

# COMBATIVE FEDERALISM IS ANATHEMA TO THE CONSTITUTION

Relevant for: Indian Polity | Topic: Issues and Challenges Pertaining to the Federal Structure, Dispute Redressal Mechanisms, and the Centre-State Relations

Prime Minister Narendra Modi with West Bengal Chief Minister Mamata Banerjee. | Photo Credit: Special Arrangement

The proposed amendments to the Indian Administrative Service (IAS) (Cadre) Rules of 1954 have triggered another round of conflict between the Centre and the States. The amendments proposed by the Department of Personnel and Training, Government of India, will take away the liberty of the States to deny consent for handing over civil servants for Central deputation. Further, if there are differences between the Centre and the States, the Centre's decision will have to be accepted by the States within a specified time period. Tamil Nadu, Kerala, West Bengal, Jharkhand, Rajasthan, Chhattisgarh and Telangana have objected to the amendments. The proposed changes are the latest examples in the evolution of the combative nature of federalism in India where the States and the Centre are always at loggerheads.

The shift of Indian federalism from co-operative to combative has been one of the major changes in Indian polity since the Narendra Modi-led government assumed power at the Centre with a brute majority. The expression 'combative federalism' was used by former Uttarakhand Chief Minister Harish Rawat immediately after his government was dismissed under Article 356 of the Constitution by President's proclamation. Immediately thereafter, the Centre started wielding power by interfering with the affairs of the States using the Governor's office.

In 2016, when the Governor of Arunachal Pradesh decided to advance the Assembly elections, which led to political crisis in the State and then President's Rule, the Supreme Court had to intervene and set right the constitutional crisis by holding that the Governor's discretion did not extend to the powers conferred under Article 174. The Governor cannot not summon the House, determine its legislative agenda or address the legislative Assembly without consulting the Chief Minister or the Speaker, the Court said. In Goa, Karnataka and Maharashtra, we saw examples of the Governor acting beyond his constitutional brief by inviting parties and formations which did not have an adequate majority to form the governments. In Rajasthan, the Governor refused to summon a session as desired by the Council of Ministers. This again brought to light how the Centre interferes in State affairs.

The question of who should have control of the National Capital Territory of Delhi was resolved by the Supreme Court in 2018, but the dispute continues to linger in one form or the other before the courts. The Constitution Bench of the Supreme Court held that the power of the Lieutenant-Governor of Delhi to differ from the Delhi government and make reference to the President is only with respect to exceptional matters like land, police and public order. However, the Supreme Court had to again remind the Delhi government and the Centre in *Ajit Mohan v. Legislative Assembly, National Capital Territory of Delhi & Ors* (2021) that for the system "to work well, the Central Government and the State Government have to walk hand in hand or at least walk side by side for better governance."

Apart from more common occurrences of the Centre usurping States' powers in the fields of legislation, overt conflicts and stalemates have surfaced in the areas of All-India Services and law and order. Such conflicts came to the fore when former West Bengal Chief Secretary Alapan Bandyopadhyay was summoned to Delhi immediately after Prime Minister Modi's visit to West

Bengal following Cyclone Yaas. West Bengal Chief Minister Mamata Banerjee's reluctance to accede to the Centre's demand and the subsequent disciplinary proceeding against Mr. Bandyopadhyay snowballed into a major litigation that is now pending before the Delhi High Court.

The deployment of central investigative agencies in the States, much to the displeasure of the States, has also caused trouble for our federal principles. The drama that unfolded with the Central Bureau of Investigation (CBI)'s attempted arrest of Kolkata Commissioner of Police Rajeev Kumar without a warrant in early 2019 was only the beginning of a series of conflicts. The unfortunate death by suicide of actor Sushant Singh Rajput triggered a round of Mumbai Police-CBI disputes, as various FIRs were registered in Patna that were transferred to the CBI by the Bihar government. The resultant legal dispute was ultimately settled by the Supreme Court which directed the Mumbai Police to hand over the investigation to the CBI. The protracted investigations at the instance of Customs, the National Investigation Agency (NIA) and the Enforcement Directorate (ED) in issues arising from a gold-smuggling case in the Kerala saw a major State-Centre face-off, after the Customs, NIA and ED charge-sheeted the former Principal Secretary to the Chief Minister's Office of Kerala. Soon thereafter, the Kerala government decided to take on the Centre by ordering a judicial inquiry against central investigating agencies and their overreach in the State. Kerala also witnessed another controversy surrounding Centre-State conflict when the CBI registered an wIR for alleged infractions of the Foreign Contribution (Regulation) Act. It said the State government had received foreign contributions from the United Arab Emirates by a Gousing project. There is no doubt that such investigations, purportedly for political reasons, into the functioning of the State governments have caused considerable dent in the federal architecture of the country. This is why litigious States live withdrawn the general consent for functioning of the CBI in their respective jurisdictions.

Combative federalism is anathema to the Constitution which prescribes cooperation and collaboration between the Centre and the States. The Constitution Bench of the Supreme Court held in *Government of NCT of Delhi v. Union of India* (2018) that the idea behind the concept of collaborative federalism is negotiation and coordination so that differences which may arise between the Centre and the State Governments in their respective pursuits of development can be ironed out. The Court said: "Union Government and the State governments should endeavour to address the common problems with the intention to arrive at a solution by showing statesmanship, combined action and sincere cooperation." The Constituent Assembly, while framing our Constitution, never envisaged a situation where the Central and the State governments would stand in the way of each other. Encroachment by either of the constituent units is strictly prohibited and expressly held abhorrent by the Constitution. Rather than wasting time and energy in unnecessary conflicts, the Centre and the States have to strive to work in coordination in the best interests of the people.

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