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# REVISITING ARTICLE 246 AND THE DISTRIBUTION OF LEGISLATIVE POWER: IMPLICATIONS FOR COOPERATIVE AND COMPETITIVE FEDERALISM IN INDIA

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## ABSTRACT

This research paper critically examines *Article 246* of the Indian Constitution and its impact on Union-State legislative power sharing. It also examines how *Article 246* shaped cooperative and competitive federalism. This article defines the Union and State governments' legislative powers, exemplifying India's quasi-federal structure. The Union, State, and Concurrent Lists divide power between the Union and States. This allocation of power was meant to balance Central and state control, but recent political and governance changes have raised questions about its ability to preserve cooperative and competitive federalism.

This paper also examines *Article 246's* provisions, historical background, and justifications. It faces challenges from rising centralisation, disagreements between the Union and the States, and judicial interpretations that have led to a power imbalance. This study studies recent events to show how Indian federalism evolved from a cooperative model, where the Central and State governments collaborate, to a competitive model, where states compete for resources and investments. The report also investigates how the judiciary resolves Concurrent List conflicts.

The study concludes that *Article 246* should be revised to reassess legislative powers, improve coordination between the two governments, and ensure equitable resource distribution to support both types of Federalism. The report emphasises that India Federalism's survival depends on balancing Central authority and State autonomy to handle governance concerns.

**Keywords:** Article 246, Legislative Power Sharing, Cooperative Federalism, Competitive Federalism, Union-State Relations

## 1. Introduction

This research paper aims to critically re-evaluate *Article 246* of the Indian Constitution, particularly emphasizing its influence on the distribution of legislative powers between the Union and State legislatures. This study is motivated by the changing dynamics of federalism in India and the increasing tension between the Union and the States regarding legislative power. *Article 246* delineates the division of powers, which is fundamental to the functioning of India's quasi-federal framework, wherein aspects of both federalism and unitarism coexist<sup>1</sup>. Over time, evolving political dynamics, economic advances, and judicial interpretations have altered the balance, necessitating a reassessment of the original intent behind *Article 246* and its contemporary consequences.

*Article 246* of the Indian Constitution defines the separation of legislative authority between the Union and the States. It establishes the hierarchy of legislative authority through three lists in the Seventh Schedule:

1. **Union List (List I):** This list comprises areas of national significance, including defence, foreign affairs, finance, and atomic energy, over which the Union Parliament possesses exclusive legislative jurisdiction. These topics indicate domains where centralised authority is crucial for national unity and security<sup>2</sup>.
2. **State List (List II):** This list includes matters of regional and local significance, such as law enforcement, public health, agriculture, and land, over which State legislatures enjoy exclusive legislative authority. This acknowledges India's diversity and permits States to legislate on issues that directly impact their citizens<sup>3</sup>.
3. **Concurrent List (List III):** This list encompasses matters upon which both the Union and the States possess legislative authority, including criminal law, marriage, bankruptcy, and education. In the event of a conflict between Union and State laws regarding a concurrent subject, the Union law takes precedence, as stipulated in *Article 254* of the Constitution<sup>4</sup>.

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<sup>1</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 186-87 (Oxford Univ. Press 1966).

<sup>2</sup> D.D. Basu, *Introduction to the Constitution of India* 336 (24th ed. 2019).

<sup>3</sup> M.P. Jain, *Indian Constitutional Law* 798 (8th ed. 2018).

<sup>4</sup> *State of W.B. v. Union of India*, A.I.R. 1963 S.C. 1241.

This tripartite structure reflects India's federal fabric, which, in contrast to classical federations such as the United States, assigns greater legislative and financial authority to the Union. The architects of the Constitution intentionally adopted this quasi-federal framework to promote national unity, especially considering the political fragmentation prevalent during the period of independence. They acknowledged the necessity for an effective central government capable of ensuring order but allowing sufficient autonomy for states to oversee local issues.<sup>5</sup>

### 1.1 Evolution of *Article 246* and Judicial Interpretation:

Since the enactment of the Constitution, the distribution of legislative powers as specified in *Article 246* has been subjected to judicial scrutiny multiple times. The judiciary has been instrumental in outlining the extent of Union and State powers, especially in instances of controversy concerning subjects in the Concurrent List or overlapping domains in the Union and State Lists. Several notable cases have influenced the interpretation of *Article 246* and its effect on Indian federalism.

In *State of West Bengal v. Union of India*,<sup>6</sup> the Supreme Court analysed the character of federalism in India, determining that it was not a "true federation" but rather a union of States with a strong central authority. This case showed that the Union had primacy over the States, particularly in issues of national significance, hence confirming the centralising impulses embedded in *Article 246*.

In *SR Bommai v. Union of India*,<sup>7</sup> the Supreme Court further examined the characteristics of federalism under the Indian Constitution, determining that the Indian system is federal with a bias for the Centre. The Court upheld the authority of the Union to intervene in State affairs under specific conditions, including the invocation of *Article 356* (President's Rule). This case is crucial for comprehending the interplay between the allocation of legislative powers and the Union's capacity to exert control over States when required.

Other significant rulings, such as *State of Karnataka v. Union of India*,<sup>8</sup> have underscored the necessity of preserving a delicate equilibrium between Union supremacy and State sovereignty. The judiciary has repeatedly affirmed the primacy of Union legislation within the Concurrent

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<sup>5</sup> H.M. Seervai, *Constitutional Law of India* 307 (4th ed. 2015).

<sup>6</sup> *State of W.B. v. Union of India*, A.I.R. 1963 S.C. 1241.

<sup>7</sup> *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

<sup>8</sup> *State of Karnataka v. Union of India*, A.I.R. 1978 S.C. 68.

List while simultaneously acknowledging the necessity of safeguarding State rights, especially in domains where local administration proves to be more effective.

## 1.2 Importance of Revisiting Article 246:

Revisiting *Article 246* in the context of recent events is necessary for various reasons:

1. **Evolving Political Landscape:** India's political landscape has seen substantial transformation since independence. The emergence of regional parties and coalitions has amplified the assertiveness of States, resulting in frequent disputes with the Centre regarding legislative authority. The necessity to reevaluate *Article 246* stems from the increasing demand for decentralisation and enhanced State autonomy.<sup>9</sup>
2. **Judicial Interpretations:** The judiciary has significantly influenced the interpretation of *Article 246*, with its rulings impacting the equilibrium of power between the Union and the States. A comprehensive re-evaluation of judicial precedents and trends is crucial to comprehend the evolution of federalism in India under *Article 246*<sup>10</sup>.
3. **Globalisation and Economic Liberalisation:** Economic liberalisation and globalisation have rendered States significant players in attracting foreign investment and formulating economic policies. The function of *Article 246* in facilitating State competition for investment while preserving national economic unity necessitates re-evaluation<sup>11</sup>.
4. **Emerging Challenges:** Emerging challenges, including climate change, technological progress, and public health emergencies (e.g., the COVID-19 pandemic), demand coordinated responses between the Union and the States. The sufficiency of the current legislative framework under *Article 246* in tackling these rising difficulties requires renewed examination<sup>12</sup>.

The paper seeks to contribute to the academic debate on federalism in India by examining the continued significance of *Article 246* in fostering equilibrium between national unity and state

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<sup>9</sup> Rajeev Bhargava, ed., *Politics and Ethics of the Indian Constitution* 226-27 (Oxford Univ. Press 2008).

<sup>10</sup> T.K. Tope, *Constitutional Law of India* 425 (1979).

<sup>11</sup> Arvind Subramanian, *Of Counsel: The Challenges of the Modi-Jaitley Economy* 195-96 (2018).

<sup>12</sup> Indian Federalism and COVID-19: Challenges to Centre-State Relations, 55 *Econ. & Pol. Wkly.* 23 (2020).

variety, central authority and regional autonomy, as well as cooperative and competitive federalism.

## 2. The Concept and Framework of Federalism in India

Federalism serves as a fundamental principle within the Indian Constitution, representing a delicate equilibrium between the maintenance of national unity and the preservation of regional autonomy. This framework encourages an intricate distribution of power between the central government and the individual States, thereby ensuring that the distinct cultural, economic, and social identities present throughout India's extensive landscape are recognised and preserved. The architects of the Constitution created a distinctive framework that blends centralising forces with regional autonomy, frequently characterised as a quasi-federal system in which the Union plays more prominent role in maintaining national integrity.

### 2.1 Theoretical Frameworks: Cooperative and Competitive Federalism in India

The evolution of federalism in India can be recognised through two primary theoretical frameworks: cooperative federalism and competitive federalism. These models illustrate various aspects of the intergovernmental relationship and highlight the intricate nature of federalism within India's political framework.

#### 2.1.1 Cooperative Federalism:

Cooperative federalism denotes a collaborative relationship between the Union and State governments, fostering joint efforts towards common objectives, particularly concerning issues listed in the Concurrent List, including education, criminal law, and health<sup>13</sup>. This model reflects the intentions of the framers, emphasising a collaborative relationship between the Union and the States in addressing policies that impact citizens at both national and regional levels. An illustration of this collaboration is evident in centrally-sponsored initiatives such as the *Swachh Bharat Abhiyan* and the *Pradhan Mantri Gram Sadak Yojana*, where responsibilities for implementation and funding are jointly managed by both the Union and State governments<sup>14</sup>. The model has demonstrated its effectiveness in tackling urgent challenges that necessitate collaborative efforts and a cohesive strategy among various levels

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<sup>13</sup> Arvind P. Datar, *Commentary on the Constitution of India* 3445 (2nd ed. 2020).

<sup>14</sup> *Government of India* (Ministry of Housing and Urban Affairs), "Swachh Bharat Abhiyan," available at <https://www.swachhbharat.gov.in> (last visited Oct. 25, 2024).

of government.

The significance of cooperative federalism becomes particularly evident during emergencies, such as the COVID-19 pandemic, when it was essential for both the Union and State governments to align their policies regarding health measures, quarantine regulations, and the distribution of resources. Throughout the pandemic, the government adeptly implemented the Disaster Management Act of 2005, a central legislation, to facilitate coordinated responses among the States, exemplifying the principles of cooperative federalism during a national crisis<sup>15</sup>.

### **2.1.2 Competitive Federalism:**

Conversely, competitive federalism fosters a climate in which States operate autonomously, thereby facilitating policy innovation and stimulating economic development through their competition for resources and investments. This model grants States greater autonomy to develop policies that are specifically suited to their unique needs and demographics. This flexibility encourages diversity in governance approaches and cultivates a setting in which effective policies are more likely to be embraced. For example, countries engage in competition to enhance their Ease of Doing Business rankings, providing various incentives to draw in both foreign and domestic investments. This competition has emerged as a significant catalyst within the Indian economy, fostering improvements in governance and contributing to regional development.

Competitive federalism further enables States to exercise their autonomy, promoting the adoption of progressive policies independent of central oversight. Nonetheless, this model presents certain limitations, as the disparities between resource-rich and resource-poor states may result in unequal development, thereby intensifying regional inequalities. The transition to competitive federalism necessitates a thoughtful equilibrium with cooperative strategies to prevent an aggravation of socio-economic inequalities.

## **2.2 The role of Article 246 on the Development of Federalism**

*Article 246* plays a pivotal role in the distribution of legislative powers, outlining the respective jurisdictions of the Union and State governments through the establishment of three legislative

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<sup>15</sup> Indian Federalism and COVID-19: Challenges to Centre-State Relations, 55 *Econ. & Pol. Wkly.* 23 (2020).

lists within the Seventh Schedule: *the Union List, the State List, and the Concurrent List*. The Union List encompasses areas such as defence, foreign affairs, and atomic energy, wherein the Union government holds exclusive jurisdiction, highlighting the emphasis placed on national unity and security<sup>16</sup>. The State List encompasses domains such as public health, law enforcement, and agriculture, enabling States to enact legislation on issues intimately connected to local governance, thereby maintaining regional autonomy<sup>17</sup>. In addition, the Concurrent List encompasses topics on which both the Union and the States possess the authority to legislate, including marriage, bankruptcy, and criminal law, thereby promoting a framework of cooperative federalism<sup>18</sup>.

The hierarchical arrangement of these lists demonstrates the quasi-federal characteristics of the Indian Constitution. Although fundamentally federal, it allows the Union to supersede State laws concerning subjects on the Concurrent List when conflicts arise. The interpretation of *Article 246* by the Supreme Court, particularly in landmark cases such as *State of West Bengal v. Union of India* and *S.R. Bommai v. Union of India*, has underscored the preeminence of the Union government in issues pertaining to national interest<sup>19</sup>. Nevertheless, these rulings highlight the importance of preserving a balance, ensuring that the powers of the State are not excessively undermined, as such actions could compromise the federal nature of the Constitution<sup>20</sup>.

The federal system of India, as designed by its architects, reflects a complex equilibrium between centralisation and decentralisation, as illustrated by the provisions outlined in *Article 246*. The dynamic characteristics of cooperative and competitive federalism illustrate the adaptability of the Indian Constitution, enabling it to respond effectively to shifting socio-political contexts. As India navigates through emerging challenges and opportunities, the dynamics between Union and State powers, as outlined in *Article 246*, will persist in influencing the federal structure, highlighting the importance of both collaboration and competition. Regular evaluation of this balance is essential for maintaining the federal character of the Indian political system.

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<sup>16</sup> *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241.

<sup>17</sup> *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918.

<sup>18</sup> V.N. Shukla, *Constitution of India* 1089 (12th ed. 2019).

<sup>19</sup> M.P. Singh, *Constitution of India* 774 (14th ed. 2019).

<sup>20</sup> *State of Karnataka v. Union of India*, A.I.R. 1978 S.C. 68.

### 3. The implications of *Article 246* on Cooperative federalism

#### 3.1 Cooperative federalism

Cooperative federalism embodies a governance framework in which both Union and State governments collaborate in the formulation of policies and decision-making processes to tackle issues that affect citizens across various regional boundaries<sup>21</sup>. This model is characterised by collaborative responsibilities, an integration of resources, and a reciprocal understanding among various tiers of government. In contrast to competitive federalism, which involves states vying for resources and formulating policies autonomously, cooperative federalism highlights the importance of collaborative initiatives in policy planning and execution aimed at attaining shared objectives, including healthcare, infrastructure development, and economic reforms.

In India, the framework of cooperative federalism is underpinned by the Constitution and further refined through judicial interpretation of *Article 246*. This provision delineates the distribution of legislative powers between the Union and State governments, thereby ensuring that each level possesses both unique and shared responsibilities. The Concurrent List has become a fundamental aspect of cooperative federalism, facilitating collaboration between the Union and State governments on various subjects, including criminal law, education, and public health<sup>22</sup>. The Union government frequently intervenes to offer guidance and resources, particularly in contexts where coherence across States is beneficial, all the while respecting the autonomy of State governments in managing local affairs.

#### 3.2 Interdependence through Concurrent Powers

The Concurrent List in the Seventh Schedule establishes a framework that allows both the Union and State governments to exercise jurisdiction over specific subjects, thereby necessitating cooperation between them. The interplay of these elements is essential in domains such as education, economic planning, labour legislation, and social welfare. The Union government generally formulates overarching policies, whereas the States adapt these frameworks to suit their specific demographics, local needs, and available resources<sup>23</sup>. In recent years, this framework has enabled significant national reforms and initiatives that require

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<sup>21</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 186-87 (Oxford Univ. Press 1966).

<sup>22</sup> D.D. Basu, *Introduction to the Constitution of India* 336 (24th ed. 2019).

<sup>23</sup> H.M. Seervai, *Constitutional Law of India* 307 (4th ed. 2015).

collaboration between the Union and States, including the execution of the Right to Education Act (RTE) and the National Health Mission (NHM).

Education represents a domain in which cooperative federalism plays a crucial role, as states execute the Right to Education with both financial and policy backing from the central government. The RTE establishes a national benchmark for educational infrastructure and curriculum; however, states possess the autonomy to tailor these standards to meet their specific requirements<sup>24</sup>. Public health is also included within this interconnected framework. Initiatives such as the NHM depend on the execution at the State level, supported by funding and strategic guidance from the Union. This framework facilitates a unified strategy for healthcare throughout the nation, while also tackling distinct regional health issues<sup>25</sup>.

The collaborative nature of the Concurrent List fosters a cohesive method of governance, particularly in domains where States seek assistance or monetary support from the Union to improve their administrative capabilities. The Concurrent List, as outlined in *Article 246*, promotes collaboration, thereby facilitating the effective functioning of cooperative federalism and achieving a balance between national interests and regional diversity.

### 3.3 Mechanisms for Collaborative Policy Development

Cooperative federalism in India transcends mere theoretical constructs; it is embedded within various mechanisms that promote dialogue, coordination, and strategic policy planning. Among the notable collaborative entities are the NITI Aayog, the GST Council, and the Inter-State Council. These institutions serve as venues for the Union and States to collaboratively tackle governance challenges and foster agreement on essential policy issues.

**1. NITI Aayog:** NITI Aayog, founded in 2015, succeeded the Planning Commission and reflects the ideals of cooperative federalism by engaging States in the processes of policy formulation and economic strategy<sup>26</sup>. This entity functions as an advisory body that promotes the sharing of resources, advocates for sustainable development practices, and evaluates the effectiveness of States in executing development programs. NITI Aayog fosters balanced regional development through initiatives such as the Aspirational Districts Program, which

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<sup>24</sup> State of W.B. v. Union of India, A.I.R. 1963 S.C. 1241.

<sup>25</sup> Arvind P. Datar, *Commentary on the Constitution of India* 3445 (2nd ed. 2020).

<sup>26</sup> *Government of India* (Ministry of Housing and Urban Affairs), "NITI Aayog," available at <https://niti.gov.in> (last visited Oct. 25, 2024).

focuses on the most underserved areas and facilitates collaboration between the Union and State governments<sup>27</sup>.

**2. GST Council:** A prominent illustration of cooperative federalism in practice is the Goods and Services Tax (GST) Council, which was established to manage and oversee the indirect tax regime that was introduced in 2017. The GST Council, which includes representatives from both the Union and State governments, facilitates a collaborative approach to determining tax rates, exemptions, and other significant elements of the Goods and Services Tax<sup>28</sup>. The Council has cultivated a collaborative environment, diminishing inter-state tax obstacles and advocating for a standardised tax framework that advantages the Indian economy, all while honouring the fiscal independence of the States<sup>29</sup>.

**3. Inter-State Council:** Established under *Article 263* of the Constitution, the Inter-State Council serves as a platform for the discussion of inter-state conflicts, governance challenges, and national policies that impact the States. The Council convenes at regular intervals, serving an essential function in tackling inter-state matters and promoting a spirit of cooperation between the Union and the States. This platform has facilitated the expression of State concerns at a national level, thereby deepening the Union's comprehension of challenges faced at the State level.

India has established cooperative federalism through these mechanisms, creating organised and inclusive avenues for collaboration between the Union and States on policy issues. Their role is to enable the exchange of effective strategies, harmonise regional and national priorities, and foster agreement on intricate matters, thereby encouraging a well-rounded approach to governance.

### 3.4 Illustrative Case Studies and Examples

The implementation of cooperative federalism is clearly demonstrated through numerous policy initiatives and legislative reforms that necessitate the participation of both the Union and State governments. Prominent instances encompass the introduction of the Goods and Services Tax (GST), the coordination of responses to natural disasters, and the execution of

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<sup>27</sup> NITI Aayog, Aspirational Districts Programme (2019).

<sup>28</sup> Indian Federalism and GST Council, 52 *Econ. & Pol. Wkly.* 11 (2017).

<sup>29</sup> S.C. Kashyap, *Our Constitution: An Introduction to India's Constitution and Constitutional Law* 112 (5th ed. 2012).

healthcare initiatives throughout the COVID-19 pandemic.

**1. The implementation of the Goods and Services Tax (GST):** The GST reform exemplifies the principles of cooperative federalism, necessitating the agreement of both the States and the Union. The implementation of this uniform tax system has effectively replaced the intricate network of state taxes, thereby removing inter-state barriers and fostering the development of a unified market<sup>30</sup>. The GST Council played a crucial role in the negotiation of tax rates, exemptions, and revenue-sharing mechanisms, thereby ensuring that both Union and State governments were actively involved in and benefited from the newly established system. This collaborative initiative illustrates the potential of cooperative federalism to align economic policies throughout a varied nation, all the while maintaining fiscal independence<sup>31</sup>.

**2. Management of the COVID-19 Pandemic:** The COVID-19 pandemic underscored the significance of cooperative federalism, as both the Union and States engaged in extensive partnership to tackle public health and economic challenges. The Union government, utilising the Disaster Management Act of 2005, established national guidelines, coordinated the distribution of resources, and spearheaded vaccination initiatives<sup>32</sup>. Concurrently, states adapted their responses to the specific circumstances of their regions, enacting targeted lockdown measures, overseeing healthcare facilities, and ensuring the distribution of essential supplies. The coordination was crucial in mitigating the effects of the pandemic and in ensuring that policies were both thorough and flexible<sup>33</sup>.

**3. National Education Policy (NEP) 2020:** The National Education Policy 2020 serves as a prime illustration of cooperative federalism, as it establishes a comprehensive educational framework while granting States the autonomy to tailor policies according to their specific regional requirements. The policy underscores the importance of a comprehensive approach to education, prioritising inclusivity, the integration of technology, and the enhancement of skill development<sup>34</sup>. It is anticipated that states will tailor the NEP guidelines to fit their particular local contexts, thereby ensuring that educational reforms maintain both a standardised framework and regional relevance. This collaborative initiative between the Union and States

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<sup>30</sup> Ashok K. Chanda, *Federalism, Governance and Union-State Relations* 203 (2019).

<sup>31</sup> M.P. Jain, *Indian Constitutional Law* 802 (8th ed. 2021).

<sup>32</sup> Disaster Management Act, No. 53 of 2005, Acts of Parliament, 2005.

<sup>33</sup> Ministry of Health and Family Welfare (MoHFW), *COVID-19 Guidelines and Policies*, available at <https://mohfw.gov.in>.

<sup>34</sup> "National Education Policy (NEP) 2020: Transforming Education System," Press Information Bureau, Government of India, available at <https://pib.gov.in>.

highlights the cooperative essence of governance in meeting the educational aspirations of a varied population<sup>35</sup>.

The examples provided exhibit the foundational role of cooperative federalism in facilitating policy implementation in India, allowing both tiers of government to collaborate effectively for the benefit of the public. The effectiveness of these initiatives depends on achieving a balance in which the Union provides guidance and resources, while simultaneously enabling States to maintain their autonomy and tackle specific regional challenges.

#### **4. The implications of *Article 246* on Competitive federalism**

##### **4.1 Competitive Federalism**

Competitive federalism is a governance framework in which states engage in active competition to draw in resources, investments, and innovation, frequently by implementing reforms and policy innovations<sup>36</sup>. Within this framework, states possess significant independence in the execution of policies aimed at attracting industries, investments, and skilled individuals. This stands in contrast to cooperative federalism, which highlights a collaborative approach. Competitive federalism fosters an environment where each State is motivated to refine its governance model, thereby enhancing national growth as various States embrace and execute best practices tailored to their particular circumstances<sup>37</sup>. As states enhance their efficiency and bolster their economic attractiveness, they establish benchmarks for one another, thereby initiating a cycle of ongoing improvement and innovation.

The shift towards competitive federalism in India became particularly significant following the economic liberalisation of 1991. This period marked a time when States gained greater autonomy to interact with foreign investors and to develop regulatory frameworks aimed at improving their competitive standing. In their efforts to enhance economic performance and draw in investment, States undertake reforms in various domains, including infrastructure, labour regulations, taxation policies, and the overall business environment. This competition is in accordance with the central government's objective of fostering a strong national economy

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<sup>35</sup> Id.

<sup>36</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 232-34 (Oxford Univ. Press 1966).

<sup>37</sup> Arvind P. Datar, *Commentary on the Constitution of India* 1298 (2nd ed. 2020).

through the enhancement of the capabilities of individual states<sup>38</sup>.

## 4.2 Autonomy and Legislative Competition

*Article 246* establishes the constitutional foundation for the legislative authority granted to the States, allowing them to formulate laws and policies tailored to their specific requirements as outlined in the State List. This autonomy enables each State to explore policies that are tailored to its unique demographic, geographic, and economic attributes, thereby fostering a varied policy environment. States utilise their legislative autonomy to create distinctive initiatives, thereby engaging in competition with each other to draw in resources and investment. This phenomenon has been especially noticeable in the sectors of industry, agriculture, health, and education, where governments have customised policies to promote development and enhance public services<sup>39</sup>.

For example, the industrial policies implemented in Gujarat during the early 2000s emphasised the importance of infrastructure development, regulatory simplification, and reforms aimed at attracting investors. This strategic approach resulted in significant industrial growth and positioned the State as a benchmark for economic development<sup>40</sup>. In a comparable manner, Tamil Nadu has utilised its legislative independence to cultivate a flourishing automobile sector through the provision of incentives and the establishment of strong infrastructure. The initiatives implemented in Tamil Nadu not only provided the state with a competitive advantage but also positioned it as a model for other states seeking to draw industries within the manufacturing sector<sup>41</sup>. The competition among states contributes to improved governance and policy effectiveness, fostering a culture characterised by self-reliance and innovation.

The agricultural sector serves as a pertinent example of competitive federalism in practice. Punjab has consistently excelled in agricultural output, emphasising high-yield crop varieties and farm productivity<sup>42</sup>. This success has served as an inspiration for other states to implement similar practices aimed at improving their agricultural productivity. In this way, by utilising their legislative authority as outlined in the State List, States play a vital role in fostering a

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<sup>38</sup> D.D. Basu, *Introduction to the Constitution of India* 345 (24th ed. 2019).

<sup>39</sup> H.M. Seervai, *Constitutional Law of India* 412 (4th ed. 2015).

<sup>40</sup> Bibek Debroy & Laveesh Bhandari, *Gujarat: Governance for Growth and Development* 35 (2011).

<sup>41</sup> R. Vaidyanathan, *The Indian Economy: A Framework for Political Economy* 209 (2013).

<sup>42</sup> P.K. Basu, *India's Rural Economy and Agrarian Policies* 80 (2017).

competitive environment that encourages both economic growth and social advancement.

### 4.3 Fiscal Federalism

Fiscal federalism plays a crucial role in shaping the competitive environment in India, as it influences the allocation of financial resources to each State. *Article 280* establishes the Finance Commission, a constitutional entity tasked with the periodic evaluation and redistribution of financial resources between the Union and the States. The recommendations put forth by the Finance Commission play a vital role in ensuring an equitable distribution of resources, particularly as states seek funding for various development initiatives and reforms. Fiscal federalism guarantees that states possess the necessary resources to maintain their competitive initiatives, while simultaneously providing incentives for governance that is both efficient and effective<sup>43</sup>.

The Finance Commission distributes financial resources by considering various factors, such as the population, geographical area, and the developmental requirements of each State. This system enhances the fiscal autonomy of States, allowing them to implement reforms in sectors such as health, education, and infrastructure. States that effectively manage their finances and utilise grants efficiently tend to receive higher allocations, thereby encouraging others to adopt best practices in fiscal discipline and resource management<sup>44</sup>. This fiscal dynamic plays a crucial role in promoting a competitive environment among States, highlighting the significance of financial prudence and providing incentives for those that are well-managed.

Furthermore, the Goods and Services Tax (GST) framework and the GST Council serve as significant instruments of fiscal federalism, enabling States to engage in a cooperative tax system while fostering competitive tax policies aimed at attracting investments. States that streamline their tax processes and offer clear regulations are more effectively positioned to draw in industries. Maharashtra has optimised its tax processes and provided tax incentives to draw businesses, especially in its capital, Mumbai, thereby establishing itself as a significant commercial centre<sup>45</sup>.

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<sup>43</sup> *Finance Commission of India*, "Report on State Finances" 45-46 (2021).

<sup>44</sup> K. Rao & S. Sen, *Fiscal Federalism in India* 120-23 (2016).

<sup>45</sup> M.P. Jain, *Indian Constitutional Law* 802 (8th ed. 2021).

#### 4.4 Mechanisms for Collaborative Policy and Competitive Dynamics

In the context of competitive federalism, it is important to recognise that there are mechanisms in place designed to maintain the cohesion of the nation, even amidst the inherent spirit of competition. NITI Aayog promotes enhanced performance among States and the attainment of developmental objectives by stimulating inter-State competition and evaluating progress through initiatives such as the “India Innovation Index” and the “State Health Index.” These indices evaluate states based on a range of criteria and encourage the adoption of best practices, thereby enhancing transparency and facilitating performance comparisons in essential domains<sup>46</sup>.

Furthermore, initiatives such as the Aspirational Districts Program demonstrate how NITI Aayog promotes enhancements in districts that are lagging, motivating States to prioritise inclusive development. States are evaluated and ranked according to their performance in health, education, agriculture, and infrastructure within aspirational districts, thereby fostering a competitive environment aimed at enhancing these sectors<sup>47</sup>. This framework guarantees a balance between competition and mechanisms aimed at promoting social equity, especially in less developed areas.

#### 4.5 Case Studies and Examples

The federal structure in India has enabled States to implement innovative policies in recent years, exhibiting instances of competitive federalism. Notable examples encompass Gujarat's prioritisation of industrialisation, Tamil Nadu's surge in manufacturing, and Andhra Pradesh's commitment to digital governance and enhancing the business environment.

**1. Andhra Pradesh and Ease of Doing Business:** The state of Andhra Pradesh has implemented significant reforms in digital governance and regulatory simplification, positioning itself among the leading states in terms of ease of doing business. The state government has undertaken the digitisation of services related to business clearances, streamlined bureaucratic processes, and offered incentives aimed at fostering start-up growth<sup>48</sup>. Through the cultivation of an environment conducive to investors, Andhra Pradesh has

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<sup>46</sup> NITI Aayog, *India Innovation Index 2021*.

<sup>47</sup> NITI Aayog, *Aspirational Districts Program: Annual Report 2022*.

<sup>48</sup> Press Information Bureau, *Andhra Pradesh Ease of Doing Business Rankings (2023)*.

successfully drawn considerable foreign investment while simultaneously setting a higher standard for other states.

**2. The Industrialisation Initiative in Gujarat:** The competitive policies of Gujarat encompass regulations that are favourable to industry, streamlined processes for land acquisition, and the establishment of dedicated industrial zones. The Gujarat International Finance Tec-City (GIFT) serves as a significant illustration of the State's commitment to establishing an international finance hub, thereby drawing the interest of financial institutions and multinational corporations<sup>49</sup>. The achievements of GIFT City have motivated the development of analogous initiatives in other regions, including the Mumbai Fintech Hub in Maharashtra.

**3. Tamil Nadu and Automobile Manufacturing:** Tamil Nadu has positioned itself as a prominent centre for automobile manufacturing through the implementation of tax incentives, the development of robust infrastructure, and partnerships with private industries. The emphasis placed by the State on skill development has effectively guaranteed a consistent availability of skilled labour to bolster the industry<sup>50</sup>. Tamil Nadu has illustrated the effectiveness of competitive federalism in promoting development tailored to specific sectors by establishing itself as a hub for automobile manufacturing.

**4. Karnataka's IT Sector Growth:** Karnataka's focus on fostering the IT sector and drawing in international technology firms has established it as the leading hub for information technology in India. The policies implemented by the State, encompassing infrastructure development, skill enhancement initiatives, and incentives aimed at the technology sector, have effectively transformed Bengaluru into a prominent global IT hub<sup>51</sup>. This achievement has motivated other states to establish comparable technology ecosystems, thereby fostering national development and promoting innovation.

The case studies illustrate the beneficial effects of competitive federalism in promoting economic growth, drawing in investments, and encouraging policy innovation at the state level. Although states maintain their independence in policy development, their achievements

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<sup>49</sup> Gujarat Industrial Development Corporation, *Gujarat International Finance Tec-City (GIFT)* 56-57 (2022).

<sup>50</sup> Tamil Nadu Planning Commission, *Industrial Development Policies* 67-69 (2021).

<sup>51</sup> Karnataka State Industrial Development, *Bengaluru's IT Sector Growth* 78-79 (2022).

frequently act as a model for others, fostering a culture of imitation throughout the country.

## 5. Criticisms and Challenges of *Article 246* in Federal Governance

*Article 246* governs India's federal system, yet it's been criticised and challenged. Critics point to legislative list uncertainties, centralisation, and recent amendments' complications.

### 5.1 Uncertainties in Legislative Enumerations

Article 246's ambiguous division of legislative responsibilities across the three lists sometimes leads to jurisdictional issues between the Union and State administrations. The Concurrent List enables both branches of government make legislation on specific problems, causing overlap and uncertainty. In a "grey area" where the Union and State governments claim authority, disagreements arise that often require court intervention<sup>52</sup>.

Disputes over water distribution and interstate rivers have lasted decades. Union laws have been used to resolve these issues, even though water is on the State List. Since the Constitution does not establish a hierarchy for Concurrent List disagreements, the judiciary has often intervened. Forest conservation, another Concurrent List item<sup>53</sup>, has led to conflicts regarding the balance between central regulatory authority and State autonomy in forest resource management. Jurisdictional conflicts hinder governance and increase judicial arbitration, weakening federal cohesiveness and local autonomy.

### 5.2 Centralisation vs. state autonomy

*Article 246* is criticised for centralising authority and weakening state autonomy. The 98 items on the Union List cover defence, international affairs, atomic energy, and important economic policies, among others<sup>54</sup>. The "*doctrine of repugnancy*" in *Article 254* emphasises central government supremacy. This Article states that Union law prevails over State law on Concurrent List matters.

Centralisation is often criticised for restricting state authority and diluting federalism. Today, central agriculture reform legislation during the pandemic illustrates this tension. The Union

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<sup>52</sup> H.M. Seervai, *Constitutional Law of India* 412 (4th ed. 2015).

<sup>53</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 256-57 (Oxford Univ. Press 1966).

<sup>54</sup> D.D. Basu, *Introduction to the Constitution of India* 345 (24th ed. 2019).

implemented considerable reforms in agriculture, which was generally a part of State jurisdiction. Many States argued that these legislation breached their constitutional powers<sup>55</sup>. Many worry that *Article 246* strengthens central power over important regional issues, limiting States' ability to tailor policies to their needs.

The increased use of *Article 256* and *Article 257*, which allow the Union to instruct States on national interest concerns, also contributes to centralisation. Critics say this change favours the Union, eroding the federal structure and State autonomy. Detractors of cooperative and coercive federalism point to central schemes and policy interventions that require States to comply with the Union's legislative authority in the Concurrent List.

### 5.3 Recent Laws and Changes

Recent legislative and judicial interpretations have attempted to address certain issues, with mixed results. By modifying the Constitution to include the GST to the Concurrent List, the GST created a national tax system. This reform streamlined taxation and created a unified market, but it was criticised for consolidating tax collecting and distribution authority in the GST Council<sup>56</sup>, reducing State fiscal autonomy. States are concerned about the GST scheme because it limits their tax authority. The constraint reduces their financial autonomy and ability to meet local needs<sup>57</sup>.

Recent legislative initiatives include a new National Cooperative Development Corporation Bill to centralise cooperative regulation, previously managed by individual States. The Bill tries to increase cooperative efficiency and openness, but it gives the Union responsibility over an area usually regulated by the State, raising concerns about State power encroachment<sup>58</sup>.

The judiciary also helped define *Article 246*. In *State of West Bengal v. Union of India* and *Kesavananda Bharati v. State of Kerala*, the Supreme Court stressed federalism's importance to the Constitution. The court has warned the Union not to overstep State powers<sup>59</sup>. However, the Court has supported the Union's engagement in certain cases, highlighting the delicate

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<sup>55</sup> R. Vaidyanathan, *The Indian Economy: A Framework for Political Economy* 209 (2013).

<sup>56</sup> M. Govinda Rao, "Fiscal Federalism in India: Theory and Practice," 42 *Economic and Political Weekly* 189-92 (2007).

<sup>57</sup> NITI Aayog, *India Innovation Index 2021*.

<sup>58</sup> Press Information Bureau, Government of India, *National Cooperative Development Corporation Bill Proposal* (2022).

<sup>59</sup> *State of West Bengal v. Union of India*, A.I.R. 1963 S.C. 1241; *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 .

balance between Union and State interests.

The challenges raised by *Article 246* show how federalism in India is always balancing state autonomy and national unity. Legislative lists provide a methodical structure for governance, but implementation issues and authority concentration have drawn criticism. As India grows, a federal framework that encourages diversity while respecting State authority is needed. Recent revisions, judicial interpretations, and legislative interventions argue for a new strategy that better supports India's cooperative federalism aspirations while respecting each State's authority.

## 6. Conclusion and Policy Recommendations

In summary, *Article 246* establishes a fundamental framework for the distribution of legislative powers in India, influencing the distinctive federal structure of the nation. Although it offers clear distinctions between Union and State jurisdictions, the presence of ambiguities and overlaps within the legislative lists often results in jurisdictional conflicts. This situation necessitates judicial intervention and adjustments via amendments. Furthermore, the article has frequently facilitated centralisation, which restricts State autonomy and, at times, hinders the principles of cooperative federalism. As India's socioeconomic landscape continues to evolve, it becomes increasingly essential to harmonise national objectives with local priorities in order to enhance the effectiveness of federal governance.

### 6.2 Recommendations for Policy Implementation:

**1. Clarification of Concurrent List Subjects:** In order to resolve jurisdictional ambiguities, it may be beneficial to revise the Concurrent List to delineate responsibilities with greater precision, thereby minimising conflicts in the "grey areas" where both the Union and States hold authority<sup>60</sup>. For example, in domains such as environmental protection and education, clearer legislative guidelines could assist in delineating the powers between the Union and State governments.

**2. Enhancing Cooperative Mechanisms:** Institutions such as the Inter-State Council, which facilitate dialogue and collaboration, ought to be endowed with greater authority and resources

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<sup>60</sup> H.M. Seervai, *Constitutional Law of India* 412 (4th ed. 2015).

to operate as effective platforms for resolving disputes and coordinating policies<sup>61</sup>. Furthermore, the NITI Aayog could enhance its role by promoting State-driven initiatives within a collaborative federal structure, particularly in areas like healthcare, where mutual reliance is essential.

**3. Fiscal Decentralization:** The concept of fiscal decentralisation warrants a reevaluation of the Finance Commission's role, with the aim of providing States with enhanced fiscal autonomy. This empowerment would enable them to align their budgetary management with the specific priorities of their regions<sup>62</sup>. This approach will promote competitive federalism, while also ensuring that states possess the financial resources necessary to effectively meet local needs.

**4. Reconsideration of Article 254:** The reevaluation of *Article 254*, which currently prioritises Union laws over State laws within the Concurrent List, has the potential to empower States with a more significant legislative role concerning issues of regional significance. This adjustment could foster a more authentic form of federalism in a nation that seeks both decentralisation and unity<sup>63</sup>.

By implementing these recommendations, India can work towards establishing a federal system that balances national unity with regional diversity, enabling each State to more effectively cater to its distinct population.

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<sup>61</sup> Granville Austin, *Working a Democratic Constitution: The Indian Experience* 228 (1999).

<sup>62</sup> K. Rao & S. Sen, *Fiscal Federalism in India* 120-23 (2016).

<sup>63</sup> D.D. Basu, *Introduction to the Constitution of India* 345 (24th ed. 2019).