invoking entry 54 of List I. Entry 33 was introduced in the Concurrent List vesting powers of control and regulation of many essential commodities including certain agricultural products. To quote the Sarkaria Commission Report on Centre-State Relations (1988): "centralised planning through the Planning Commission (a non-statutory body) is a conspicuous example of how, through an executive process, the role of the Union has extended into areas such as agriculture, fisheries, soil and water conservation, minor irrigation, area development, rural reconstruction and housing etc. which were within the exclusive State field." This trend was no doubt sought to be checked by other political parties which came to power in the States and by the emergence of regional parties avowedly wedded to protecting and promoting the interests of that particular State, its language and culture, but not to much avail.

On the question of Centre-State relations in the Indian federation, one can not overlook the Report of the Justice Sarkaria Commission. The Commission was constituted in 1983 with the following terms of reference: "2. The Commission will examine and review the working of the existing arrangements between the

Union and States in regard to powers, functions and responsibilities in all spheres and recommend such changes or other measures as may be appropriate. 3. In examining and reviewing the working of the existing arrangements between the Union and States and making recommendations as to the changes and measures needed, the Commission will keep in view the social and economic developments that have taken place over the years and have due regard to the scheme and framework of the Constitution which the founding fathers have so sedulously designed to protect the independence and ensure the unity and integrity of the country which is of paramount importance for promoting the welfare of the people."

After an exhaustive and painstaking study, the Commission submitted its Report in 1988. Its recommendations cover legislative and administrative relations, the role of the Governor including his power to reserve a bill for the assent of the President, Emergency provisions including the misuse of Article 356, All-India Services, the Inter-governmental Council (Article 263), financial relations, economic and social planning, industries, mines and minerals, agriculture, forests, food and civil supplies, inter-State water disputes and language. Each chapter contains a set of recommendations. In particular, I may quote a few paragraphs from the "General observations" found at the end of the Report: "21.2.01 In India, because of the diversities in religion, language, caste, race, etc. there are a large number of groups, seeking to establish their identity and promote their sectional interests. 21.2.02 The issue of devolution of powers and responsibilities between the top two tiers of Government, Union and States, needs, therefore, to be considered in the context of the broader issue of decentralisation between these and other tiers of government on the one hand, and the functional agencies within each of these tiers, on the other. 21.2.03 Unfortunately, there was not only inadequate territorial and functional decentralisation in India when the country became independent, but there has also been a pervasive trend towards greater centralisation of powers over the years, inter alia, due to the pressure of powerful socio-economic forces. 21.3.01 Effective participation by citizens is an integral part of democracy. Large parts of the programmes, projects and services initiated by the Union are executed in the States. Many of the programmes undertaken by the States also have wider implications for the Union as well as local Governments. There is at present no forum where a citizen can present his views on all these matters. No doubt, various issues of national importance would be discussed by the Inter-Governmental Council recommended by us. But it will necessarily be in camera. 21.3.02 We feel that the I.G.C. should set up an Advisory Committee of experts which may look into specific inter-governmental problems requiring special knowledge of the subject, such as law, economics, sociology etc. The proceedings of this Committee should be unfettered by the formal positions taken by the various Governments, and may permit public hearings. This will enhance the acceptability of the programmes and solutions suggested by the I.G.C. and ensure efficiency in their implementation. 21.3.03 In view of the relatively communal nature of some "majorities" and "minorities" of different hues (of

religion, caste, language, race, etc.) at different governmental levels of our country, it is most important that democracy is seen as Government by "compromise" between the majority and the minority, and not an authoritarian use by the former of its voting power riding roughshod over the latter."

In the year 1992, the Parliament, acting in exercise of its constituent power under Article 368, amended the Constitution inserting Parts IX and IX-A, relating to Village Panchayats and Municipalities. These two chapters provide for Constitution, elections, functions and powers of these organs of local self-government. Developmental activity at a local level is now made the primary responsibility of these bodies.

Challenges of diversity:

Before I speak on challenges of diversity to the Indian federation, I must refer to a feature peculiar to India. Apart from linguistic, cultural, religious and ethnic diversity, there is yet another feature which is peculiar to India.

Hindu religion and Hindu civilisation is one of the earliest religions/civilisations in the world. It is certainly more than 5000 years old. Over the years, several distortions and inequities have crept into it. The most important of them is the division of people on the basis of caste. Hindus are divided, quite inexplicably and most illogically, into 'high castes' and 'low castes' on the basis of accident of birth. At the top of the caste system, are the Brahmins. Next come the Kshatriyas and then the Vaishyas. The last rung is of Shudras. Funniest of all, there is yet another large category outside the four-tiered caste system, who were called the 'outcastes' or Panchamas. These outcastes were generally treated as untouchables. Now they are being referred to as Scheduled Castes -- for the reason that they are placed in a Schedule prepared under Article 341. Most of the sub-castes among the Shudras (which are themselves referred to as castes) are now known as Other Backward Classes (OBCs). In addition to the Scheduled Castes and backward classes, there are certain tribes who have largely remained untouched by civilisation and who lived and continue to live in forest areas. They are even more backward than the Scheduled Castes and are now referred to as Scheduled Tribes (Article 342). Scheduled Tribes, who are sometimes incorrectly referred to as "indigenous people" constitute 8.08% of the total population. 50% of them live in the central Indian States while approximately 12% live in north-eastern region. In four States in the north-east, they make up more than 80% of the population. By some coincidence, a large amount of minerals like coal, bauxite, uranium etc. are found mostly in areas inhabited by these tribes. The mining activity, deforestation and construction of certain big dams like the Narmada Dam (Sardar Sarovar) are leading to large-scale displacement of tribals which has become a serious socio-economic issue. Several NGOs have been promoting the cause of these people and their rehabilitation.

With a view to undo this social imbalance and to bring the Scheduled Castes,

Scheduled Tribes and backward classes on par with the others, the Constitution provides for -- indeed obligates -- the States to make special provisions and to undertake special measures for their upliftment (Articles 15(4), 16(4), 16(4A), 46 and 338 to 340). Accordingly, the Indian State has been providing quotas/reservations in the services under the State (both at the Centre and the States) in educational institutions and other spheres. With a view to empower them politically, quotas/reservations have been provided for them in Parliament, in the State Assemblies, in the local bodies and all other institutions of self-governance. These quotas extend up to fifty per cent and sometimes even beyond. Schedules Five and Six to the Constitution contain special provisions for the administration of Scheduled areas (inhabited by Scheduled Tribes) and in particular for the administration of Tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram -- all in the north-east.

Challenge based upon social backwardness:

Even prior to independence, quotas both in services and educational institutions were in vogue in certain southern States of India. After the commencement of the Constitution, there was pressure from the backward sections of society, in particular from the Scheduled Castes and Scheduled Tribes, to provide reservations for them in services under the State and in educational institutions. The federal government provided quotas in all central services in favour of SCs and STs but as far as reservation in favour of Other Backward Classes are concerned, it has been a story of innumerable Commissions and endless litigation. The main controversy has been "how to identify the Other Backward Classes (OBCs)", and the extent of reservations (quotas) that can be fixed for them. Ultimately in the year 1992, a Bench of nine judges was constituted in the Supreme Court of India -- which is increasingly emerging as an arbiter in socio-economic conflicts -- to decide the above questions once and for all (*Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217). By a majority of 6:3, the court decided that (1) for identification of OBCs, caste can be taken as the starting point but it cannot be the sole basis. Along with the caste, social and educational backwardness, occupation and poverty should also be taken into consideration. In case a particular caste satisfies the above tests, that caste can be identified as a backward class for the purpose of the Constitution. At the same time, the court held that those members of that caste who are socially, educationally and economically advanced should be excluded from that backward class. (This exclusionary exercise was referred to as removal of the 'creamy layer'). (2) the extent of reservations provided in favour of SCs, STs and OBCs put together cannot go beyond 50%. It is not permissible to provide reservations up to 60, 70 or 80% since that would negate the guarantee of equality provided by Articles 14, 15(1) and 16(1) of the Constitution of India. (3) while reservations/quotas can be provided in the matter of direct recruitment at any stage/level of the services under the State, no reservations/quotas can be provided in the matter of promotion from one stage to another stage in the service.

Some of the southern States felt gravely aggrieved by the said decision. They mounted pressure upon the Central Government to amend the Constitution to over-ride points (2) and (3) mentioned above. They pointed out that in their States, quotas extend up to 70% or more and that sudden scaling down to 50% would create serious problems of adjustment and would also give rise to general dissatisfaction among their people. The Scheduled Castes and Schedules Tribes -- Members of Parliament, Members of State Legislatures, SC/ST Commission and several political parties too joined this demand. As a result, the Parliament enacted, in 1995, the Constitution 77th Amendment Act, adding a clause in Article 16 providing that it shall be permissible for the State to provide quotas (reservation) for the Backward Classes in the matter of promotion as well. So far as the demand for raising the ceiling on extent of reservation is concerned, another constitutional amendment, restricted to State of Tamilnadu was passed, saving and preserving the existing reservations in excess of 50%. Another southern State, Kerala, is refusing to prescribe and implement the criteria for excluding the "creamy layer", compelling the Supreme Court to issue a mandatory direction to undertake and complete that exercise promptly.

Challenge based on Language:

As indicated above, the Constitution guarantees to all linguistic minorities the right to preserve and promote their language and culture and entitles them to establish and maintain educational institutions of their choice.

Though the carving out of a number of States on the basis of language satisfied the long standing demand of these linguistic groups, it has also served to fan exclusivist tendencies in certain States, particularly in Tamil Nadu which witnessed a strong anti-Hindi movement in the 50s. Some groups spearheading the anti-Hindi agitation went to the extent of claiming that culturally they are different from the rest of India. Secessionist talk was also in the air. Fortunately, these fissiparous tendencies were put an end to by wise statesmanship on the part of both the central and State leaders. Even so the political landscape in Tamil Nadu is occupied mainly by two dravidian parties. The national parties like Congress and BJP have to ally with one or the other party at the time of and for the purpose of contesting elections. So far as education is concerned, the linguistic States are facing a problem which the Hindi speaking majority does not. In linguistic States, the three-language formula is being implemented which means that while the principal medium of instruction is the particular local language, the students are asked to learn Hindi and English too as compulsory subjects. The linguistic minority groups in these States have no choice but to receive instruction in the language of that State. In private schools, however, whose members are constantly growing, the medium of instruction is, by and large, English and Hindi and the local language is being taught only as one of the subjects. This trend is attributable not only to the perception that the English language opens the window to the world but also because of the information

technology revolution which by and large employs the English language.

In this context, I may refer to the disputes arising between the States in the matter of allocation of natural resources. Disputes regarding the sharing of waters of inter-State rivers frequently arise not only between the constituent States in a given federation but also between independent States e.g., the dispute between the central European states regarding the distribution of water in the Danube. In India too, there have been a number of disputes between the States with respect to sharing of water flowing in inter-State rivers. There have been long-drawn disputes between Maharashtra and Andhra Pradesh regarding water in Godavari, between Andhra Pradesh and Karnataka regarding water in Krishna, between Punjab and Haryana regarding water in Sutlej and the most intractable of all, the dispute between Karnataka and Tamilnadu regarding sharing of water in Cauvery. Had it been a dispute merely between two States, it would not have presented much of a problem but the fact that these two States are two linguistic States, Kannada and Tamil, the dispute is acquiring an edge and a certain sharpness. Indeed, a few years back, this dispute led to large-scale violent attacks on Tamil-speaking people in Karnataka by Kannada-speaking majority. The course of the Cauvery water allocation dispute is referred to elsewhere in this paper. The linguistic States are also giving rise to regional parties speaking in the name of and seeking to uphold the interest and dignity of that particular language and culture. In Andhra Pradesh, a party called Telugu Desam is representative of this tendency. So is the Shiv Sena in Maharashtra, Akali Dal in Punjab and Trinamul Congress in West Bengal, apart from the dravidian parties in Tamilnadu.

Challenge based on religious and cultural diversity:

It must be said to the credit of the Indian nation that there has been no major challenge to the unity and integrity of the country on the ground of religion. This is because the founding fathers have wisely provided for a secular Constitution for India as has been explained above. The Supreme Court of India has expressed itself on this aspect in the following words in *S.R. Bommai v. Union of India* (1994 (3) SCC page 1 at 233): "While the citizens of this country are free to profess, practice and propagate such religion, faith or belief as they choose, so far as the State is concerned i.e., from the point of view of the State, the religion, faith or belief of a person is immaterial. To it, all are equal and all are entitled to be treated equally." The Supreme Court and the High Courts have emerged as the dependable and sturdy guardians of religious, cultural and linguistic rights of minorities. The law reports of India since 1950 are replete with decisions evidencing this fact. This is one of the reasons that today in India, the judiciary enjoys greater credibility than either the executive or the legislature.

Of course, there have been cases of communal clashes between religious groups here and there but gradually they are fading away. In recent days, you must have heard, there have been some isolated attacks upon Christians in two States

but each and every political party and each and every individual has condemned these incidents. They do not represent concerted or organised attacks upon a given religious group but are isolated incidents born of local rivalries and animosities. It would be tendentious to see any pattern in them. Islamic terrorists are only a problem in Kashmir -- period -- and not in the country as such. In this context, I must clarify the position with respect to the State of Jammu and Kashmir. Jammu and Kashmir was one of the princely States in British-India. While the majority of the population was Muslim, it was ruled by a Hindu prince. The State of Jammu and Kashmir abuts both India and Pakistan. By the date of independence (15th August 1947), the ruler of Kashmir did not decide whether to join India or to join Pakistan. Probably he was toying with the idea of an independent Kashmir. Pakistan, however, thought that being a Muslim majority State, it must accede to it. When the ruler demurred, it sent raiders (in truth Pakistani army regulars) into Jammu and Kashmir. When they reached the outskirts of Srinagar, the capital of Jammu and Kashmir, the ruler asked India to repel the raiders but India (whose Governor-General then was Lord Mountbatten) insisted that unless the ruler accedes his State to India it would not be possible for India to send its forces into that State. The ruler acceded to India. The Indian armed forces then went into the State and cleared a large part of the State of the raiders. While one-third of the State was yet to be cleared of Pakistani presence, the Indian Government went to the United Nations complaining of aggression by Pakistan. The United Nations brought about a ceasefire, which ceasefire line has been the effective dividing line between India and Pakistan in that State for more than 50 years. Pakistan's craving for Kashmir has led to more than one conflict between India and Pakistan including the recent conflict in Kargil. It must be remembered that after peace was restored, a free and fair election was held in Jammu and Kashmir under the control of India in 1953, in which the National Conference led by Sheikh Abdullah (father of the present Chief Minister of Jammu and Kashmir) swept the polls on an agenda of State's accession to India being final. It would thus be clear that the demand for secession or independence on the part of certain groups in a part of Jammu and Kashmir (Kashmir valley) is not really based upon religion but is based upon the alleged arbitrariness in the Ruler's accession to India and the alleged failure of the Indian Government to hold a referendum to ascertain the wishes of the people in the matter of accession to India. It is necessary to point out at this stage that the referendum which was proposed by the United Nations was premised upon the vacation of Jammu and Kashmir by Pakistani forces. In other words, the vacation of Jammu and Kashmir by Pakistani forces was a prerequisite to holding of such referendum. Pakistan never did vacate the territory of Jammu and Kashmir occupied by them. Hence, the question of referendum is irrelevant and misplaced at this juncture.

It would not be out of place to mention at this stage that applying the criteria evolved in the recent decision of the Supreme Court of Canada in "the Reference re Secession of Quebec" [1998 (2) SCR 217], the populace of Kashmir can not be characterised as "a people". It is not a case either of a colony or a place where

the people of that State are denied any meaningful exercise of their right to self-determination within the Indian State, of which it forms part.

There were certain secessionist groups in north-eastern States too but most of them are a spent force by now. The demand now is for more autonomy, more funds and for special measures to conserve their cultural identity and way of life.

Between the years 1990 to 1994, certain groups in Punjab resorted to violence and terrorism in support of their demand for a separate State -- 'Khalistan'. They were being helped both in money and material by certain expatriate groups. But the State got the better of them by adopting stern counter-terrorist measures, the credit for which largely goes to a police officer named K.P.S. Gill and the police force under him.

Disputes between States and States, and between States and the Centre, in the matter of allocation of natural resources:

Article 263 empowers the President to constitute an inter-State Council if he is satisfied that such a council is necessary in the public interest to enquire into and advise the steps necessary to resolve inter-State disputes and also disputes between the Centre and the States.

Article 131 of the Constitution of India provides that the Supreme Court shall have exclusive original jurisdiction in any dispute (a) between the Government of India and one or more States or (b) between the Government of India and a State or States on one side and one or more other States on the other or (c) between two or more States.

Article 262 provides for adjudication of disputes relating to waters of interstate rivers or river valleys. It says that the 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 interstate river or river valley. The Parliament is empowered to provide that in such a dispute, neither the Supreme Court or any other court shall have any jurisdiction. Two interesting situations arose under these Articles which reached the Supreme Court. A number of Legislators filed a complaint setting out several acts of corruption, nepotism and favouritism against the Chief Minister of State of Karnataka. The complaint was addressed to the Central Government. The Central Government appointed an Inquiry Commission under the Commissions of Enquiry Act to inquire into the allegations. Thereupon the State of Karnataka brought a suit against the Union of India questioning the right of the Central Government to appoint an Inquiry Commission under the Act aforesaid to enquire into allegations against the Chief Minister of a State. The challenge failed. The court rejected the argument that in case of such complaints, only the State Government has the power to appoint an Inquiry Commission. It held that no such limitation flows from any of the Articles of the Constitution. The court opined that the jurisdiction in this behalf appears to be co-extensive. The

other case related to the dispute between the States of Karnataka and Tamilnadu in the matter of distribution of water flowing in the Cauvery river. The Tribunal constituted under the Water Tribunal Act made an interim award pending a final decision. The State of Karnataka not only refused to obey the interim order, but went ahead and enacted a law directly contrary to the interim order. In the light of the seriousness of the dispute arising between two States, the President made a reference under Article 143 of the Constitution to the Supreme Court to render its opinion whether the Water Disputes Tribunal was competent to make an interim order and whether the Karnataka Act made in defiance of the said interim order is valid and effective. The court held that the Tribunal is competent to grant interim relief pending a final decision of the dispute and that the Karnataka Act made in defiance of the said interim order is beyond the legislative competence of the State and is ultra vires the Constitution. (The dispute between the said two States, Karnataka and Tamilnadu, still remains unresolved.)

The challenges arising from globalisation:

Globalisation is not a single phenomenon. It is employed to denote a range of trends and forces changing the face of the world. It essentially means extending a free market economy to the rest of the globe, taking advantage of the collapse of Soviet Union and the East-European Communist regimes. Globalisation signifies free trade in goods and services, free flow and transfer of capital, investment and establishment of industries without regard to national boundaries i.e., internationalisation of production, curtailment and elimination of tariff and other barriers to trade, and so on -- the rules of the game being laid down by the WTO, IMF, the World Bank, the OECD and G-7 summits. This process is both the cause and a consequence of the information revolution, which in my opinion is one of the important causes contributing to the disintegration of the Soviet Union. No State is in a position today to control it or to isolate themselves from the rest of the world. Globalisation is also affecting the internal balance of power within states, in particular, in federal states. Not only this, this process seems to be enhancing the power of the executive (governments) at the cost of the legislatures, as would be evident from the Indian experience, where the federal government is signing international agreements one after the other without reference to Parliament. As pointed out by the Human Development Report 1999, these policies are indeed proving counter-productive in a majority of the countries in the absence of strong governance. It is making the rich richer and poor poorer, both among the States as also within the States. Moreover, there is no transparency in the working of giant corporations who spearhead these policies, their accountability being only to their shareholders. The result is the rise of the 'Market' and the corresponding decline of the State. It is certainly leading to diminution of national sovereignty. The dominance of the market is today an unpleasant but an inescapable reality. It has become an article of faith with the developed countries and the developing world has no choice but to believe in it. Even communist China had to adjust itself to this reality. Of course, they call it a "socialist market economy". Many of the smaller States and

developing countries are finding themselves unable to manage their economies or their monetary and fiscal policies. Economic forces outside their reach and control are shaping the economic scenarios within their countries. Their economies are becoming subject to vagaries of the capital market -- and the capital markets are inherently volatile. We have witnessed this phenomenon in South-East Asia, Russia and Brazil in recent years. Simply stated, nation-states are fast losing control over some of their areas of traditional control and regulation such as regulation of external trade, telecommunications and financial transactions. They are unable to control the flow of goods and services, ideas and cultural products. A situation is arising where the interests of residents as citizens are often at odds with their interests as consumers and this is contributing to two diverse developments, viz., globalisation and an association of regional/ethnic identities and their claim for a share in the decision-making processes both at macro as well as micro levels -- referred to as "localisation" by the World Bank.

The rise and dominance of market forces and the corresponding decline of State power is also contributing to a weakening of the federal authority and is providing a much larger freedom of action to the constituent States/provinces. Some of them are now seeking direct representation in international decision-making fora. Until about 1990, the trend was towards strengthening of federal governmental authority at the expense of the constituent States. Whether because of post-World War II ideological animosities (cold war) and the consequent threat perceptions or on account of technological and scientific advances e.g., invention of nuclear energy, the federal authority in every federal State -- be it USA, Canada or Australia -- tended to expand and fill all spaces not actually occupied by the constituent States. With the disintegration of the Soviet Union and the consequent cessation of threat perception, coupled with the information technology revolution, the trend now appears to be in the opposite direction. This trend -- the growing political power of the provinces/constituent States and the assertion of regional identities by them is referred to as the "localisation" process in the World Development Report 1999-2000, published by the World Bank last month. The Report says that rising educational levels, technological innovations that allow ideas to circulate and the economic failure of most centrally planned economies coupled with urbanisation have all contributed to the push for localisation. At the same time, the Report says that decentralisation of power, as in the case of a federation, helps maintain political stability in the face of pressures for localisation. "When a country finds itself deeply divided, especially along geographical or ethnic lines, decentralisation provides an institutional mechanism for bringing opposition groups into a formal, rule-bound bargaining process". The Report indeed warns against the risks involved in globalisation and localisation and highlights the need for development thinking to move beyond simplistic notions of economic growth in order to embrace a more comprehensive view of people's lives. To take the example of my own country, until a few years ago, the entry of foreign capital was closely and tightly controlled and monitored by the Central Government under a host of laws including the Foreign Exchange Regulation Act, and the Rules made thereunder. No one could take in or take out

a single dollar without the permission of the Reserve Bank. Parliament not only made all the restrictive laws, but even the Reserve Bank of India was under the control of the Central Government. The States had no say in the matter. But with the introduction of liberalisation and globalisation policies, signifying free and unrestricted movement of capital and investment, the States are finding themselves to be more appropriate channels for attracting such capital and investment than the national government. The result is that each State is now exploring the developed world for loans and investment. They are inviting industrialists to establish industries in their State promising all kinds of concessions and advantages. No permission of the Central Government is required for this purpose. No doubt, for taking out foreign currency by Indian citizens, there are still certain restrictions in force but not for foreign capital. Even in the matter of establishment of industries, there has been a sea-change. Earlier, the establishment of all major industries was governed by the Industries (Development and Regulation) Act, 1951 and a host of other enactments and Rules, all within the domain of the Central Government. With the introduction and implementation of globalisation/liberalisation policies, most of these restrictions have been withdrawn. As a matter of fact, the subject of "Industries" was in the State List according to the distribution of powers, but that entry was subject to a rider, viz., that if the Parliament declares that control of any industry by the Union (Central Government) is expedient in the interest of public, that industry went under the exclusive jurisdiction of the Central Government. (The position was the same with respect to mines and mineral development.) But since the Central Government has practically done away with its control, the States have recovered back their lost authority. Each State is now free to invite, allow and encourage the industries within its territory in such manner as it likes. At another level, the 73rd Amendment to the Constitution has established units of local self-government and village and town/city levels, endowing them with a constitutional status and conferring fairly autonomous powers in several matters including developmental works. The developments aforesaid have inspired the World Bank to query whether India is a decentralising federation. While the said query appears to be a bit misplaced, the process of the States and other statutory/constitutional authorities asserting their regional identities and also their right to participate in the decision-making processes is all too evident. It is in such manner that globalisation is serving to curtail the authority of the Central Government and correspondingly enhance the authority and freedom of action of the States.

At the same time, I must refer to another and contrary development. Under Article 253 read with entries 13 and 14 of the Union List, it is the exclusive power of the Central Government to participate in international conferences, associations and bodies and to implement the decisions taken there, and to enter into treaties and agreements with foreign countries and their implementation. It is in exercise of this power that the Government of India has signed several agreements like TRIPS and GATS and has signed conventions like CBD besides innumerable conventions promoted by the UN. The government has already

initiated action to enact laws in terms of these international agreements which is seriously impacting upon the powers of the States. I may explain. According to the distribution of legislative power under our Constitution, "agriculture including agricultural education and research", "preservation, protection and improvement of stock and prevention of animal diseases" and "fisheries" are placed in the State List which means that legislation concerning the said heads can be enacted only by the State Legislature. But the federal government has already enacted a Patent (Amendment) Act and is contemplating a Biodiversity Act (pursuant to the Convention on Biodiversity, 1982), a plant variety protection Act and other substantive changes in the Patents Act in terms of and as required by the TRIPS Agreement. While the Centre wants uniform laws applicable to the entire country, the States are protesting that the Centre is seeking to trench upon the territory reserved exclusively to the States. It may be that some or other State will resort to the remedy of suit (legal proceedings) in the Supreme Court as contemplated by Article 131.

It would thus appear that the globalisation process is having a two-way effect on federations. On one hand, it is allowing the provinces/constituent States more and more freedom of action -- the "localisation" process -- and on the other hand it is also enabling the federal power to trench upon the fields exclusively reserved to provinces under our constitutional system.

So far as the Inter-State Council is concerned, it does not appear that any such Council has been constituted so far, though in 1990, the Supreme Court urged the government to consider the feasibility of setting up such a Council [Dabur (India) v. State of U.P.]. Of course, every year -- or more often, if necessary -- a Chief Ministers' Conference is held, presided over by the Prime Minister, where inter-State disputes are discussed and sought to be settled.

The impact of globalisation on Canadian federation/confederation:

The historical process which gave birth to the federation of Canada is distinct from the one which led to the birth of Indian federation. As you are aware, the British North America Act, 1867, gave effect to the 'confederation scheme' settled at conferences held in 1864 and 1867. The entity which emerged from this Act, was later joined by British Columbia, Prince Edward Island and Newfoundland and still later by Yukon and north-west territories.

Several international agreements entered into by the federal government of Canada like the Free Trade Agreement of 1988, the North American Free Trade Agreement (NAFTA) of 1994, the agreements arrived at in the course of the Final Round of Multilateral Negotiations on Trade and Tariffs (GATT) -- leading to the establishment of the WTO -- have had an effect similar to the one they had on Indian federation. According to a perceptive study made by Keith Banting, the effect of globalisation policies has been an ideological shift to the right whereunder "Canada's top business executives see government as the main

barrier to growth. Like the general public, corporate executives once saw government as a helpful partner in the building of the national economy. But today corporate Canada embraces the radical, free market view that government is no longer the solution but the problem itself." Indeed, there is an apprehension that in a globalised world, while the small and medium-sized businesses will continue to be constrained by government policy, multinational corporations will be able to work outside the regulatory and legal confines of domestic governments. One important casualty of globalisation has been the social sector i.e., spending on health, education and social development. Universal Health Care has been an important programme in Canada. But now the federal government is proposing major changes in it to which many of the provinces do not appear to be agreeable. There is also the grievance in certain provinces that the federal government is entering into international treaties and agreements without a proper discussion with them. Then there is the issue of Canadian Indians asserting their identity and their rights -- sometimes by reaching across the national boundaries in search of group affinity and to share strategies for putting pressure upon the governments.

In this connection, I cannot but refer to the recent decision of the Canadian Supreme Court on the reference made by the Governor General on the question whether Quebec has a unilateral right to secede from the Canadian federation. The unanimous opinion expressed by the Court is that while Quebec has a right to secede, it cannot do so unilaterally and that if a clear majority express their preference for secession, Quebec will have to enter into discussions with the Canadian federation and the other provinces in that behalf. The following observations are apt: "Democracy exists in the larger context of other constitutional values... Democratic rights (under which Quebec is claiming the right to secede) under the Constitution cannot be divorced from constitutional obligations... The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others. The negotiations that followed such a vote would address the potential act of secession as well as its possible terms should in fact secession proceed... The negotiation process would require the reconciliation of various rights and obligations by negotiation between two legitimate majorities, namely the majority of the population of Quebec and that of Canada as a whole. A political majority at either level that does not act in accordance with the underlying constitutional principles puts at risk the legitimacy of its exercise of its rights and the ultimate acceptance of the result by the international community... Although much of the Quebec population certainly shares many of the characteristics of 'the people'... Quebec does not meet the threshold of a colonial people or an oppressed people, nor can it be suggested that Quebecers have been denied meaningful access to government to pursue their political, economic, cultural and social development. In the circumstances, the 'National Assembly, the Legislature or the government of Quebec' did not enjoy a right at international law to effect the secession of Quebec from Canada

unilaterally "

It is in this manner that the parameters of the claim for secession by Quebecers have been clearly delineated in the light of international law.

The question then arises whether the entity of federation has successfully responded to the contemporary challenges of social diversity? The answer can only be one, viz., it is a federation alone which can properly manage, accommodate and satisfy the diversities of various kinds -- regional, linguistic, religious, ethnic and economic. A unitary state is the most inappropriate model for a pluralistic society like that of India, Canada, USA or Australia. The judiciary has fortunately emerged in all these four countries as the final arbiter of the several kinds of conflicts which are bound to arise in a federal state. Very often social and political questions which exercise the whole nation and which the politicians either do not wish to decide themselves (for fear of offending any particular section) or are not able to decide, are pushed onto the courts. They are presented as legal and constitutional issues before the courts. The courts have however not shirked, particularly in the recent decades, from examining and answering those issues. The decisions of Indian Supreme Court in *Keshavananda Bharati* (1973) and *Indira Sawhney* (1992) and of the U.S. Supreme Court in *Brown* (1954) and *Roe v. Wade* (1973) and of the Canadian Supreme Court on the Reference re. secession of Quebec (1998) are instances where the court decided issues of great moment to the nation as a whole.

At the same time, it must be recognised that decentralisation of governing power coupled with a strong -- and of course, a good -- federal government is a must to meet the challenges of increasing diversity and of globalisation. Without strong governance and effective regulation designed to promote common good, globalisation is likely to lead to human misery and sharpen the conflicts within each nation-state. A strong central government does not and should not mean weak state governments. Where the Constitution is supreme as in the case of a federation, a strong centre with equally strong states, each operating within its allotted spheres, is not only possible but essential.

There is no alternative.

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