



## Reviving Federalism

This editorial is based on [“The Sustained Attack on Federalism”](#) which was published in The Hindu on 21/12/2021. It talks about how in recent years, federalism has been threatened in India and what measures can be taken to revive federalism.

**For Prelims:** Supreme Court Judgements related to Federalism, Doctrine of Pith and Substance, Constitutional provisions regarding the powers of central and state governments, state, union and concurrent lists.

**For Mains:** Issues and Challenges Pertaining to the Federal Structure, Issues faced by the state governments, Increasing Central Dominance in Fiscal Policies is affecting federalism, How India’s federalism has been impacted by Covid-19 pandemic, Steps that can be taken to revive federalism in India.

**Federalism** in essence is a dual government system including the Centre and a number of States. Federalism is one of the pillars of the [Basic Structure of the Constitution](#).

However, in recent years, the **coercive policies introduced by the Central Government** coming on top of the **pandemic-induced economic shock**, have **worsened the political as well as fiscal situation of State governments**.

As the [Supreme Court](#) iterated in the *S.R. Bommai vs Union of India case*, the States are not mere appendages of the Union and the **latter should ensure that the powers of the States are not trampled with**.

### Federalism in India

- **Nature of Indian Federalism:** A Federal theorist K.C. Wheare has argued that the nature of Indian Constitution is quasi-federal in nature.
  - The SC in *Sat Pal v State of Punjab and Ors (1969)*, held that the Constitution of India is **more Quasi-federal than federal or unitary**.
- **Constitutional Provisions:** The respective legislative powers of states and Centre are traceable to **Articles 245 to 254 of the Indian Constitution**.
  - The **Seventh Schedule of the Constitution** contains [three lists](#) that distribute power between the Centre and states (Article 246).
    - On 98 subjects in the Union List, the Parliament has exclusive power to legislate.
    - On 59 subjects of the State List, the states alone can legislate.
    - On the subjects of the Concurrent List (52), both the Centre and states can legislate.
      - However, in case of a conflict, the law made by Parliament prevails (**Article 254**).

- **Absolute Power of State in Certain Matters:** According to various decisions of the Supreme Court (such as in the *State of Bombay vs F.N. Balsara case, 1951*), if an enactment falls within one of the matters assigned to the State List and reconciliation is not possible with any entry in the Concurrent or Union List after employing the [Doctrine of “Pith and Substance”](#), the **legislative domain of the State Legislature must prevail.**

## Issues Related to Federalism

- **Increasing Central Dominance in Fiscal Policies:** A series of steps by the Union government undermined the principles of fiscal federalism. This has been manifested by:
  - Increasing monetary share of the States in [Centrally Sponsored Schemes \(CSS\)](#).
  - Imposition of **demonetisation without adequate consultation with the States.**
  - Outsourcing of the statutory functions under the [Smart Cities Mission](#)
  - As of 2020-21, the Union government’s share in the total contribution of the petroleum sector was 68%, **which left only 32% to the States.**
    - In 2013-14, the **Union:State share was almost 50:50.**
- **Impact of the Covid-19:** The states were curtailed in aspects relating to Covid-19 management such as procurement of testing kits, vaccination, the use of the [Disaster Management Act, 2005](#), and the unplanned national lockdown.
  - Moreover, the ill-prepared government during the [Second Wave](#) countered criticism by **claiming health as a ‘State subject’.**
- **Legislations Weakening States’ Autonomy:** Several other bills and amendments introduced by the Union government in the recent past have also led to the weakening of States’ autonomy. These include:
  - The [farm laws](#) (which have been repealed now)
  - Banking Regulation (Amendment) Act of 2020
  - [Government of National Capital Territory Amendment Act, 2021](#)
  - Indian Marine Fisheries Bill, 2021
  - Draft Electricity (Amendment) Bill, 2020
  - [National Education Policy of 2020](#)
- **Taxation Related Issues:** Enlarging the non-divisible pool of taxes in the form of cess in petrol tax and instituting the Agriculture Infrastructure and Development Cess have resulted in a situation where the **Union continues to exclusively benefit from tax collection.**
  - The share of non-divisible pool cess and surcharge in total taxes collected by the Union government has **increased from 12.67% in 2019-20 to 23.46%** in 2020-21.
  - The 2021-22 Budget Estimates indicate that the **States’ share of Union tax has reduced to 30% against the mandated 41%** devolution prescribed by the [15<sup>th</sup> Finance Commission](#).
  - **GST Specific Issues:** During the pandemic, the Union government repeatedly violated the [compensation guarantees to the States under the GST regime](#).
    - **Delay in paying the States their due** worsened the impact of the economic slowdown.
    - The **GST compensation period expires in 2022**, and despite multiple requests from the States, the **deadline has not been extended.**
- **Inadequate Funding:** Cash-starved States have been **seeking non-tax avenues to generate funds** to sustain their programmes.
  - The **suspension and transfer of the [Member of Parliament Local Area Development \(MPLAD\)](#) funds to the [Consolidated Fund of India](#)** led to a major crisis situation for most States.
  - Although the Government has raised the borrowing limit under the [Fiscal Responsibility and Budget Management Act \(FRBM\)](#) from 3% to 5%, it has **imposed certain restrictive conditions** making it more difficult for the states to borrow.

## Way Forward

- **Relooking into Federalism:** The above mentioned policy misadventures call for research and introspection on federalism.
  - States should demand the **creation of a formal institutional framework to mandate and facilitate consultation** between the Union and the States in the areas of legislation

under the Concurrent List.

- **Strengthening Inter-State Relations:** State governments shall consider **deploying human resources to support them** in preparing responses to the consultations initiated by the Union, especially with a focus on the federalism angle.
  - Instead of reaching out to each other only during crisis situations, **Chief Ministers may create forums for regular engagement** on this issue.
    - This would be **crucial in the advocacy of major demands** like the extension of GST compensation to 2027 and inclusion of cess in the divisible pool of taxes.
- **Consultation is the Key:** The intention of the framers of the Constitution was to ensure that public welfare is subserved and the key to that lies in listening to stakeholders.
  - The **essence of cooperative federalism lies in consultation and dialogue** whereas a unilateral legislation without taking the States into confidence will only lead to protests on the streets.
- **Bringing Reforms while Balancing Federalism:** A diverse country India requires a **proper balance between the pillars of federalism (autonomy of states, centralisation, regionalisation etc)**. Extreme political centralisation or chaotic political decentralisation can both lead to the weakening of Indian federalism.
  - **Proper utilisation of the institutional mechanism of the Inter-state Council** must be ensured to develop political goodwill between the Centre and the states on contentious policy issues.
  - The **gradual widening of the fiscal capacity of the states** has to be legally guaranteed **without reducing the Centre's share**.

## Conclusion

The presence or lack of federal flexibility plays a crucial role in shaping democracy. The Union government needs to invest resources towards facilitating effective consultation with States as a part of the lawmaking process. It is critical to establish a system where citizens and States are treated as partners and not subjects.

### ***Drishti Mains Question***

“The presence or lack of federal flexibility plays a crucial role in shaping democracy”. Comment.