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# THE ROLE OF THE JUDICIARY IN RESOLVING FEDERAL FRICTION: A COMPARATIVE ANALYSIS WITH SPECIAL REFERENCE TO INDIA

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## ABSTRACT

This research explores the judiciary's role as a vital stabilizing entity in addressing federal tensions in India, where conflicts often emerge between the Center and the States due to the Constitution's federal framework with pronounced unitary characteristics. Through mechanisms like judicial review, constitutional interpretation, and its original jurisdiction under Article 131, the Supreme Court ensures that issues concerning legislative authority, executive power, fiscal allocation, and inter-state disputes are settled within constitutional boundaries. Notable cases, including *S.R. Bommai*, *Narmada Bachao Andolan*, *State of West Bengal v. Union of India*, *CPDR*, and recent decisions regarding governors' roles, demonstrate the Court's function in curbing executive overreach, safeguarding state independence, and promoting cooperative federalism. A comparative look at the federal systems of the USA and Canada further underscores how India's judiciary assumes a more proactive and integrative role in preserving the federal equilibrium.

**Keywords:** Federalism, Federation, Federal Friction, Cooperative Federalism, Comparative Federalism.

## 1. INTRODUCTION

Federalism is a system in which power is constitutionally divided between a central government and local entities, allowing each to govern independently within its area while working together on common issues. Federalism is a governance system that establishes two broad levels of government, each with constitutionally assigned power and responsibility. These divisions emerged from historical circumstances, political negotiations, and social factors and have endured over time through continuous adaptation. As conditions change, federal systems evolve by modifying institutional and functional relationships in innovative ways.<sup>1</sup> Robert Garran, an eminent Australian scholar, defined federalism "A form of Government in which sovereignty or political power is divided between the Central and local Governments, so that each of them within its own sphere is independent of the other."<sup>2</sup>

### 1.1 FEDERALISM AND FEDERATION

These two terms are intimately linked with one another. Both words are derived from the Latin term *foedus*, which means relationship or covenant. There is no single, universally accepted scientific definition for these phenomena. The proximity of these terms is apparent in that they must be used to explain each other, thus illustrating their inseparability.<sup>3</sup>

Federalism is a relatively new term introduced in the nineteenth century. Federalism may be referred to as the theoretical basis of the federation. It is a set of principles that determines the organization, function, and decision-making processes of federations<sup>4</sup>. A federation, or federal state, is a set of legal and governmental institutions that enable us to distinguish a particular state from both unitary states and confederations. Thus, federalism is both an idea and a process, while a federation is the manifestation of these ideas and is subject to the aforementioned process. It is worth mentioning that federalism as a theory of a phenomenon relates not only to the federal state but also to any governance system that distributes competence across multiple autonomous units<sup>5</sup>.

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<sup>1</sup> S. A. Paleker, *The Indian Journal of Political Science*, Vol. 67, No. 2 (APR.- JUNE, 2006), pp. 303-310 (8 pages)

<sup>2</sup> Robert Garran, *The Coming Commonwealth: An Australian Handbook of Federal Government* 70

<sup>3</sup> Kenneth C. Wheare, *Federal Government* 1–5 (Oxford Univ. Press 1963)

<sup>4</sup> Daniel J Elazar, *Exploring Federalism* (University of Alabama Press 1987) 5–7.

<sup>5</sup> M.P. Sharma, B.L. Sadana & Harpreet Kaur, *Public Administration in Theory and Practice* 256–61 (Kitab Mahal 2010)

## 2. FEDERAL SYSTEM OF THE USA, CANADA AND INDIA

### 2.1 FEDERAL SYSTEM OF THE UNITED STATES OF AMERICA

- The Constitution of the United States, 1787 was the first modern federal constitution.
- Under American federalism, power and sovereignty are constitutionally divided between state and federal governments<sup>6</sup>.
- American federalism grants more power to the states than most other federal systems. This is evident because 3/4 of the states need to agree to any constitutional amendments, and states have equal representation in the Senate<sup>7</sup>.
- Residual power will go to the state jurisdiction.
- The American Constitution is written as well as being rigid.
- The legislature cannot alter the provisions of the Constitution in a simple manner or according to the will of the politician. For example, regarding rigidity, only 27 amendments have been made from 1787 to 2020, which indicates how complex and difficult the procedure is in the US Constitution. After the passage of more than 200 years, only 27 amendments have been adopted so far.
- In the United States, the Constitution has established a system of “dual sovereignty,” under which the states have surrendered many of their powers to the Federal Government but also retained certain sovereign powers of their own.<sup>8</sup> Examples of this dual sovereignty are reflected in several constitutional provisions, as follows:
  - i. Article VI of the U.S. Constitution contains the Supremacy Clause, which states: “*This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made shall be the supreme law of the land.*”<sup>9</sup> This means that when federal laws conflict with state laws, federal

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<sup>6</sup> U.S. Const. arts. I–III

<sup>7</sup> U.S. Const. art. V

<sup>8</sup> *McCulloch v Maryland* 17 US (4 Wheat) 316 (1819).

<sup>9</sup> United States Constitution 1787, art VI.

law prevails.<sup>10</sup>

ii. Article I, Section 8 describes the specific powers granted to Congress. These are known as **enumerated powers** and include taxation, regulation of interstate commerce, national defense, and the enactment of laws necessary and proper for carrying out federal functions<sup>11</sup>.

iii. The Tenth Amendment provides that powers not delegated to the federal government are reserved for the states or people. These **reserved powers** include creating school systems, overseeing state courts, public safety, intrastate business regulation and local governance.

## 1.2 FEATURES OF THE FEDERAL SYSTEM OF CANADA

- Canada is a federal state formed under the Constitution Act of, 1867 (formerly the British North America Act).
- Sections 91 and 92 of the Constitution Act, 1867 outline the division of legislative powers between the federal and provincial governments. Federal powers include trade and commerce, criminal law, national defense, banking, currency, and Indigenous affairs. In contrast, provincial powers encompass property and civil rights, hospitals, municipalities, education ( shared with the federal government), and natural resources.
- Residual power belongs to the federal government<sup>12</sup>.
- Strong Center with Coordinated Provincial Autonomy.
- Dual and Cooperative Federalism.
- Flexible and Evolving Federalism. Canadian federalism has evolved through constitutional conventions, judicial decisions, and political practices.
- The Constitution is a written document that allows adaptability.

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<sup>10</sup> Gibbons v Ogden 22 US (9 Wheat) 1 (1824).

<sup>11</sup> U.S. Constitution, Article I, Section 8.

<sup>12</sup> Constitution Act, 1867, § 91 (“peace, order, and good government”);

## 2.3 CHARACTERISTICS OF INDIAN FEDERALISM

- **Dual Nature of the Indian Constitution: Federal with Unitary Features**

**Federal Features:** Two governments, division of powers, written Constitution, supremacy of the Constitution, rigidity of the Constitution, an independent judiciary, and bicameralism.

**Unitary Features:** Strong Centre, single Constitution, single citizenship, flexibility of Constitution, integrated judiciary, appointment of state governor by the Centre, all-India services, emergency provisions, etc<sup>13</sup>.

- **Absence of the Term ‘Federation’ in the Constitution: ‘Union of States’ Concept**

The Constitution avoids using the term ‘Federation.’ Instead, Article 1 describes India as a "union of states," suggesting that the Indian federation is not based on an agreement among states and that no state has the right to secede. It is characterized as "federal in form but unitary in spirit."<sup>14</sup>

K.C. Wheare coined the term "quasi-federal," while Morris Jones referred to it as "bargaining federalism," and Granville Austin termed it "cooperative federalism."<sup>15</sup> These terms reflect India's unique combination of a federal structure and strong central authority.

### **Constitutional Provisions**

The Constitution of India, though not explicitly using the term federation, establishes a polity that is federal in structure but unitary in spirit. Article 1 declares that “India, that is Bharat, shall be a Union of States.”<sup>16</sup> This formulation embodies the intention of the framers to establish an indestructible Union made up of destructible States, thereby ensuring national unity while acknowledging the diversity of regional interests. The federal character of the Constitution is manifested through a distribution of powers, a dual polity, a written and supreme Constitution, an independent judiciary, However, the

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<sup>13</sup> M.P. Jain, *Indian Constitutional Law* (LexisNexis 8th ed. 2018) 685–702

<sup>14</sup> M P Jain, *Indian Constitutional Law* (8th edn, LexisNexis 2018) 556–560.

<sup>15</sup> D D Basu, *Introduction to the Constitution of India* (LexisNexis 2022) 138–140.

<sup>16</sup> Art 1(1), Constitution of India 1950,

Indian model is frequently referred to as "quasi-federal" in contrast to traditional federations like the United States or Australia due to the Union's relative dominance in legislative, administrative, and financial concerns, creating a more centralized federal structure.<sup>17</sup>

## **2. Distribution of Legislative Powers**

### **(a) Territorial Distribution – Article 245**

Article 245 gives the State Legislatures the authority to enact laws for their respective States and the Parliament the authority to enact laws for all or any portion of India. The basis of legislative federalism is the territorial separation of powers.

**(a) Distribution of Subject Matter:** Article 246 and the Seventh Schedule Subjects are divided into three legislative lists under Article 246, read with the Seventh Schedule:

- List I: Union List (97 subjects): Important national issues such as currency, defense, foreign policy, and atomic energy. Parliament is the only body with the authority to enact laws on these issues.
- List II: State List (66 subjects): Issues of regional or local significance, including local administration, public health, public order, police, and agriculture. These topics are solely within the jurisdiction of state legislatures
- List III – Concurrent List (47 subjects): Matters where both Parliament and State Legislatures may legislate, such as criminal law, marriage, education, forests, and labour welfare.

In case of conflict between a Central and a State law on a Concurrent subject, Article 254 provides that the Central law shall prevail, thus reinforcing Union supremacy.

### **(c) Residuary Powers – Article 248**

Unlike the United States and Australia, where residuary powers rest with the States, Article 248 vests them in Parliament. This further strengthens the legislative dominance of the

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<sup>17</sup> S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1

Union.<sup>18</sup>

### **3. Distribution of Executive Powers**

#### **(a) Executive Authority of the Union – Article 73**

The executive power of the Union encompasses areas where Parliament has the authority to legislate. It also includes the exercise of rights, authority, and jurisdiction that the Government of India may hold under any treaty or agreement. This arrangement ensures that the executive authority of the Union aligns with its legislative powers, highlighting the Union's overarching role in India's federal structure.<sup>19</sup>

#### **(b) Executive Authority of the States – Article 162**

Similarly, the executive power of a state extends to matters on which the State Legislature has the competence to legislate. However, in some cases, it is expressly subject to the executive power of the Union.<sup>20</sup>

### **4. Financial Distribution of Powers (Articles 268–293)**

#### **(a) Scheme of Fiscal Federalism**

The Indian Constitution creates a complex mechanism for sharing financial resources, recognising that economic federalism is vital to political federalism. Recognizing that financial autonomy is essential for effective governance, the Constitution establishes mechanisms for taxation, revenue distribution, grants-in-aid, and the Finance Commission's role in mediating fiscal relations.<sup>21</sup>

#### **(b) Division of Taxation Powers**

Union Taxes (Articles 268–272): Customs, excise, income tax (excluding agricultural income), corporation tax, and others.

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<sup>18</sup> Art 248, Constitution of India 1950

<sup>19</sup> Art 73, Constitution of India 1950; see also M.P. Jain, *Indian Constitutional Law* 761–764 (LexisNexis 8th ed. 2018)

<sup>20</sup> India Const. art. 162

<sup>21</sup> India Const. arts. 268–293; D.D. Basu, *Commentary on the Constitution of India* 2184–2205 (LexisNexis 9th ed. 2018).

State Taxes: Land revenue, sales tax on goods, excise on alcoholic liquor, etc.

Concurrent and Shared Taxes: The Goods and Services Tax (GST) under Article 246A, introduced by the 101st Constitutional Amendment (2016), represents cooperative fiscal federalism<sup>22</sup>.

### **(c) Grants and Financial Relations**

**Article 275:** Grants-in-aid to States in need of assistance.

**Article 280:** Establishes the Finance Commission to recommend the principles of distribution of revenues between the Union and the States.

**Article 282:** Permits both levels of government to make grants for any public purpose.

The financial scheme demonstrates both autonomy and interdependence the Union collects major revenues, while States depend on transfers, promoting cooperative federalism.

## **5. Inter-Governmental Relations and Mechanisms**

### **(a) Inter-State Council – Article 263**

Article 263 empowers the President to establish an Inter-State Council to investigate and discuss subjects of common interest and recommend policy coordination between the Center and States. The Council acts as a consultative body, promoting cooperation and mitigating potential disputes between the two states.<sup>23</sup>

### **(b) Zonal Councils**

Zonal Councils, created under the States Reorganization Act of 1956, promote cooperation among neighboring states by providing a platform for discussion on regional issues such as economic planning, border disputes, and administrative coordination. These councils contribute significantly to India's cooperative federalism framework by

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<sup>22</sup> India Const. art. 246A; The Constitution (One Hundred and First Amendment) Act, 2016

<sup>23</sup> India Const. art. 263



institutionalizing inter-state dialogue outside the formal constitutional structure<sup>24</sup>.

### (c) Inter-State River Water Disputes – Article 262

Article 262<sup>25</sup> authorizes the Parliament to enact laws for the adjudication of disputes relating to the waters of inter-State rivers and river valleys. Pursuant to this, the Inter-State River Water Disputes Act, 1956,<sup>26</sup> was enacted, creating special tribunals. The Supreme Court's jurisdiction in such matters may be excluded by law, showing a limited departure from the judicial federalism.

## COMPARATIVE ANALYSIS: FEDERAL FEATURES OF INDIA, CANADA, AND THE USA

Feature	USA	Canada	India
<b>Nature of Federation</b>	Classic federal	Federal with central bias	Quasi-federal / federal with unitary tilt
<b>Type of Constitution</b>	Written & rigid	Written & moderately rigid	Written, partly rigid & partly flexible
<b>Source of State Powers</b>	States created the Union	Provinces created the Dominion	Union created the States
<b>Distribution Model</b>	Dual federalism	Centralised federalism	Three-tier federalism
<b>Lists of Powers</b>	Federal & State lists	Federal, Provincial & shared	Union, State & Concurrent Lists
<b>Residual Powers</b>	States (10th Amendment)	Centre (Section 91)	Centre (Art. 248)
<b>Citizenship</b>	Dual citizenship	Single citizenship	Single citizenship
<b>Amending Procedure</b>	Very rigid; state consent essential	Federal Parliament + provinces	Parliament; federal features require special majority + basic structure constraints

<sup>24</sup> States Reorganisation Act, No. 37 of 1956, §§ 15–20 (India)

<sup>25</sup> India Const. art. 262

<sup>26</sup> Inter-State River Water Disputes Act, No. 33 of 1956;

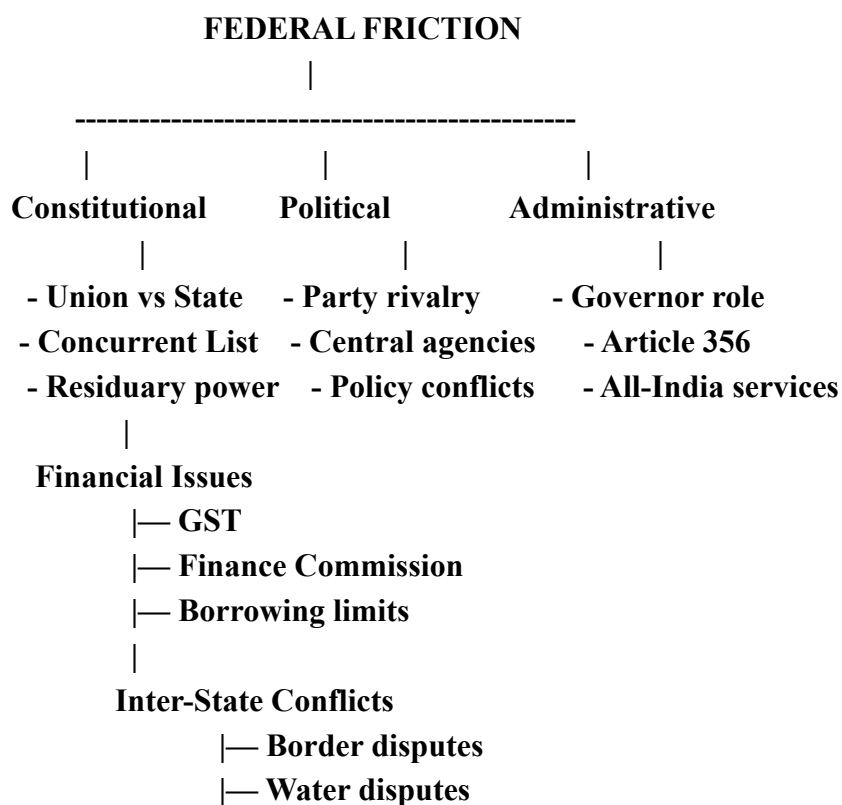
Feature	USA	Canada	India
Emergency Powers	Very limited	Moderately strong	Very strong (National, State, Financial)

## 2. FEDERAL FRICTION

Federal friction refers to the **tensions, conflicts, and disagreements** that arise between the different levels of government within a federal structure. In India, this tension is especially prominent because the Constitution is **federal in form but unitary in spirit**, giving the Union government more power in many areas than the states. Federal friction is not a sign of failure; it is an **inherent feature of federalism**, where power is shared, sometimes contested, and often reinterpreted through judicial decisions.

Friction occurs in the spheres of **legislative powers, financial relations, administrative powers, constitutional roles of governors, emergency provisions, inter-state relations, and political competition** between ruling parties at the Centre and States.

### 3.1 FEDERAL FRICTION IN INDIA



Federal issues in India span a wide range of topics that involve the relationship between the central and state governments, often leading to debates, discussions, and at times, conflicts. Some prominent federal issues in India include the following:

1. **Goods and Services Tax (GST):** The implementation of GST involved coordination between the center and states to create a unified tax system. Disputes arise over tax rates, revenue sharing, and decision-making powers between the centre and states.
2. **Water Sharing and Inter-State River Disputes:** Water sharing among states, especially in river basins such as the Cauvery, Mahanadi, and Krishna-Godavari, often leads to disputes over the allocation, usage, and construction of dams and reservoirs.
3. **Finance Commission Recommendations:** The distribution of financial resources between the center and states as per the Finance Commission's recommendations sometimes becomes contentious. States often demand a larger share, arguing for more autonomy in financial matters.
4. **Centre-State Relations on Legislative Matters:** Conflicts arise when both the centre and states pass laws on concurrent subjects. Disputes regarding the supremacy of central laws over state laws, or vice versa, often end up in courts for resolution.
5. **Special Status and Autonomy:** Some states, such as Jammu and Kashmir (before its reorganization), had special status and a higher degree of autonomy. Debates on autonomy and special status for states such as Nagaland continue.

## 4. JUDICIAL MECHANISM IN FEDERAL DISPUTE RESOLUTION IN INDIA

### 4.1 AUTHORITIES

#### (a) Supreme Court's Original Jurisdiction – Article 131

The Supreme Court possesses exclusive original jurisdiction in disputes between, The Government of India and one or more States; or Two or more States.

This provision serves as a constitutional safety valve for resolving federal friction. The Court's authority under Article 131 ensures that centre–state and inter-state disputes are settled through constitutional interpretation rather than political confrontation.

## (b) Judicial Review and Constitutional Supremacy

Articles 32, 136, and 226 empower the Supreme Court and High Courts to review the legislative and executive actions of both Union and State authorities, maintaining the supremacy of the Constitution and safeguarding federal balance.

## 4.2 ROLE OF JUDICIARY

### A. Centre–State Legislative Conflicts

#### 1. Overlapping Legislative Competence

- **Deep Chand v. State of U.P.<sup>27</sup>**, It involved the validity of the Uttar Pradesh Transport Service (Development) Act, 1955 passed by the U.P. Legislature, which authorised the State Government to frame schemes for the nationalization of motor transport. Parliament in 1956, with a view to introducing a uniform law on the nationalization of motor transport, amended the Motor Vehicles Act, 1939, by adding a new chapter to the Act enabling the State Governments to frame and execute schemes of nationalization of motor transport. It was held that the two laws occupied the same field, and the State law, to the extent of repugnancy, was, therefore, void. The Supreme Court held that both the Central and State laws occupied the same field, the **State law was held to be void** to the extent of repugnancy, and the **Central law would prevail**.
- **A.K Gopalan v. State of Madras<sup>28</sup>**, Every law of the Parliament as well as the state legislature must conform to the provisions of the Constitution, and if it does not, it must be unconstitutional and be declared so by the courts in appropriate proceedings. Conflicts often arise when both Parliament and State legislatures legislate on the same or related subjects especially in the Concurrent List. Under Article 254, the Union law prevails in the case of inconsistency unless the state law has Presidential assent.

### B. Administrative Conflicts: The Role of Governors

- **S.R. Bommai v. Union of India<sup>29</sup>**, In this landmark case the Hon'ble Supreme Court

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<sup>27</sup> *Deep Chand v. State of Uttar Pradesh*, A.I.R. 1959 S.C. 648.

<sup>28</sup> *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27.

<sup>29</sup> *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1

of India held that the President's power under Article 356 is not absolute and is completely subject to the power of judicial review. Only in the event of a breakdown of the constitutional machinery of the state can the State Government be dismissed, and this breakdown must be supported by relevant material. The judgment significantly restricted the misuse of the President's Rule and strengthened Indian federalism and democratic accountability.

- **State of Tamil Nadu v. Governor of Tamil Nadu, 2024** In this case the Governor R. N. Ravi withheld / delayed assent to several State Bills. The Supreme Court held that a Governor **cannot indefinitely delay assent**. Governor must act **within a reasonable time**, and cannot "sit on Bills." This ruling by the Hon'ble apex court places a limitation on the discretionary power of governors.
- **Punjab Government v. Governor of Punjab, 2023** The Governor of Punjab Banwarilal Purohit refused to summon the Legislative Assembly, citing procedural issue. The Hon'ble Supreme Court of India directed the Governor to summon the Assembly when advised by the Cabinet. The governor cannot obstruct legislative functioning.

### C. Fiscal Federal Friction

#### REASONS OF INCREASING FISCAL FRICTION

- Increasing centralisation under GST
- Declining fiscal autonomy of states
- Rising expenditure pressure on states
- Political differences between Union and state governments
- Centre's growing use of conditional funding

The Centre enjoys most lucrative sources of revenue (corporate tax, customs, income tax), while States bear heavy expenditure responsibilities (health, education, agriculture). This vertical fiscal imbalance leads to dependency on central grants.

## E. Inter-State Water Disputes

- **State of Karnataka v. State of Tamil Naidu**<sup>30</sup> (Cauvery Water Dispute), The Supreme Court upheld the Cauvery Tribunal's award and clarified the Union's responsibility to implement tribunal decisions. This ruling reinforced the constitutional framework under Article 262 and the Inter-State River Water Disputes Act of 1956.
- **State of Andhra Pradesh v. State of Karnataka**<sup>31</sup>, the Court interpreted Article 262 in the context of the Krishna Water Dispute, holding that judicial review is limited where Parliament restricts the Court's jurisdiction.
- **Narmada Bachao Andolan v. Union of India**,<sup>32</sup> The Hon'ble Supreme Court upheld the Narmada Tribunal Award in this case, ensuring coordination between the Center and the States involved in the Sardar Sarovar Dam project. The Court played a key role in preventing inter-state conflicts, overseeing compliance with rehabilitation and environmental responsibilities, and reinforcing cooperative federalism, all while refraining from interfering in policy decisions.

## G. Emerging Domains of Friction

### 1. Central Investigating Agencies (CBI, ED and NIA)

States such as West Bengal, Kerala, Chhattisgarh, and Rajasthan have withdrawn their general consent to the CBI, alleging central overreach. Raises constitutional questions under Entry 80, List I, and federal autonomy<sup>33</sup>. In the *State of West Bengal v. Committee for Protection of Democratic Rights* <sup>34</sup>, the Supreme Court held that a High Court can, under Article 226, direct the Central Bureau of Investigation (CBI) to investigate a case within a state, even without the state's consent. The Court clarified that this does not infringe on federalism or the separation of powers of the government.

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<sup>30</sup> (2018) 4 SCC 1

<sup>31</sup> (2000) 9 SCC 572

<sup>32</sup> (2000) 10 SCC 664

<sup>33</sup> Entry 80, List I, Seventh Schedule (investigation powers)

<sup>34</sup> (2010) 3 SCC 571

## 2. Uniform Civil Code (Article 44)

Debate on state autonomy vs. national uniformity in personal law. Potential for friction if Parliament enacts a nationwide law without state concurrence.<sup>35</sup>

## THE COVID-19 PANDEMIC

The COVID-19 outbreak exposed both the advantages and disadvantages of India's federal structure. The crisis revealed conflicts over the distribution of resources, administrative control, and legislative authority while also requiring the Union and the States to work closely together. The pandemic emphasized both the necessity of a coordinated national response during emergencies and the vital relevance of decentralizing some decision-making tasks, particularly in public health. The pandemic also showed that states must have administrative and financial autonomy for federal governance to be effective. Due to limited authority over crucial policy levers, delays in central transfers, and budgetary restrictions, many states found it difficult to respond effectively to the crisis.

## CONCLUSION

By its nature, federalism fosters a dynamic relationship in which collaboration and conflict coexist among various levels of government. Federal friction is therefore not a weakness but an inherent feature of a system in which powers are constitutionally divided and continually renegotiated. A comparative analysis of the US, Canada, and India shows that while federations share fundamental ideas such as constitutional supremacy and the division of powers, their forms change in response to social, political, and historical circumstances. Canada is an example of cooperative and asymmetrical federalism; India is a unique model, federal in form but unitary in spirit and the United States represents typical dual federalism with substantial state sovereignty.

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<sup>35</sup> India Const. art. 44;