



# Federal Aspects of Internal Security: Indian Case

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*The characteristics of Indian federalism are unique. The uniqueness is conspicuous by its dual character: “federal during normal times, but unitary in times of war”. The study examines how such a federal set-up impinges on India’s internal security management, including maritime and coastal security. Despite being in a stronger position constitutionally, the Centre has not been assertive. Finding out various reasons for the Union’s hesitancy, the study advocates a stronger role for the Centre in internal security issues. The main reason being the threat matrix to India’s internal security is such that it is beyond the capability of the States of India to counter them on their own, effectively. After analysing various constitutional and legal aspects of internal security, the study makes some key recommendations. It advocates the need for the Centre and the States to combine their efforts instead of blaming each other for internal security problems. “Cooperative Federalism” instead of “Competitive Federalism” is the suitable way ahead.*

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## Indian Federal Framework

It is important to understand the unique characteristics of Indian federalism before comprehending the federal aspects of internal security. During the Constituent Assembly debates, it was acknowledged that India was “confronted with problems which have not confronted other Federations in history”.<sup>1</sup> Federation was not contemplated in orthodox or traditional sense (like in the USA), but what could be a realistic model that suited India best.<sup>2</sup> According to a noted author,

*Characterisations such as “quasi federal” or “statutory decentralisation” are interesting, but not particularly illuminating. The members of the [Constituent] Assembly themselves refused to adhere to any theory or dogma about federalism. India had unique problems, they believed, problems that had not “confronted other federations in history”. These could not be solved by recourse to theory because federalism was “not a definite concept” and lacked a “stable meaning”. Therefore, Assembly members, drawing on the experience of great federations like the United States, Canada, Switzerland, and Australia pursued “the policy of pick and choose to see (what) would suit them best, (what) would suit the genius of the nation best ... This process produced ... a new kind of federalism to meet India’s peculiar needs.”<sup>3</sup>*

The distinguishing feature of the Indian federation was construed as “flexible”. The uniqueness of Indian federal set-up is conspicuous by its “dual character”, as against the general explanation of “dual polity”. In the words of Dr Ambedkar, the Chairman of the Drafting Committee, “... the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war, it is so designed as to make it work as though it was a unitary system.”<sup>4</sup> To put this in James Madison’s “Double Security”<sup>5</sup> framework, in the Indian context, twin security is available during normal times, and not during war or national emergencies. Subsequently, the Supreme Court, while ascertaining that the “Constitution of India is not truly Federal in character”,<sup>6</sup> had pertinently observed:

*In a sense the Indian Union is federal. But, the extent of federalism in it is largely watered down by the needs of progress and development of a country which has to*

*be nationally integrated, politically and economically coordinated, and socially, intellectually, and spiritually uplifted.*<sup>7</sup>

It is perhaps for this reason that the word “federalism” does not figure anywhere in the Constitution.<sup>8</sup> What is being used is “Union of States” in Article 1 of the Constitution. Justifying the usage of word “Union of States” instead of “Federation of States”, Dr Ambedkar, explained thus:

*The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source.*<sup>9</sup>

Thus, to quote Dr Ambedkar again,

*The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time will have uniformity in all basic matters which are essential to maintain the unity of the country.*<sup>10</sup>

The basic and crucial question, therefore, is whether the Indian Constitution entrusts internal security duties solely to the Centre or to its federal units or to both.

### **Constitutionally Speaking ...**

The Indian Constitution when it came into being, accorded “federal exclusivity” to handle external security and “federal supremacy” to maintain internal security. The Constituent Assembly envisaged a superior role for the Union Government in internal security affairs. It is true that during initial stages of Constitutional debate, the “consensus in the Constituent Assembly was to have a strong Centre, but indications were given that a scheme of limited powers to the Centre might be accepted to secure the cooperation of the Muslim League in framing a Constitution for United India”.<sup>11</sup> But, after the partition, the need for limiting the Union’s powers in order to secure

the cooperation of the Muslim League was no more. The Union Powers Committee and Provincial Powers Committee that met jointly on 05 June 1947 concluded that India should be federal in structure, but with a strong Centre.<sup>12</sup> The balance of power was tilted towards the Centre mainly due to the dominating concern for the unity, integrity and security of the new State.<sup>13</sup> Reiterating the stand, the Second Report of the Union Powers Committee observed,

*The severe limitation on the scope of central authority in the Cabinet Mission's plan was a compromise accepted by the Assembly much, we think, against its judgment of the administrative needs of the country, in order to accommodate the Muslim League. 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 coordinating vital matters of common concern and of speaking effectively for the whole country in the international space.*<sup>14</sup>

This is clearly reflected by the vertical division of powers in the Indian Constitution.

## Vertical Division of Powers

In general, the vertical distribution of powers is an essential feature of federalism. The Union Powers Committee that went into the modalities of vertical division of powers observed:

*In the matter of distributing powers between the Centre and the units, we think that the most satisfactory arrangement is to draw up three exhaustive lists on the lines followed in the Government of India Act, 1935, viz. the federal, the provincial and the concurrent. We think that the residuary power should remain with the Centre.*<sup>15</sup>

Accordingly, when the Constitution came into force on 26 January 1950, three exhaustive lists – Union, State, and Concurrent – with residual powers to the Centre were provided. Term “Internal Security”, does not appear explicitly in any of the three lists. Entries that broadly pertain to internal security under Lists I, II and III are:

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**List I: Union List**

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<b>Entry No.</b>	<b>Entry</b>
1.	Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation
2.	Naval, military and air forces; any other armed forces of the Union
2A.	Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment <sup>16</sup>
5.	Arms, firearms, ammunition and explosives
8.	Central Bureau of Intelligence and Investigation
9.	Preventive detention for reasons connected with Defence, Foreign Affairs or the security of India; persons subjected to such detention
10.	Foreign affairs; all matters which bring the Union into relation with any foreign country
14.	Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries
15.	War and peace
16.	Foreign jurisdiction
17.	Citizenship, naturalization and aliens
18.	Extradition
19.	Admission into, and emigration and expulsion from, India; passports and visas
21.	Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air
31.	Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication
36.	Currency, coinage and legal tender; foreign exchange
59.	Cultivation, manufacture and sale for export, of opium
61.	Industrial disputes concerning Union employees
65.	Union agencies and institutions for professional, vocational or technical training, including the training of police officers; or scientific or technical assistance in the investigation or detection of crime

70. Union Public Service; All-India Services; Union Public Service Commission
80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State<sup>17</sup>
81. Inter-State migration; inter-State quarantine
93. Offences against laws with respect to any of the matters in this List
95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists (thus having exclusionary jurisdiction)

#### List II: State List

1. Public order (but not including [the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof]<sup>18</sup> in aid of the civil power)
2. Police [(including railway and village police) subject to the provisions of entry 2A of List I]<sup>19</sup>
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions
64. Offences against laws with respect to any of the matters in this List
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List

#### List III: Concurrent List

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power
2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention
  4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List
  - 11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts<sup>20</sup>
  12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings
  14. Contempt of court, but not including contempt of the Supreme Court
  - 17A. Forests<sup>21</sup>
  19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium
  22. Trade unions; industrial and labour disputes
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On the whole, in the words of the Supreme Court, the basis of distribution of powers between the Union and States is that “only those powers which are concerned with the regulation of local problems are vested in the States and the residue specially those which tend to maintain the economic industrial and commercial unity of the country are left to the Union. It is not correct to say that full sovereignty is vested in the States.”<sup>22</sup>

Apart from division of powers under the Seventh Schedule, there are certain articles in the Constitution that grant powers to the Centre over the States on internal security matters, but under certain circumstances:

- **Article 245:** Territorial distribution of legislative powers.
- **Article 246:** Parliament’s exclusive power to make laws on matters in the Union List.
- **Article 247:** The Centre can set-up additional courts with respect to a matter enumerated in the Union List.
- **Article 248:** Parliament’s exclusive power to make any law with respect to any matter not enumerated in the Concurrent (List III) or State List (List II), considered as “residuary powers” of the Centre listed as entry 97 of List I.
- **Article 249:** Parliament’s power to legislate with respect to a matter in the State List in the national interest.<sup>23</sup>

- **Article 250:** Parliament's power to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.
- **Article 251:** If there is inconsistency between laws made by Parliament under Articles 249 and 250 and laws made by the legislatures of States, laws made by Parliament shall prevail.
- **Article 252:** Parliament can legislate in subject matter that fall under the States if two or more states pass resolutions to that effect.
- **Article 253:** Parliament can make law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.<sup>24</sup>
- **Article 254:** If there is inconsistency between laws made by Parliament and laws made by the Legislatures of States in any of the matters in the Concurrent List, then laws made by Parliament shall prevail.
- **Articles 256–257:** Union's power to issue directions "extends to all matters on which parliament has power to make laws" and "also to the construction and maintenance of means of communication declared in the direction to be of national or military importance".
- **Article 258:** Union's authority to confer powers, impose duties and entrust functions in relation to any matter to which the executive power of the Union extends on States in certain cases. In that case, it becomes the duty of the State to accept the same and act accordingly.<sup>25</sup>
- **Article 312:** All India Services – Administrative, Police and Forest.<sup>26</sup>
- **Article 339:** The control of the Union over the administration of Scheduled Areas and the welfare of the Scheduled Tribes irrespective of their habitation.
- **Article 352:** Power of the Centre to declare national emergency if "the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion ...".<sup>27</sup> In that case "the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised".<sup>28</sup>
- **Article 355:** It shall be the "Duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution."<sup>29</sup>

- **Article 356:** A State government can be dismissed, if a situation arises in which the administration of the state cannot be carried on in accordance with the provisions of the Constitution.<sup>30</sup> Although the Constitution makers expected that “such articles will never be called into operation and that they would remain a dead letter”, Article 356 has been used indiscriminately, more for political rather than security reasons.<sup>31</sup>
- **Article 365:** Action on those States for non-compliance of any directions (under various articles of the Constitution) given in the exercise of the executive power of the Union under any of the provisions of the Constitution can be taken under.

In short, constitutionally, the division of powers is in favour of the Centre than States in the internal security arena. Reiterating this, the Supreme Court, in S. R. Bommai's case, observed:

*A review of the provisions of the Constitution shows unmistakably that while creating a federation, the founding fathers wished to establish a strong Centre. In the light of the past history of this sub-continent, this was probably a natural and necessary decision. In a land as varied as India is, a strong Centre is perhaps a necessity.*<sup>32</sup>

## In Practice

Despite constitutional empowerment and obligations, it looks like the Centre has not been assertive enough over the States on internal security. Why? In the initial years of independence, due to same party rule (Congress), issues of centre–state relations were often played out within the ranks of the Congress party and the States, in turn, remained just as “glorified municipalities”. There was a “hegemonic consensus” inter alia on security issue as well, between the Centre and the States. However, federalism is not a static paradigm, but “dynamic and changing”.<sup>33</sup> This is truer in India's internal security domain. The idea of “strong Centre” got a jolt since the late 1960s when parties of different ideologies started ruling the states even while the Congress was in power at the Centre. Cracks started emerging in the “hegemonic consensus”. The pendulum gradually started swinging towards the States in the aftermath of the 44th Amendment to the Constitution.<sup>34</sup> But, it did more forcefully since the late

1980s due to the emerging political and economic situation. This reminds one of William H. Riker's remarks: "The strength of any federal system depends not so much on the constitutional structure, but rather on the political and economic culture, that may be prevailing within the country at any given time."<sup>35</sup>

Politically, India's political system began a rapid transition from a one-party dominant to a multi-party system and from majority to coalition governments. Regional parties played an increasingly decisive role in the formation of government at the Centre. Also, the growing importance of regional leadership has allowed the process of "decentring the centre" in a major way. As Subrata Mitra puts it,

*Having established themselves locally, regionalists [regional leaders] have now set their sights on constructing the kind of nation that they want ... The central government no longer holds a monopoly over defining what the nation is and deciding who has the right to speak in its name.*<sup>36</sup>

This has made a profound impact on India's federal system. Some of the states like Tamil Nadu and West Bengal went to the extent of demanding "reallocation of powers". The Tamil Nadu Government-appointed Centre-State Relations Inquiry Committee,<sup>37</sup> in its report submitted in 1971, observed that factors like one-party rule, both at the Centre and in the States, inadequacy of the States' own fiscal resources and consequent dependence on the Centre for financial assistance and the institution of Central planning and the role of the Planning Commission had contributed to the "perpetuation and growth" of unitary trends. The Committee *inter alia* called for the abolition of Articles 249, 356 and 357 (exercise of legislative powers under proclamation issued under article 356) of the Constitution and suggested transfer of a number of items not only from the Concurrent to the State List in the Seventh Schedule but also from the Union to the State List.<sup>38</sup>

On their part, the Akalis adopted the Anadapur Sahib Resolution on 17 October 1973 demanding "a true federal Constitution", which envisages the retention of only four subjects – Defence, Foreign Affairs, Communications and Currency – with the Centre, leaving the rest to the States.<sup>39</sup> On the eastern part of India, the first Left Front Government in West Bengal brought out a 15-point "Memorandum on Centre-State Relations" in 1977 perceiving that "During the past ten years the Centre's tentacles have further spread to the states in the sphere of law and order, which is formally a state subject, through the creation of the CRPF, the BSF and the

CISF etc.” It argued that the advocacy for strong States “is not necessarily in contradiction to that of a strong Centre, once the respective spheres of authority are clearly marked out”. In this regard, it demanded amending Preamble of the Constitution to include “Federal” to describe Republic of India. It also insisted transfer of residuary powers from the Centre to the States and deletion of Article 249 (that granted power to Parliament to legislate on subjects in the State list in the national interest).<sup>40</sup>

During 1983–84, non-Congress parties held a series of conclaves demanding more powers to the States through Constitutional revision. A total of five conclaves of opposition parties were held respectively in Bangalore (20 March 1983), Vijayawada (28 May 1983), Delhi (June 1983), Srinagar (05–07 October 1983) and Calcutta (January 1984). But, it was Srinagar Conclave that raised substantive issues on the subject. In its resolution, the Conclave observed:

*There has been significant erosion of the powers of the States due to one-party rule both at the Centre and the States. It is important, therefore, to restore and strengthen the autonomy of the States and to strike a balance between the powers of the Centre and those of the states, so that the character of our multi-religious, multi-lingual and multi-cultural country is preserved.*<sup>41</sup>

It went on to argue that “law and order is a state subject and induction of the paramilitary forces by the Centre into a state must have the prior concurrence of the state government”.<sup>42</sup> Thus, politically, the regional parties that rose to prominence started questioning the existing structure of the Centre-State relations. And they resented on any kind of “Centre’s encroachment” in the name of security or development.

Economically, at independence, Jawaharlal Nehru preferred a mixed economic model. Impressed by Soviet Union’s Five-year plans, Nehru emphasized on the role of planning in economic development.<sup>43</sup> The Planning Commission was set up in March 1950, “in pursuance of declared objectives of the Government to promote a rapid rise in the standard of living of the people by efficient exploitation of the resources of the country, increasing production and offering employment opportunities to all, in the service of the community”.<sup>44</sup> In this regard, Nehru believed that a “majority rule” and “unified sovereignty” would facilitate socialist transformation and economic growth in independent India. Therefore, though not entirely in favour of federalism, he agreed to the system, but with a strong Centre.

However, when India witnessed a severe balance of payment crisis in the early 1990s, there was a need for opening up of markets in the “form of reductions in tariffs and conversion of quantitative restrictions to tariffs, and a sweeping away of a large segment of restrictions on domestic industrial investment”.<sup>45</sup> Thus, there was a paradigm shift in the economic strategy resulting in the emergence of a “federal market economy”. It brought openness not only at the Central level, but also to the States. The policy shift enabled the States directly to invite Foreign Direct Investment (FDI) as against the earlier arrangement—through the Centre. As a result, State governments actively competed for FDI, though with results that varied dramatically across states.<sup>46</sup> This has widened the gap between the more developed and the less developed states with the latter being left behind in the competition for economic growth.<sup>47</sup> This has given rise to a concept of “empowered States”, which claimed to have developed strong and modern internal security infrastructure and which, in turn, exuded confidence for self-protection.<sup>48</sup> They sought little or no financial support from the Union government. As a result, the Centre’s economic leverage declined considerably, especially *vis-à-vis* the “empowered states”. Thus, the economic clout of the States regions added to their political strength which impacted the existing federal system in practice. In sum, Indian federalism has stood as a classic case of Riker’s observation, who remarked:

*The essence of federalism ... is the political feature: (1) the political bargain that creates it and (2) the distribution of power in political parties which shapes the federal structure in its maturity. Everything else about federalism is accident: the demarcation of areas of competence between central and constituent governments, the operation of intergovernmental relations, the division of financial resources, etc.*<sup>49</sup>

## Conclusion and the Way Ahead

The study acknowledges the fact that the dynamics of internal security threats confronted by India did not remain as they were when the Constitution came into being. New threats have come to the fore, apart from aggravation of the existing threats. There is not much distinction between what Constitution makers considered as purely external threats like “war” and “external aggression”, and internal security threats. The threat matrix to India’s internal security is such that it is beyond the

capability of the States to counter them effectively. Although the State police forces are considered as the “first responders”, they are the weakest link in the entire response chain. With their restricted territorial jurisdiction and limited resources, the State police forces have been finding it difficult to deal with internal security threats that have inter-State and global dimensions. Hence, there is a mismatch between expectations and capabilities. Unless this incongruity is addressed, India’s overall internal security management would continue to be in a fragile state. The States of India have to understand the limitations of their police forces and need to take concrete steps to strengthen and modernize their forces.

This, in other words, means that the responsibility of the Central Government for management of internal security problems has increased manifold. Yet, as the Group of Ministers’ Report pertinently points out, “the powers of the Union Government to intervene in matters pertaining to internal security” have dwindled. The Indian Constitution, when it came into being, accorded “federal exclusivity” to handle external security and “federal supremacy” to maintain internal security. This was clearly confirmed by the vertical division of powers in the Indian Constitution. Three exhaustive lists – Union, State and Concurrent – with residual powers to the Centre were provided. Despite being in a stronger position constitutionally, the Centre has not been assertive.

As the Group of Ministers Report on National Security rightly observes, “The Union Government’s ability to deal with situations caused by grave threats to internal security has eroded over the years and needs to be strengthened. This capability should flow from the Constitution.”<sup>50</sup> The crucial question is how far this is happening? It must be acknowledged that the Constituent Assembly debated the issues in the light of events around independence and partition. Constitution makers thought the exact internal security mechanism would “emanate and get shaped by practice ...”<sup>51</sup> Things, however, did not “get shaped” as desired. Perpetuation of colonial structures that “worked at cross-purposes with the preferred ideals of the constitution” continued even after over six decades of coming into force of the Constitution.<sup>52</sup> It is, therefore, imperative to revisit the Constitution.

The Constitution should, at the outset, clear the cobweb of who is responsible for internal security. Should it be the Centre, or the States, or both. The idea of including a new entry “internal security” in List III (Concurrent List) to enable a clear-cut role for the Centre with the concurrence of the concerned states on the issue should be explored seriously. Some of the underutilized constitutional provisions require

attention. For instance, the vast constitutional potential to issue directives under articles 256 and 257 remains untapped. Yet another article that remains underutilized is Article 355.<sup>53</sup> These apart, Article 263(b) can be imaginatively put into service by constituting subject or area specific Inter-State Councils to deal with inter-State nature of internal security threats, say for instance the Left-wing extremism or militancy in the northeast of India. The Constitution should also be able to enhance coordination on internal security at two levels: between the Centre and states and among the States. Presently, there are no provisions that deal with coordination issues, except of Inter State Council, which has not been effective enough.

As suggested by the Group of Ministers' Report, supporting legislation will have to be enacted to, inter-alia, to cover the following:

- (a) *Suo moto* deployment of Central Forces, if the situation prevailing in the States so demands; the legislation will spell out situations in which such deployment may take place, as also its consequences.
- (b) Defining powers, jurisdiction, privileges and liabilities of the members of Central Forces, while deployed in States, in accordance with Entry 2A of the Union List.
- (c) Specifying situations in which the Central Government can intervene to advice, direct or act under Article 355.

In the same vein, it is about time to “undertake a comprehensive review of the existing laws, with a view to removing from the statue book, all laws, which are archaic or repugnant to the Constitution”.<sup>54</sup>

Instead of passing the buck on the states as a “state subject”, it is vital to assert the role of the Centre on issues pertaining to internal security. It is not unconstitutional to do so. The Supreme Court, in fact, has pointed this out in various judgments. The fact that some of the insertions like Entry 2A in List I and corresponding changes in Entries 1 and 2 of the List II in the Seventh Schedule brought about by the 42nd Amendment was retained by the post emergency Janata Party Government, which otherwise undid many parts of the 42nd Amendment through the 44th Amendment, shows the recognition of the Union Government's dominant role in safeguarding internal security.<sup>55</sup> But the main issue is Centre's failure in asserting its role, citing political propriety.

Given the enormity of Union funding to the States for internal security purposes, an accountability mechanism is required in respect of the schemes being financed by the

Central Government. But, what is the best way to go about it? As the Group of Ministers' Report suggests, the Ministry of Home Affairs "may enter into MoUs with the concerned State Governments, with specific stipulations to ensure accountability".<sup>56</sup>

Internal security is indeed a national issue requiring national solutions. Yet, states and local governments cannot be ignored. The local police are often better suited to perform certain internal security functions because of their superior familiarity with their local communities and their rich networks of relations with other local governmental and non-governmental actors. With the advantage of familiarity and community and institutional relationships, the local police are better placed to detect and analyse suspicious irregularities and to cultivate sources of information and intelligence.

Effective response to internal security challenges requires considerable collaboration and cooperation between a wide range of federal, State and local agencies. As Sarkaria Commission pertinently observes, "the very purpose of deployment of the armed forces of the Union – to restore public order – cannot be achieved without the active assistance and co-operation of the entire law enforcing machinery of the State Government".<sup>57</sup> None other than the Centre could do the coordination on a national issue. This is truer in the case of maintaining maritime and coastal security where numerous Central agencies are involved.

The major issue is differing viewpoints on the subject. "National Statist" view seeks increased centralization of government power in the national government. On the other hand, "States' Rights" perspective argues for increasing state power at the expense of the federal government and for shifting the equilibrium away from the Centre and towards the States. Events like 26/11 or any terror attack create cries for shifting of the power pendulum towards the Centre or, in other words, centralization of power in the central government. Unfortunately, such cries fizzle out in due course. What is required is a sustained or consistent effort to chart a better course of action in effectively meeting the threats.

There is a "need for the Centre and the States to combine their efforts instead of blaming each other for internal security problems".<sup>58</sup> Competitive federalism is not a suitable option. In this regard, it is pertinent to take note of the observation made by the National Commission to Review the Working of the Constitution (NCRWC):

*There is no dichotomy between a strong Union and strong States. The relationship between the Union and States is a relationship between the whole body and its*

*parts. For a healthy body, it is necessary that its parts are strong. It is felt that the real source of many of our problems is the tendency of centralisation of powers and misuse of authority.*

The federal interdependence of the Centre and the States in matters of internal security is often lost sight of in the political gamesmanship, which is often practiced. It is important to de-politicise security. The spirit of the Constitution has to come to the fore. The practical administration should not be allowed to go against it. Expecting such a situation, Dr Ambedkar had rightly cautioned:

*The form of the administration must be appropriate to and in the same sense as the form of the Constitution ... [It] is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution ... Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it.<sup>59</sup>*

## Notes

1. Remarks by N. Gopalaswamy Ayyangar, *Constituent Assembly of India Debates*, Vol. V, August 20, 1947.
2. Constitution makers cited for example the definition of “Federation” used by the Report of the Royal Commission on the Australian Constitution (1929) as rigid: “Federation is 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.”
3. Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford: Clarendon Press, 1966).
4. Remarks by B. R. Ambedkar while introducing the Draft Constitution, *Constituent Assembly of India Debates*, Vol. VII, November 4, 1948.
5. James Madison wrote: “In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The

different governments will control each other, at the same time that each will be controlled by itself.”

See James Madison, “The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments”, *Independent Journal*, February 6, 1788, available at <http://www.constitution.org/fed/federa51.htm> (accessed February 22, 2013).

6. *State of West Bengal vs. Union of India*, Supreme Court judgment date December 21, 1962.
7. *State of Rajasthan & Others vs. Union of India*, Supreme Court judgment date May 6, 1977.
8. However, the term “federal” is being mentioned in the Constitution to refer to the “Federal Court” that existed before India’s independence. It was an equivalent of present Supreme Court.
9. Remarks by B. R. Ambedkar during the first reading of the Draft Constitution, *Constituent Assembly of India Debates*, Vol. VII, November 4, 1948.
10. The means adopted by the Draft Constitution were three: (i) a single judiciary; (ii) uniformity in fundamental laws, civil and criminal; and (iii) a common All-India Civil Service to man important posts. See *Ibid*.
11. Amit Prakash, *Politics and Internal Security* (Mumbai: Popular Prakashan, 2005), p. 22.
12. However, the Objectives Resolution, which formed the basis of the Preamble of the Constitution, moved by Jawaharlal Nehru on December 13, 1946 read, “Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter by the laws of the Constitution, shall possess and retain the status of autonomous units, together with residuary power, and exercise all functions and powers of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in Union or resulting there from.” Full text of the Resolution is available at <http://parliamentofindia.nic.in/lS/debates/facts.htm> (accessed January 2, 2014).
13. In fact, one of the members opposed federalism because he feared that “with the setting up of semi-sovereign part-States, centrifugal tendencies will break up Indian unity. Provincial autonomy led to the vivisection of the country. Federalism will lead to the establishment of innumerable Pakistans in this sub-continent”. Remarks by Brajeshwar Prasad, *Constituent Assembly of India Debates*, Vol. VII, November 9, 1948.
14. Full Report of the Union Powers Committee headed by Jawaharlal Nehru is available at *Constituent Assembly of India Debates* (Proceedings), Vol. V, Appendix “A”, August 21, 1947, No. CA/23/Com./47.
15. But the Report tried to distinguish between the States and Provinces when it came to vesting of residual powers. It suggested that residual powers being with the States in the case of the

States and with the Centre in the case of the Provinces. See *Second Report of the Union Powers Committee*, July 5, 1947. Full text of the Report is available at <http://parliamentofindia.nic.in/ls/debates/vol5p3b.htm> (accessed April 25, 2013).

16. Included by the Constitution (Forty-second Amendment) Act, 1976, Section 57.
17. In exercise of the powers conferred by Sections 3 and 4 of the Police Act, 1888, the Union government has notified with the consent of all the State Governments (except Nagaland) that a Police Officer of any one of the consenting States may exercise in another among them, the powers and jurisdiction of a Police Officer of the latter state.
18. Substituted by the Constitution (Forty-second Amendment) Act, 1976, Section 57.
19. Ibid.
20. Included by the Constitution (Forty-second Amendment) Act, 1976, Section 57.
21. Ibid.
22. *State of West Bengal vs. Union of India*, Supreme Court judgment date December 21, 1962.
23. Provided a resolution passed by not less than two-thirds of the members present and voting in the Council of States (Rajya Sabha).
24. This prompted Ivor Jennings to remark: “This is such a startling invasion of States’ rights, thrown in casually by a few words at the end of an Article, that one doubts its correctness. Possibly, a court would hold that “international” implied a governmental organisation, that it applied to “association” and “body” as well as “conference” and that “body” had to be read *ejusdem generis*”
25. Expenses incurred by the States in performing the duties and functions thus entrusted shall be borne by the Centre [(Article 258 (3)]. Centre’s Security Related Expenditure and Police Modernisation Scheme Funds to the States have to be seen in this light. However, the States need not bear expenses for functions entrusted to the Union.
26. In this regard, the Ministry of Home Affairs observes:

*The all-India character of the Service gives its members a unique advantage of handling specific problems in the States within the overall perspective of National unity and integrity. The MHA is the cadre controlling authority in respect of IPS officers and is responsible for all policy decisions related to the Service, including cadre structure, recruitment, training, cadre allocation, confirmation, empanelment, deputation, pay and allowances, disciplinary matters, etc.*

See Ministry of Home Affairs, *Annual Report 2012–13*, p. 97.

27. Prior to the 44th Amendment, the expressions “external aggression” and “internal disturbance” were common to both Articles 352 and 355. With the substitution of “internal disturbance” by

the expression “armed rebellion” by the said Amendment, the power under Article 352 is not available with the Union in case of an “internal disturbance”. In terms of territorial extent of the emergency, the 42nd Amendment added that the proclamation of emergency need not apply to the whole of India, but to a specified part of the country. The 44th Amendment also added an Explanation as to when the Proclamation should be made: “before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof”.

28. Though the requisite grounds for invoking Emergency are “war or external aggression or armed rebellion”, the Supreme Court clarified that “once the Proclamation is properly made, it extends to all aspects of the security of India, not merely from the standpoint of external aggression, but also internal disturbances which will cover public safety, maintenance of public order and all peaceful conditions in any part or area in India”. See *M. Karunanidhi vs. M. Raman, Assistant Commissioner*, Supreme Court judgment date March 19, 1965.
29. Ambedkar explained what the drafters meant by “in accordance with the provisions of the Constitution” thus, “When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained.” Remarks by B.R. Ambedkar, *Constituent Assembly of India Debates*, Vol. IX, August 4, 1949.
30. In that case, the President “may by Proclamation assume to himself all or any of the functions of the Government of the State; declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament; make such incidental and consequential provisions for suspending in whole or in part the operation of any provision of this Constitution relating to anybody or authority in the State”.
31. Article 356 has been used about 119 times since the commencement of the Constitution until 2010. In the initial years, it was used sparingly. Up to the end of 1967, it had been invoked only 12 times. However, in the next 18 years, it was resorted to on as many as 62 occasions. The very first occasion of its use (Punjab, 1951) for resolving an internal crisis in the ruling party, contained the seeds for future misapplication. It rose to a crescendo in 1977 (again in 1980) when, in nine States, President’s Rule was imposed at the same time. The year-wise break-up is as follows: 1950–54 three times; 1955–59 three times; 1960–64 twice; 1965–69 nine times (seven cases in 1967–69); 1970–74 19 times; 1975–79 21 times (nine cases in 1977); 1980–84 16 times (nine cases in 1980); 1985–89 six times; 1990–91 eight times; 1992–96 11 times; 1999–2002 five times; 2005–2010 nine times.
32. *S.R. Bommai vs. Union of India*, Supreme Court judgment date March 11, 1994.

33. Michael D. Reagon, *The New Federalism* (New York: Oxford University Press, 1972), p. 14.
34. The scope for action under Articles 352, 358 and 359 has been considerably restricted and hedged in, by incorporating tight safeguards through the Constitution (Forty-Fourth Amendment) Act, 1978. This Amendment replaced in Article 352 the term “internal disturbance” by the expression “armed rebellion”.
35. William H. Riker, “Six Books in Search of a Subject or Does Federalism Exist and Does It Matter?” *Comparative Politics*, 2, no. 1 (1969): 144.
36. Subrata K. Mitra, *Politics in India: Structure, Process and Policy* (New York: Routledge, 2011), p. 103
37. The three-member committee was headed by a former Chief Justice of Madras, Dr P.V. Rajamannar. The other members of the Committee included Dr A Lakshmanaswamy Mudaliar, a former Vice-Chancellor of Madras University, and Dr P. Chandra Reddy, a former Chief Justice of Andhra Pradesh.
38. Government of Tamil Nadu, *Report of the Centre-State Relations Inquiry Committee*, 1971.
39. Later, in 1978 (when they were in power) the Akali leadership watered down this resolution and adopted another Anadapur Sahib resolution, which merely demanded more autonomy to the States.
40. See Communist Party of India (Marxist), “Approach Paper on Restructuring of Centre-State Relations,” *The Marxist*, XXIV, no. 3 (2008): 1–2.
41. S. K. Jain, *Party Politics and Centre–State Relations in India* (New Delhi: Abhinav Publications, 1994), p. 60.
42. Ibid.
43. In this regard, Nehru remarked:

*One thing is clear: that the Five Year Plan has completely changed the face of Russia. From a feudal country it has suddenly become an advanced industrial company ... The argument about the success or otherwise of the Five Year Plan is rather a pointless one. The answer to it is really the present state of the Soviet Union. And a further answer is the fact that this Plan has impressed itself on the imagination of the world. Everybody talks of “planning” now, and of Five-Year and Three-Year plans. The Soviets have put magic into the world.*

See Jawaharlal Nehru, *Glimpses of World History* (New Delhi: Penguin Books, 2004).

44. Planning Commission, “History”, available at <http://www.planningcommission.gov.in/aboutus/history/>, accessed on January 30, 2014.

45. Nirvikar Singh and T. N. Srinivasan, "Indian Federalism, Economic Reform and Globalization," *Working Paper No. 150*, Centre for Research on Economic Development and Policy Reform, Stanford University, p. 5.
46. Top rung states that attracted foreign direct investments during the period 1991 to 2011 include Maharashtra, Delhi, Tamil Nadu, Karnataka, Andhra Pradesh and Gujarat. See Atri Mukherjee, "Regional Inequality in Foreign Direct Investment Flows to India: The Problem and the Prospects," *Reserve Bank of India Occasional Papers*, 32, no. 2 (2011): 108–9.
47. Balveer Arora, "Indian Federalism, Economic Reform and Globalization," paper presented at an international seminar on "Constitutionalism and Diversity in Nepal," Organized by Centre for Nepal and Asian Studies, Tribhuvan University in collaboration with MIDEA Project and ESP-Nepal, August 22–24, 2007, Kathmandu, Nepal.
48. Committee on Centre-State Relations, para 2.5.04.
49. Willam Riker, "Federalism," in *Handbook of Political Science*, ed. Fred Greenstein and Nelson W. Polsby (Reading, MA: Addison-Wesley, 1975), Vol. 5, p. 141.
50. Government of India, *Report of the Group of Ministers on National Security*, Chapter IV, para 4.12.
51. P. D. Sharma, *Police, Polity and People in India* (New Delhi: Uppal, 1981), pp. 116–18.
52. Ibid.
53. In this regard, the Committee on Centre-State Relations observed:

*... to effectively discharge its obligations under Article 355, it needs to be specifically provided that it empowers the Union Government to issue directions and play a positive role rather than only a passive role of wait and watch for providing support to the State Governments till it makes such a request.*

See para 4.3.02.

54. Government of India, *Report of the Committee on Centre-State Relations*, "Internal Security, Criminal Justice and Centre-State Co-Operation," Vol. V, March 2010, para 4.21
55. Ibid., p. 49, para 4.1.01.
56. Government of India, *Report of the Group of Ministers on National Security*, Chapter IV, para 4.95
57. Government of India, *Sarkaria Commission Report*, Chapter VII, "Deployment of Union Armed Forces in a State for Public Order Duties," para 7.5.01.
58. V. R. Raghavan, "Internal security's diminishing returns," *The Hindu*, August 4, 2000.
59. *Constitutional Assembly of India Debates*, Vol. VII, November 4, 1948, p. 38.