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RESEARCH ARTICLE

The quasi-federal constitution? Taxonomical influences on interpretation of federalism in India

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Abstract

Designating India as a 'Union of States' under Article 1, the Constitution of India does not adhere to a federal vocabulary. The perusal of the Constituent Assembly Debates establishes this verbiage to be a deliberate choice. Scholars such as Prof. Wheare (1963) have classified the Indian Federalism as 'quasi-federal', which remains a part of constitutional vocabulary to date. This scholarship undertakes an assessment of federal semantics and taxonomical choices under the Constitutions of the USA, Australia, Switzerland, Brazil and Canada, juxtaposing them with the 'quasi-federal' model of the Indian Constitution. Challenging rigid categorizations, the paper argues that the constitutions identified as 'federal' have also depicted centralizing tendencies in their working. Examining the legal and political intent behind the omission of 'federal' and its anti-federal fallouts, the scholarship explores that the lack of a uniform federal vocabulary and mis-categorization has allowed the Union government and the judiciary to reinforce the centralization of power that shapes the federal discourse, while sporadically identifying the federal features in the Indian Constitution.

Keywords: asymmetric federalism; Constitution of India; federal semantics; federalism; quasi-federal

Introduction

Since the commencement of India's Constitution, the vertical division of powers has been one of its core identities. However, to describe the nature of the Indian Constitution, Article 1 of the Constitution of India uses the term 'Union of India'. Is the absence of the words – 'federalism', 'federal', 'federation' or 'federally united' a deliberate omission, or is it a nonchalant oversight? Famous and oft-quoted words of Dr Rajendra Prasad, President of the Constituent Assembly of India, echo here: 'I do not attach any importance to labels which may be attached to it – whether you call it Federal Constitution or Unitary Constitution or by any other name'.[1] The detachment from labelling the Constitution of India, as expressed by Dr Prasad, in terms of vertical power sharing has led constitutional

[1]See Rajendra Prasad, Constituent Assembly Debates (26 November 1948), available at https://www.constitutionofindia.net/debates/26-nov-1949/#130353.

theorists to classify it as 'quasi-federal',[2] 'centralized federalism',[3] 'federal with centralizing tendencies',[4] 'holding-together federation',[5] etc.

The doctrinal work on the nature of Indian federalism develops heavily on Prof. Wheare's identification of the Indian Constitution as 'quasi-federal' – a categorization that resonates even today with the constitutional thinkers advancing scholarship on Indian Federalism.[6] It is reasoned that though the Indian Constitution never categorically claimed to establish a federation, it, nevertheless, prescribed a division of legislative and executive powers. Prof. Wheare, however, expresses concerns that the overarching powers given to the Union Government of India to interfere in the affairs of any state make a fragile case for Indian Federalism. He, thus, concludes: '…though it is difficult to assess the position, it *seems reasonable to conclude* that in practice the government, like the Constitution of India is quasi-federal, not strictly federal'[7] [emphasis added]. This school of thought is further solidified by the Indian judiciary, wherein it is theorized the Indian Constitution to be quasi-federal[8] or a federation with a strong Centre[9]; all this while maintaining that 'federalism' is a basic structure of the Constitution.[10]

Tillin, while tracing asymmetries in the Indian Constitution, has ascribed the term 'asymmetric federalism' to the Indian Constitution.[11] This prescription hinges on the intra-state inequalities in the constitutional text, which the courts in India have further reaffirmed.[12] The disparities in provincial autonomy have led scholars like Varshney to attribute the dogma of 'state-nation', developed by Stepan, Linz and Yadav,[13] to the Indian polity, as opposed to the 'nation-state'.[14] The assessment juxtaposes the intersecting identities of Indian citizenry against the assimilationist cultural identities of France, Japan and Portugal.[15] It posited that the anti-assimilationist model of India allows for varying degrees of provincial autonomy, thereby furthering the asymmetries in the Indian Federation.[16]

While some refer to this new vocabulary of 'state-nation', the veterans of contextualizing and theorizing Indian Constitutional law have resorted to the popular ascription of

[2]K.C. Wheare, *Federal Government* (4 edn, Oxford: Oxford University Press, 1963).

[3]M.P. Singh, 'The Federal Scheme' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds.), *The Oxford Handbook of the Indian Constitution* (Oxford: Oxford University Press, 2016).

[4]Baby Huma, 'Understanding Indian Federalism' (2015) 76(4) *The Indian Journal of Political Science* 792–95.

[5]Nirvikar Singh, 'Holding India Together: The Role of Institutions of Federalism' in Ajit Mishra and Tridip Ray (eds.), *Markets, Governance, and Institutions in the Process of Economic Development* (Oxford: Oxford Academic, 2017).

[6]Louise Tillin, 'Indian Federalism: Centralism Amidst Diversity' in John Kincaid and J. Leckrone (eds.), *Teaching Federalism* (Cheltenham: Edward Elgar, 2023); A. Varshney, 'How has Indian Federalism Done?' (2013) 1(1) *Studies in Indian Politics* 43–63.

[7]See (n 2) 29–28.

[8]*In Re: Article 370 of the Constitution*, 2023 INSC 1058.

[9]*S.R. Bommai vs Union of India*, 1994 AIR 1918.

[10]Ibid.

[11]Tillin Louise, 'Asymmetric Federalism' in Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (eds), *The Oxford Handbook of the Indian Constitution* (Oxford: Oxford University Press, 2016).

[12]*NCT of Delhi v Union of India*, (2018) 8 SCC 501.

[13]Stepan, Alfred, Linz, Juan and Yadav, Yogendra, *Crafting State-nations: India and Other Multinational Democracies* (Baltimore: The Johns Hopkins University Press, 2011).

[14]A. Varshney, 'How has Indian Federalism Done?' (2013) 1(1) *Studies in Indian Politics* 43–63.

[15]Ibid.

[16]Ibid.

'centralized federalism'.[17] Singh and Verney have put forth the idea that the claims of India not being federal at all cannot be discounted entirely.[18] The 'one-party dominance' – historically[19] and presently[20] – supported by the incorporation of the term 'Union' in Article 1 lends strength to the argument.[21] The purposeful act of avoiding the use of the terms 'federal' or 'federation' or 'federalism' in all government documents, communications, laws, orders, byelaws, reports, etc., rightly pointed out by Singh and Verney, bespeaks the intent of the government to establish a non-federal state.[22] Nonetheless, the vertical division of power, which presents itself in the Constitution of India, is regarded as a core feature of a federal model by Singh elsewhere in their work on the Federal Scheme.[23]

The disparity in the nomenclature of the *sui-generis* federal model of the Indian Constitution is not merely a product of federal-unitary debate but rather the existence, or omission thereof, of the terminology attributed to identify the Constitution of India. The existing scholarships and the jurisprudential development have overlooked the doctrinal implications of the seemingly innocuous label of 'quasi-federal'. This paper offers an interpretative analysis of semantic framing and taxonomy of the Indian federalism, arguing that the refining federal taxonomies would serve as a check on centralization of power by the federal governments. The assessment juxtaposes Indian federalism with federations around the world, offering a global lens to understand the emerging contours of federal states that may not resonate with dated federal taxonomies. Such a reassessment of federal taxonomies would further offer an apposite analytical lens to the courts for upholding federal values. To that end, this paper undertakes a comparative study of federal taxonomies dissecting the taxonomical choice to identify India as 'quasi-federal' and the fallouts of the same in the form of constitutional interpretation of federalism in India. This paper intends to emphasis the centrality of constitutional vocabulary for identifying constitutional orders and thus, contributes to the global debates on comparative models of federalism.

Prior to understanding the practical fallouts of the doctrinal mischaracterization of Indian federalism, it would be befitting to assess the intent of the visionaries of the Indian Constitution to articulate whether the Indian Constitution was meant to be 'quasi' (as it is popularly believed) or was it meant to be a 'federation proper' or not a federation at all.

Constituent assembly debates – Digging the nature of the Indian federation

While presenting the Draft Constitution on 4th November 1948, Dr BR Ambedkar vehemently supported India as a 'Union of States' and not a 'Federation of States'. It was emphasized that the deliberate use of the word 'Union' is to indubitably establish India as a federal country which is not a product of a 'coming-together' contractual

[17]See (n 3).

[18]Ibid.

[19]Tripurdaman Singh, *Sixteen Stormy Days: The Story of the First Amendment of the Constitution of India* (India: Penguin Random House, 2020).

[20]M.R. Sharma, 'Locating Contemporary Indian Federalism: Contextualising the Trends of Centralisation with Changing Dynamics' (2023) 30(1) *South Asian Survey* 45–71.

[21]M.P. Singh and Douglas V. Verney, '*Challenges to India's Centralized Parliamentary Federalism*' (2003) 33(4) Publius: The Journal of Federalism 1–20.

[22]Ibid.

[23]See (n 3).

arrangement, and accordingly, none of the parties to the Indian federal model can elect to cede from it. The word 'Union', it was clarified, was not used in the same sense as in the South African Constitution,[24] but was meant to signify 'unity' – an indestructible federal unit.[25] The first draft of the Constitution of India, thus, stated India to be a 'Union of States', which left most members of the Constituent Assembly perplexed as to why the word 'federation' was not used to describe Indian polity for that was believed to be a more appropriate description.

One of the significant amendments proposed to Draft Article 1 was by Prof. KT Shah, who moved Article 1 to be redrafted to say – 'India shall be a secular, **federal**, socialist Union of States'[26] [emphasis added]. Though the motion was defeated on all three counts, that is, secular, federal and socialist, the assessment here is restricted to 'federal'. The proposed amendment was purported to guard against any misinterpretation on account of incorporating the word 'Union'. India was meant to be a federal division of powers with states having concurrent powers as the Union. Replacing the word 'Union' with 'federal', it was debated, would put the issue beyond doubt that India is *not* a 'unitary' state.

In response to Prof. Shah's proposal, HV Kamath drew the attention of the Assembly to the Constitution of British North America, 1867, which was the source of inspiration for the Draft Article 1.[27] It was argued that the word 'Union' best describes the polity that the Constitution of India envisages as it would prevent the balkanization of India as historically, the fissiparous tendencies of provinces have led to the disintegration of the Indian subcontinent.[28] Nonetheless, Kamath asserted that using the word 'Union' should not mean to suggest that India is not a federation. This claim was substantiated by elucidating the instances of vertical division of powers between the Union and the states established by the Constitution, showcasing its federal essence.[29]

Concerns with the word 'Union' were also debated by Mehboob Ali Baig, who contemplated the significance of adopting a specific constitutional vocabulary.[30] The arguments were two-fold. First, it was sought to ascertain if any significance is associated with using the word 'Union' as Dr Ambedkar claimed to attach no great significance to the word.[31] By expanse of the same logic, it was articulated that if words are included in the constitutional text without due significance attached to their meaning and political connotations, then the Assembly might as well consider the term 'federal' with the same nonchalance, which, in Baig's opinion, was a more appropriate term. Second, it was argued that if it is indeed a purposeful act to use the word 'Union', then it is pertinent to use the correct word, that is, 'federal'.[32] The apprehensions in the minds of certain

[24]Section 2, The South Africa Act, 1909.

[25]See BR Ambedkar, Constituent Assembly Debates (4 November 1948), available at https://www.constitutionofindia.net/debates/04-nov-1948/.

[26]See KT Shah, Constituent Assembly Debates (15 November 1948), available at https://www.constitutionofindia.net/debates/15-nov-1948/.

[27]Article 1 of the Draft Constitution of India, 1948 states: 'India shall be a Union of States.'

[28]See H.V. Kamath, Constituent Assembly Debates (15 November 1948), available at https://www.constitutionofindia.net/debates/15-nov-1948/.

[29]H.V. Kamath noted: '…we have various Lists prescribed for Union, etc. So long as the essence is there in the Constitution, I do not see any reason why the word "Federal" should be specifically inserted here to qualify the word "Union"'.

[30]Mehboob Ali Baig, Constituent Assembly Debates (15 November 1948), available at https://www.constitutionofindia.net/debates/15-nov-1948/#101365.

[31]Ibid.

[32]Ibid.

members of Constituent Assembly were that with time, the policies drafted on partisan lines could morph the federal spirit of the Constitution into a Unitary form. The concerns expressed by Baig have indeed come true during the National Emergency of 1975 proclaimed by the then incumbent Prime Minister of India, Ms. Indira Gandhi,[33] or more recently, with the abrogation of Article 370 of the Constitution[34] that has led to the bifurcation of the erstwhile state of Jammu and Kashmir into two Union Territories by the incumbent government (2019).[35]

During the second reading of the Draft Constitution, reflecting upon and re-emphasizing the nature of the Indian Constitution, Prof. KT Shah stressed that the 'Union' is meant to be a true federation, and the political units therein are equal members of a Common Federation.[36]

The perusal of the debates of the Constituent Assembly establishes tension amongst the members of the Assembly to either adopt the word 'federal' or 'Union'. Nevertheless, all the members unanimously agreed that the Constitution of India would embody the federal principles irrespective of the semantics. Furthermore, none of the members, even those who advocated in favour of the word 'federal', proposed qualifying 'federal' with the word 'quasi', which, paradoxically, is now part of the Indian constitutional law discourse. Despite not alluding to the categorization of the Indian federal model as 'quasi', the semantic and taxonomical choice of 'quasi-federal' in contemporary practice has delimited state authority, contributing to centralizing outcomes (further discussed in Part V). The historical record of the lexical choices of the members of the Constituent Assembly exemplifies the centrality of terminology in shaping institutional practices and constitutional interpretations.

Building on Prof. Wheare's identification of federal constitutions and federal governments, the following part assesses the semantic choices and taxonomies embedded in the constitutions of the United States of America, Australia, Switzerland, Brazil and Canada – jurisdictions that exhibit similarities with the Indian Constitution, both in terms of existing provisions and/or omissions related to federal principles. The choice of these jurisdictions is based on the core federal features in their constitutional designs, particularly with respect to primacy given to federal laws over regional legislations, the composition of the federal legislature, the power of the federal legislature to amend the constitution, appointment and role of the Governors in regional governments and division of legislative competence of powers between different levels of the government.

A 'Federation Proper' – Assessing the federal semantics and taxonomies

This part explores how terminological and taxonomical choices influence the understanding and interpretation of constitutions and the working of federal governments. To ensure conceptual clarity, the keywords that are central to the inquiry in this part have been delineated:

- The term 'federal features' refers to the commonly accepted features of federalism as identified by Prof. Singh in their work on 'The Federal Scheme'. They are the

[33]W.H.Morris-Jones, '*Whose Emergency—India's or Indira's?*' (1975) 31(11) The World Today 451–461.
[34]Declaration under Article 370(3) of the Constitution 2019, C.O. 273.
[35]Jammu and Kashmir Reorganization Act, 2019, s 3.
[36]K.T. Shah, Constituent Assembly Debates (15 November 1948), available at https://www.constitutionofindia.net/debates/15-nov-1948/#101459.

existence of two levels of government and distribution of competence or powers – legislative, executive, judicial and financial – between the general and the regional governments, the supremacy of the constitution and the dispute resolution mechanism for determining the competence of the two governments for exercising any power or for performing any function.[37]

- The terms 'unitary tendency' or 'centralizing tendency' refer to an explicit constitutional power that gives greater authority to the Union (*the federal government*), as differentiated from mere policy dominance. For instance, such 'unitary tendency' or 'centralizing tendency' in the Constitution of India appears in the form of the location of the residuary legislative powers with the Parliament, primacy to laws made by the Parliament over the laws made by the state legislature in cases of repugnancy, the power of reorganizing state territories available with the Parliament, etc. These features *tilt* the balance in favour of the Union and, hence, are referred to as 'centralizing' or 'unitary' tendency.
- As the core theme of the paper is to deconstruct the language and taxonomies and their centrality thereto, the term 'federal semantic(s)' refers to the constitutional text identifying the nature of federalism; prescription of (federal) institutional design by the constitutions and the judicial vocabulary interpreting federal features.

While assessing the federations around the world, Prof. Wheare ascribed two terms – the federal constitution and federal government – to identify federal elements in a nation-state. It was argued that some federal constitutions have incorporated federal principles but have failed to establish a federal government.[38] Conversely, some not-so-federal constitutions (identified as 'quasi-federal') have, in working, established federal governments.[39] Irrespective of the nomenclature adopted by the Constitution, Prof. Wheare's normative assessment focused on whether the constitutional text retains actual federal elements and whether the Constitution has successfully established a federal government. For instance, though Prof. Wheare identifies the Indian Constitution as establishing a 'federal government', but has not crowned the Indian Constitution with the term 'federal'.

Popularly, the Constitution of the United States of America is considered the most befitting model of a federal constitution. The omission of the term 'federal' or 'federalism' in the constitutional text does not disturb this narrative.[40] The provisions of the United States of America's Constitution postulated an exception with a specific unitary flavour. Until 1913, the composition of the Senate included representatives selected by the state legislatures. Prof. Wheare did not treat this breach as significant and categorized the Constitution of the United States as 'federal', both in terms of the Constitution and governance.

The working of the Constitution of the United States, however, has led to the expansion of the powers of the national government under the commerce clause. This

[37]See (n 3).

[38]For example, Prof. Wheare considers the Brazilian Constitution of 1891, Argentine Constitution of 1853, Venezuelan Constitution of 1936, and the Constitution of Austrian Republic (1920) to have a federal constitution, but there is little evidence of working of a federal government in these jurisdictions.

[39]For example, Prof. Wheare considers Constitution of Canada (the British North America Act, 1867) and Constitution of India (1950) as quasi-federal constitutions but he argues that both the constitutions establish a federal government.

[40]The Preamble of the Constitution of the United States of America prescribes – 'We the People of the United States, in Order to form a more perfect Union…'

has attributed broad legislative powers to the Congress to regulate any or all economic activities in a state with a potential (either substantial or not) impact on interstate commerce. The working of the Constitution no longer remains a 'federation-proper' in its strict sense.[41] This comparison is further developed in this part where the quasi-federal features of the Indian Constitution are analysed, taking the Constitution of the United States of America as a comparative baseline.

Further, the Australian Constitution (1900) established a 'federal Commonwealth' that embodies strict federal principles of vertical division of powers. One of the most federalizing features of the Australian Constitution is the location of the concurrent legislative powers. Both the Commonwealth and the states can legislate on subjects under concurrent jurisdiction. However, in cases of conflict, primacy is given to the law made by the Commonwealth. Interestingly, this provision exists in a similar fashion even in the Indian Constitution.[42] In practice, the Commonwealth in Australia has expanded its concurrent jurisdiction to the extent that it dilutes provincial legislative competence to a great extent.[43] On the other hand, the Supreme Court of India has interpreted the legislative powers of the Union and the state through doctrines such as 'pith and substance' and 'harmonious construction', which accommodate a state law in the concurrent legislative domain even if operating in overlapping legislative fields with a law made by the Parliament.[44] Further, one of the redeeming features of Indian federalism, which makes a case for a federal Constitution, is that a state can preserve a law made by a state legislature, even if it is repugnant to a law made by the Parliament, by securing Presidential assent.[45] This is addressed further in Part IV of the paper, which identifies the federal principles in the constitutional text of India that counteract the unitary tendencies.

Another significant example of a federal constitution is the Constitution of Switzerland, which adopts the term 'Confederation' to classify its Constitution. Prof. Wheare classifies the Swiss Constitution of 1848 – the first federal constitution of Switzerland – as establishing a 'federal constitution' and a 'federal government'.[46] One of the peculiar features of the Swiss Constitution of 1848 was that the functioning of the national government (Confederation) was subjected to a minor degree of cantonal dependence. The cantonal representatives in the Confederation were financially compensated by their respective cantons, and the term of office, along with the manner of election, was affixed by the cantons. Notably, this deviation from a 'federation proper' (by incorporating regional dependence in federal legislature) did not deter Prof. Wheare from classifying the Swiss Constitution (1848) as a federal. This conclusion was arrived at by juxtaposing the Swiss Constitution with the Constitution of the United States of America, wherein the degree of regional dependence regarding representation is higher. It was argued that the Swiss Council of States was the least influential organ and, thus, did not disturb the federal features of the Constitution.

[41]William B. Fisch, 'Emergency in the Constitutional Law of the United States' (1990) 38 *The American Journal of Comparative Law* 389–420.

[42]See (n 3).

[43]See, for example, the expansion of legislative power on Education under Section 51 by the Commonwealth; Campbell, Craig. 2023, Constitution of Australia and education, https://dehanz.net.au/entries/constitution-of-australia-and-education/.

[44]*Preeti Srivastava vs State of M.P.*, (1999) 7 SCC 120.

[45]Constitution of India (1950), Article 254 (2).

[46]See (n 3).

If one were to extend the expanse of this reasoning to the Indian Constitution, it would be observed that the Indian bicameral legislature in the Parliament is similar to Switzerland's Confederation on two counts. First, the members of the Council of States (*Rajya Sabha*) in India are representatives of the states. Secondly, the Council of States in the Parliament of India is less influential, particularly in financial matters,[47] and in the manner of indirect general elections,[48] when compared to the House of People (*Lok Sabha*).

The Swiss Constitution (1848) exhibited another crucial omission that deviated from the strict principles of federalism. The laws made by the Swiss Federal Assembly were not amenable to judicial review by the Swiss Courts. Thus, the courts were duty-bound to treat all federal laws as valid, despite any transgressions that might disturb the division of legislative powers between the Confederation and the Cantons.[49] Prof. Wheare defended this departure by relying on the intention of the Constitution makers, which, it was believed, was to refrain from entrusting the Confederation with the powers to transgress its allocated legislative field. Presuming Prof. Wheare was indeed open to a dialogue tracing the intention of the Constitution makers, then there exists no reason not to consider the same while classifying the Constitution of India. The intention of the constitution makers in India (as witnessed in the preceding part) was to establish a federal constitution, irrespective of the semantics.

Further, from a semantic point of view, the Constitution of Brazil (1891) embodied a purely federal vocabulary by establishing a 'Federative Republic of Brazil'. Prof. Wheare also identified the Brazilian Constitution of 1891 as 'federal' despite one very potent deviation that was of unitary tendency. The process of the amendment of the Constitution under the Constitution of Brazil (1891) allowed the federal government to amend the Constitution by securing a two-thirds majority in both houses in two successive years.[50] This provision undermined the authority of the regional governments. It directly contradicted one of the essential features of a federal arrangement, which posits that no one party can unilaterally change the terms of the agreement.[51] However, as per Prof. Wheare, the federal safeguard against the abuse of this provision was provided by mandating that if a proposed amendment alters the federal principles of the Constitution, then the same cannot be discussed in the Congress. This provision forthwith preserved the federal categorization of the Constitution of Brazil (1891). It is crucial to note that similar federal preservation also exists in the Constitution of India. Any amendment to the Constitution that could potentially disturb the vertical division of powers between the Union and the states can be passed by Parliament only after securing the consent of more than 50% of the state legislatures.[52]

In addition to the Constitution of India, Prof. Wheare also classifies the Constitution of Canada (British North America Act, 1867), which claims to be 'federally united', as 'quasi-federal'. Both the Constitutions, as per Prof. Wheare, establish federal governments but fail to establish a federal Constitution per se due to their centralizing tendencies. The Constitutions of India and Canada have similarities in terms of representation of

[47]Constitution of India (1950), Article 109.
[48]Constitution of India (1950), Article 80.
[49]Federal Constitution of the Swiss Confederation (1848), Article XC, CVI.
[50]Constitution of the Republic of the United States of Brazil (1891), Article 90.
[51]See (n 3).
[52]Constitution of India (1950), Article 368(2).

the federal heads in the provinces. The Lieutenant Governors in the provinces in Canada are appointed by the Governor-General in Council[53] and the Governors in India, as Executive Heads of the states, are appointed by the President of India acting on advice of the Union Council of Ministers.[54] The Lieutenant Governors in Canada could reserve a bill for the consideration of the Governor General and this further allows the Dominion to veto provincial laws.[55] Despite the centralizing tendencies, these provisions are not a part of modern constitutional practice and one of the features that preserves the federal character of the Indian and the Canadian Constitutions is that the Dominion cannot legislate over the state subjects.

In addition to the Indian and Canadian models of federalism, jurisdictions such as South Africa, Ethiopia and Pakistan grapple with the constitutional semantics and judicial vocabulary surrounding federal/unitary binaries. For instance, the Constitution of the Republic of South Africa (1996) is often described as 'quasi-federal',[56] and the judicial vocabulary, thus, focuses on balancing the powers amongst constituent units rather than enforcing a strict federal division of powers.[57] By contrast, the Constitutions of Ethiopia and Pakistan ascribe to an overtly federal vocabulary. The Constitution of the Federal Democratic Republic of Ethiopia (1995) establishes a 'federal state', and the current Constitution of the Islamic Republic of Pakistan (1973) and the preceding Constitution of Pakistan (1962) described the constitution as 'federal'. Despite this textual commitment to federalism, the courts have often favoured the centralization of powers. In the early years of the commencement of the Constitution of Pakistan of 1962, the tendency to avoid decentralization of power led to territorial unrest that contributed to the disintegration of Pakistan in 1971 leading to the creation of the independent state of Bangladesh.[58] Similarly, in Ethiopia, the constitution grants the regional governments the right to secede. However, in practice, the federal government has asserted dominance – most notably in its military response against the Tigray region's decision to conduct regional elections after the national government had postponed the national elections during Covid-19 pandemic.[59]

These instances illustrate that when constitutions that semantically identify as 'federal' and have been classified as 'federal' have often failed to establish an indefeasible federal government, the taxonomical choice to classify India leaves little room for the principles of federalism to develop. The ascription of the term 'quasi-federal' has armoured the federal governments with legal cover to reinforce centralizing tendencies, thereby blurring the normative expectations associated with federalism. One may argue that ascribing a particular vocabulary is of little significance when the *working of the Constitution* is often categorized as 'federal' (as in the case of India). However, the ascription of the term

[53]British North America Act, 1867, Section 58.

[54]Constitution of India (1950), Article 155.

[55]British North America Act, 1867, Section 90.

[56]R.E. Mabugu and E.M. Rakabe, 'South Africa' in J.F. Tremblay (ed.), *The Forum of Federations Handbook of Fiscal Federalism* (Cham: Palgrave Macmillan, 2023).

[57]Nico Steytler, 'The Constitutional Court of South Africa: Reinforcing an Hourglass System of Multi-Level Government' in Nicholas Theodore Aroney and John Kincaid (eds.), *Courts in Federal Countries: Federalists or Unitarists?* (Toronto: University of Toronto Press, 2017).

[58]S.M. Taha, 'Failing Conflict Management between Federation and Unit: An Analysis of Conflict Management between the Federation of Pakistan and East Pakistan' (2012) 1(3) *International Journal of Independent Research and Studies* 106–111.

[59]'Ethiopia's Tigray War: The Short, Medium and Long Story', *BBC News* (June 29, 2021).

'quasi-federal' with the Indian Constitution has enabled the Union of India to centralize power (discussed further in Part V).[60]

The nomenclature, terminology and taxonomy one adopts in legal discourse to describe and/or identify modern statutes and constitutions are of utmost significance. Apposite verbiage lays out the roadmap to gauge the intent of lawmakers and bolsters the observance of the normative framework of the statute or the Constitution.[61] In addition to facilitating governance on constitutional lines, the use of apposite terminology also lucidly lays out the parameters of Constitutional interpretation for the judiciary and, thus, keeps a check on legislative, executive and administrative overreach.

The common charges against the federal features of the Constitution of India are hinged on its unitary tendencies, which shift the balance of power in favour of the Union government. This perceived power imbalance has led scholars to categorize the Indian constitution as 'quasi-federal'.

Addressing these charges against Indian federalism, the following part juxtaposes the Indian federal model with the federation of the United States of America, illustrating that, in practice, the working of the federal government in the United States of America has often resulted in centralization of policy dominance in favour of the federal level.

The Indian constitutional order, despite its centralizing tendencies, posits the principles of federalism. The following comparison is premised on the argument that the taxonomical choice to label India as 'quasi-federal' has denied constitutional theorists and the courts to explore the scope of federalism fully. As a result, the degree of normative expectation from Indian federalism is significantly lower owing to the presupposition that the Constitution of India is not 'truly federal'[62] or is less federal than that of the United States of America.

Comparing 'quasi-federal' features of the Constitution of India with 'federation proper' under the Constitution of the United States of America

As witnessed, the Constitution of India prescribes a vertical division of competence of powers, thereby establishing a federal constitution. The charge against the federal scheme of the Constitution of India is its strong bias in favour of the Union. This structural imbalance between the Union and the states is manifested in the form of overarching powers given to the Parliament of India. A few instances of this power imbalance are evident from the power of the federal legislature to reorganize the state territories, primacy to laws made by the Parliament over laws made by the state legislature(s) in cases of repugnancy, appointment of Governor or the Lieutenant Governor to the states or Union Territories, respectively, by the Union of India, the Union's power to declare national or regional emergencies in any part of the territory of India, thereby morphing the Indian federal state into a unitary state, the constituent power of the Parliament to amend the Constitution etc. It is, however, interesting to note that despite these centralizing tendencies in the Constitution of India, safeguards exist to preserve provincial autonomy.

[60] A. Choutagunta, G. P. Manish and S. Rajagopalan, 'Battling COVID-19 with Dysfunctional Federalism: Lessons from India' (2021) 87(4) *Southern Economic Journal* 1267–1299.

[61] Dharmendra Kumar Singh and Amit Singh, 'The Constitutional Spirit of Word 'Union' and the Colonial Hangover of the Word 'Central' in the Federal Structure of India' (2019) 40(2) *Statute Law Review* 28–142.

[62] *S.R. Bommai vs Union of India*, 1994 AIR 1918.

The two significant charges that are levelled against the federal nature of the Constitution of India are – (a) Parliament's territorial autonomy over states by way of reorganization of state territories and (b) the Power of the President of India to declare national or regional emergency on advice of the Union Executive.

Addressing the first charge – Parliament's territorial autonomy over states by way of reorganization of state territories. The proviso to Article 3 under the Indian Constitution mandates that a bill altering the area, boundaries, names of any state, etc., must be presented to the concerned state legislature to obtain their views on the proposed reorganization. Though the views so received are recommendary in nature, this preserves, albeit to a limited extent, the provincial autonomy of the states over their territories.

Historically, the reorganization of states in India at the behest of the Parliament was preceded by a demand from the states based on linguistic or ethnic homogeneity, or its lack thereof. In a linguistically neutral territorial organization of India,[63] the first instance of linguistically guided reorganization was after the demand from the *Telegu*-speaking population of the State of Madras that led to the formation of the State of Andhra (later renamed as Andra Pradesh in 1956).[64] The creation of the State of Andhra on linguistic lines ignited the demands from other states, which led to the States Reorganisation Act, 1956. The *Telegu*-speaking population of Hyderabad was merged with the State of Andhra Pradesh, and a new state of Kerala was formed with a predominantly *Malayalam*-speaking population. The existing state of Punjab was merged with the *Punjabi*-speaking territories of the State of Patiala and the East Punjab State Union. At the same time, the State of Madhya Pradesh had a predominantly *Hindi*-speaking population. The then-existing State of Bombay was reorganized to include the *Marathi*-speaking population from the existing states of Hyderabad and Madhya Pradesh. This composite state of Bombay, created in 1956, was further split into two states with the creation of the State of Maharashtra (with *Marathi*-speaking population) and the State of Gujarat (with *Gujarati*-speaking population) by the Bombay Reorganisation Act, 1960.

Succumbing to constant demands for the creation of new states for lack of cultural homogeneity, the Parliament of India, in the year 2000, separated the territories of Chhattisgarh from Madhya Pradesh, Uttarakhand from Uttar Pradesh and Jharkhand from Bihar. One of the most prolonged movements for demanding statehood led to the formation of the State of Telangana out of the State of Andhra Pradesh in 2014. The most prominent reorganizations in the political history of post-independence India are a product of the demand for statehood that originated primarily on linguistic lines,[65] and on certain occasions, owing to the lack of cultural and ethnic homogeneity, and disparity of economic development.[66] Apart from the most recent reorganization of the erstwhile State of Jammu and Kashmir into two Union Territories (2019), the demands for reorganization, as documented above, have emerged within the state concerned and have not been a federal dictate by the Parliament of India.

If the reorganization of states in India is compared with the Admission Clause (also known as the New States Clause) of the Constitution of the United States of America (the model considered as 'federation-proper'[67]), it would be seen that, ostensibly, the power

[63]Report of the State Reorganization Commission, 1955, Ministry of Home Affairs, Government of India.

[64]The Andhra State Act, 1953, Section 3.

[65]M.P. Singh, 'Reorganisation of States in India' (2008) 43(11) *Economic and Political Weekly* 70–75.

[66]For example, creation of states of Jharkhand, Uttarakhand and Chhattisgarh, bifurcating the states of Bihar, Uttar Pradesh and Madhya Pradesh, respectively, in the 2000.

[67]See (n 2).

balance favours states as no new state can be formed out of an already existing state without the consent of the legislature of the state concerned.[68] However, the Admission Clause prescribes the consent of both the legislature of the state concerned and the Congress. In practice, this provision has resulted in Congress withholding consent and disallowing the creation of a state despite demands for separate statehood out of existing state or territory. Hawaii was the last state to be admitted to the United States of America, in compliance with the procedure mandated by Article IV, Section 3 (Admission Clause) of the Constitution of the United States of America, in 1959.[69] For decades, Washington, DC, has been denied statehood despite the people of the District of Columbia having voted in support of statehood and having approved a state constitution.[70] The congressional approval to admit a new state operates as a tacit power of veto in the hands of the federal government. Conversely, the states' demand for reorganization in India rather than creating an impasse between states and the Union has facilitated the integration of Indian states by imbibing a sense of provincial autonomy. In the working of the Constitution of the United States of America, the federal feature of admission of new states is not indisputably successful in mitigating federal dominance.

Paradoxically, Prof. Wheare classified both the Constitution and the working of the Constitution of the United States of America as 'federal',[71] a terminology he was reluctant to ascribe to the Constitution of India.

Addressing the second charge – The power of the President of India to declare a national or regional emergency on the advice of the Union Executive. The Constitution of India under Article 352 empowers the President to declare a national emergency on the grounds of external aggression, war or internal disturbance (which was replaced by the term 'armed rebellion' in 1978), and Article 356 empowers the President to declare a state emergency on failure of constitutional machinery in a state. One of the consequences of the President's declaration under the said articles is that it morphs the federal structuring of the competence of powers into a unitary. This concern was not lost on some of the members of the Constituent Assembly as well.

Addressing those concerns, Dr Ambedkar argues on two points: first, these provisions exist for emergency situations only and, thus, do not disturb the peacetime divisions of powers. Secondly, if hypothetically these provisions are taken out of the constitutional text, then who would the citizens owe their allegiance to during emergencies – the state or the Centre?[72] Dr Ambedkar feared that the issue of allegiance could not be left open for interpretation if and when a conflict arose. With this, it was reasoned that in times of emergency, the Union is competent to command the allegiance of the subjects and the constituent states and, thus, work towards the nation's common good. Per the states' obligation, Dr Ambedkar posited that the abridgement of states' power is only to preserve and perpetuate the common good for the entire nation along with the states' interests.

[68]The Constitution of the United States of America, Article IV, Section 3.

[69]Constitution Daily Blog, National Constitution Centre, The last time Congress created a new state (2024), available at https://constitutioncenter.org/blog/the-last-time-congress-created-a-new-state-hawaii.

[70]Sadie Morris, *Statehood Denied* (Common Home, Georgetown University, 2022), available at https://commonhome.georgetown.edu/topics/environmentaljustice/statehood-denied/.

[71]See (n 2).

[72]B.R. Ambedkar, Last Speech in the Constituent Assembly on Adoption of the Constitution (25 November 1949), available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://csja.gov.in/images/p1195/s_1_constitution_vision_of_Justice/Dr_Ambedkars%20speech.pdf.

The trepidations of the members of the Constituent Assembly came true at the time of a national emergency declared in India in the year 1975 by the then incumbent Prime Minister of India, Ms. Indira Gandhi, on the grounds of 'internal disturbances'.[73] However, to mitigate the abuse of the emergency provisions, the Constitutional (Forty-fourth) Amendment Act, 1978, incorporated certain procedural safeguards in the Constitution to retain the federal spirit of the Constitution even during times of emergency.[74]

The emergency provisions in the Constitution of India are a very potent charge on Indian federalism, which is undoubtedly difficult to shake. However, if one juxtaposes this with other constitutions around the world that are considered 'federal', it could be observed that emergency provisions are not *sui generis* to India.

Political scientist Clinton Rossiter, in their work on 'The Supreme Court and the Commander in Chief', while referring to the working of the Constitution of the United States of America, commented: '[t]here do indeed seem to be two Constitutions – one for war, one for peace'.[75] Though, unlike the Constitution of India, the Constitution of the United States does not explicitly adopt the 'emergency' based semantics in its text, the undercurrents of the same can be witnessed in the workings of the Constitution. The Constitution of the United States prescribes powers available with the Congress that are exercisable during episodes that are characteristically identified as 'emergencies' or 'exigencies'. To illustrate, Article 1 Section 8 gives extensive powers to the Congress relating to war and regulation of the army, including naval forces. Furthermore, it empowers the Congress to sanction the use of militia to execute Federal laws and to suppress insurrection. The 'guaranty clause' under the U.S. Constitution makes the federal government constitutionally duty-bound to guarantee a republican form of government to every state and to protect against invasion.[76] However, one caveat to this rule is that in conflicts arising out of domestic violence within the states, the federal power will interfere with the civil power of the states only when 'asked'. Though the constitutional text preserves the federal-state balance, the judicial interpretation of this restriction has not done justice to preserving the harmonious balance of power between the federal government and the states. The judiciary has interpreted this restriction to apply only in cases of a state seeking assistance from the federal government to suppress an insurrection against the state authority.[77] Congress has proceeded to exert a guaranty clause sans a state request, and the judiciary has upheld the exercise of the same in cases of enforcing federal law or preserving the rights of the citizen against abuse of power by the state authorities.[78]

A juxtaposition of the express emergency provisions in the Constitution of India and the implied provisions of a similar nature in cases of war, invasion, insurrection or national security under the Constitution of the United States highlight the irrefutable similarities in both the constitutional orders. The following table addresses the key

[73]See (n 33).

[74]For example, see section 37, Constitutional (Forty-fourth) Amendment Act, 1978 that narrowed down the scope of proclamation of emergency by replacing 'internal disturbances' with 'armed rebellion' as one of the grounds of emergency. It further mandated the advice to be tendered to the President must be in writing before a proclamation of emergency can be issued.

[75]C. Rossiter, *The Supreme Court and the Commander in Chief* (New York: Cornell University Press, 1976) 394.

[76]The Constitution of the United States of America, Article IV, Section 4.

[77]See (n 41) 411.

[78]Ibid.

questions concerning the degree of federalism in both jurisdictions – as reflected from the constitutional text and practice. To that end, it examines:

- Whether the federal government is empowered to declare an emergency, and if yes, on what grounds
- The impact of the declaration of emergency on the structuring of the legislative and executive competence of power
- The effect of the declaration of emergency on individual rights, including the equal protection clause, freedom of speech and expression and the guarantee of due process

The analysis above puts to the forefront the working of the Constitution of India and the Constitution of the United States during times of emergency. Despite the nonexistence of express provisions in the Constitution of the United States authorizing the federal government to declare an emergency, the working of the U.S. Constitution has demonstrated considerable power in the hands of the federal government to interfere with the state government and for reading down civil liberties during exigencies. The government exercises this power to deal with situations referred to as war, rebellion, insurrection or threat to national security – terms tantamount to universally accepted interpretation of the term 'emergency' under modern constitutions.[79]

Under the Constitution of the United States, particularly during the time of World Wars I and II, the wartime authority of the federal government was significantly expanded to justify the suspension of civil liberties[80] and the interference of the federal government in the states.[81] The 'guaranty clause' ordains the federal government with the constitutional obligation to protect every state in cases of invasion, thereby allowing the federal government to harness its federal dominance.

It is crucial to note that the presence of emergency provisions in the constitutional text is a significant factor influencing the 'quasi-federal' taxonomy. However, the working of the Constitution of the United States has demonstrated the potential expansion of the wartime authority of the federal government to read down the states' autonomy and right of self-determination on lines similar to the express constitutional prescriptions under the Indian Constitution. Focusing on the express provision to deny a federal label, subconsciously allows the legal discourse to sanction federal overreach, as witnessed in the stance of the Supreme Court during the national emergency of 1975 in India (recorded in Table 1 and discussed further in Part V).

Furthermore, it takes the focus away from several provisions in the Constitution of India that safeguard the autonomy of the regional governments. Alexandrowicz, in their work, 'Is India a Federation', notes: '[t]hough India is by her origin not a contractual but an administrative federation, federation has a real meaning and is not nominal'. The following part explores the decentralizing tendencies of the Constitution of India that potentially counteract the charges of centralization directed at its federal design.

[79]For example, see Article 91 of the Basic Law for the Federal Republic of Germany (1949) that identifies emergency as 'an imminent danger to the existence or free democratic basic order of the Federation or of a Land.'

[80]See (n 41).

[81]Ibid.

Table 1. Provisions dealing with emergencies/exigencies under the Constitutions of India and the United States of America

Constitutional prescriptions for exigencies		Jurisdiction	
		India	United States
Grounds		War, External Aggression, Armed Rebellion (*earlier, internal disturbances*)	War, invasion, cases of rebellion, domestic violence (*violence within the state*)
Federal-state relations		Morphs the federal structuring of powers into a unitary structure during the proclamation of emergency (Article 353)	Guaranty Clause (constitutional obligation of the federal government to preserve the republic form of government in the states and to offer protection upon a request made by the state in cases of insurrection) (Article IV Section 4)
Effect on individual rights	Generally	Suspension of certain fundamental rights during the duration of the proclamation of emergency (Articles 358 and 359)	Suspension of *Habeas Corpus* in cases of Rebellion or Invasion, the public safety may require it (Article I Section 9, cl. 2).
	Equal protection clause	Suspension of the Equal Protection clause during the emergency under Article 359	*Korematsu* case[82] during World War II upheld the Presidential Order of 1942 that ordained the Secretary of War and the armed forces to remove people of Japanese ancestry from what they designated as military areas and surrounding communities in the United States. It propounded the test of 'pressing public necessity' to justify the curtailment of the civil rights of a single racial group.
	Freedom of speech	Automatic suspension of freedom of speech during the proclamation of emergency on the grounds of war or external aggression (Article 358) Suspension of freedom of speech by a Presidential Order during the proclamation of emergency on the grounds of armed rebellion (Article 359)	During World War I, the petitioners' conviction was upheld under the Espionage Act by stating that in times of war, the courts owe a greater degree of deference to the government constitutionally empowered with wartime authority. The free speech guarantee of the First Amendment was significantly read down if it attracted a 'clear and present danger'. *(Schenck vs United States, 249 U.S. 47 (1919))*

Continued

[82]*Korematsu vs United States*, 323 U.S. 214.

Table 1 *Continued*

Constitutional prescriptions for exigencies	Jurisdiction	
	India	United States
Due process	The due process guarantee under Article 21 was amenable to suspension up till 1977, and the Supreme Court of India upheld that suspension in the infamous case of *ADM Jabalpur*.[83] After the 44th Amendment to the Constitution (1977), Article 21 cannot be suspended during an emergency.	Foreign Intelligence Surveillance Act of 1978 ('FISA'), a reactive legislation passed after the Supreme Court in the *United States vs United States District Court*, prohibited warrantless surveillance. FISA sets up a Foreign Intelligence Surveillance Court ('FISC') to review surveillance applications in the interest of 'national security', and surveillance can be carried out after the FISC issues the order. However, the disposal of applications by FISC has chronicled that out of the 4000 applications received for approval of surveillance requests, FICA has denied zero requests.[84] Furthermore, FICA provides an exception to the warrant requirement in 'emergency circumstances' provided an application is made before FICA within 24 hours.

Federal features counteracting centralizing tendencies under the Constitution of India

In addition to the charges discussed above against Indian Federalism, scholars and political scientists have identified various other provisions of the Constitution of India that perpetuate centralizing tendencies.[85] These include the power of territorial reorganization of states, the competence of the federal legislature to legislate on state subjects on certain occasions, the primacy given to laws made by the federal legislature over conflicting laws made by the state legislatures, and the power of the federal legislature to amend the constitution. Notwithstanding the provisions establishing federal dominance, some aspects of the Constitution counteract central bias and re-establish provincial autonomy to maintain a balance in centre–state relations.

Table 2 analyses these centralizing tendencies of the constitution to evaluate whether the Constitution of India simultaneously incorporates a counteracting federal feature to preserve regional autonomy.

[83] *ADM Jabalpur vs Shiv Kant Shukla*, AIR 1976 SC 1207.
[84] See (n 42) 419.
[85] See (n 21); (n 14).

Table 2. Federal features counteracting central tendencies in the Constitution of India

Provisions under the Constitution of India	Centralizing tendency	Counteracting feature
Article 3	Parliament has the power to reorganize the state territories to form a new State by separating territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State; increase the area of any State; diminish the area of any State; alter the boundaries of any State; alter the name of any State	Reorganization of any state cannot be carried out by the Parliament without a reference by the President to the Legislature of that State for expressing its views thereon
Article 252	The Union Government is empowered to make laws for states on matters that fall under the states' competence to legislate upon a resolution passed to that end by two or more state legislatures	The power of the Union to legislate upon state matters is not an inherent power and its exercise is preceded by a demand made by the State Legislature.
Article 254	If any provision of a law made by the State Legislature is repugnant to a law made by the Parliament, then, to the extent of inconsistency, the law made by the Parliament shall prevail.	Clause 2 of Article 254 sanctions the operation of a state law despite repugnancy with the Union Law, if the law made by the State Legislature is backed by a Presidential assent
Article 251	If any provision of a law made by the State Legislature is repugnant to a law made by the Parliament under Article 249 or Article 250 on a matter over which the State Legislature is competent to make law, then the law made by the Parliament shall remain	It is vital to notice here that the law made by the State Legislature is not decreed as 'invalid' but rather only 'inoperative'. Since otherwise Parliament is disempowered to legislate upon matters wherein the State Legislature has competence to legislate, the law made by the Parliament operates only for a limited time. Once the law made by the Parliament ceases to operate, it no longer eclipses the state law, and thus, the operation of state law is revitalized
Article 368	Only the Parliament of India has the constituent power to amend the Constitution of India – the fundamental document prescribing the relations between the Union and the States	Certain provisions of the Constitution that are federalizing in nature (Election of President and the Manner of Election, Extent of executive power of the Union, Extent of executive power of State, High Court for Union Territory, Goods and Services Tax Council, Union Judiciary, High Courts in the States, Legislative Relations between the Union and the States, Lists in the Seventh Schedule providing legislative competence, representation of States in

Continued

Table 2 *Continued*

Provisions under the Constitution of India	Centralizing tendency	Counteracting feature
		Parliament and provisions of Article 368 itself) cannot be unilaterally amended by the Parliament and to give effect to an amendment of such a pedigree, it is constitutionally mandated to obtain a ratification passed by not less one half of the state legislatures in India

The above table (Table 2) illustrates that the charges on the federal nature of the Indian Constitution hold considerable merit. Provisions such as reorganization of states, emergency, amendment of the constitution, repugnancy clause, etc., tilt the balance in favour of the Union Government. However, the incorporation of counteracting features by the Constitution of India restores provincial autonomy, as highlighted in the table above. The argument here is not that the presence of these features obliterates the centralizing tendencies but that, despite such tendencies, the federal elements are preserved – evidenced by India's consistently high ranking on the self-rule component of the Regional Authority Index.[86]

The assessment in this part reinforces the argument of mischaracterization of the federal label for the Constitution of India. Building on this, the following part explores the practical implications of the 'quasi-federal' label, which has dominated the federal vocabulary associated with the Indian Constitution. This categorization has contributed to an institutional bias in favour of the Union government and has influenced doctrinal reasoning that sanctions a constitutional overreach by the federal government.

Institutional fallouts of the 'quasi-federal' label of the Constitution of India

Semantic choices and adherences to an atypical constitutional vocabulary lay a roadmap for the development of doctrines. For instance, Section 51 of the Australian Constitution, while enlisting the legislative powers of the Parliament, expands the power to *[m]atters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.*[87] Interpreting this provision textually, the High Court of Australia in *Engineer's case*[88] allowed the federal laws to be applied to state instrumentalities. It rejected the implied inter-legislature governmental immunities that preserved the states' autonomy from the Commonwealth to legislate on state matters. Thus, the interpretational and/or institutional consequences produced through constitutional vocabulary that further influence taxonomies cannot be

[86]Gary Marks, *Regional Authority* (University of North Carolina, Chapel Hill, 2021), available at https://garymarks.web.unc.edu/data/regional-authority-2/.

[87]Commonwealth of Australia Constitution Act (1900), Section 51 (xxxix).

[88]*Amalgamated Society of Engineers vs Adelaide Steamship Co Ltd*, (1920) 28 CLR 129.

ignored. In the Indian context, post the commencement of the Constitution, India has witnessed institutional legitimization of centralizing tendencies. Since the commencement of the Constitution, certain pivotal occurrences such as the national emergency of 1975, the introduction of Goods and Services Tax Council as a joint forum for collection of taxes for the Union and the states, and the unilateral abrogation of Article 370 that granted 'special status' to the state of Jammu and Kashmir followed by the conversion of the state of Jammu and Kashmir into two Union Territories have brought the assessment of the nature of federalism in India to the forefront of constitutional law discourse. This part examines institutional fallouts in the working of the Constitution of India resulting from unquestioning reliance on 'quasi-federal' categorization to rationalize federal overreach.

National Emergency of 1975

In 'Whose Emergency – India's or Indira's?', Morris-Jones succinctly observes: 'When silence fell on India's normal untidy mixture of political voices, one voice [Indira's] was left in very active operation, ringing out loud and clear'.[89] As much ink has already been spilt deconstructing the constitutional transgressions during the proclamation of emergency in 1975,[90] the assessment here is restricted to the anti-federal fallouts of the proclamation that reinforced centralizing tendencies of the Constitution.

One of the notable instances of the face-off between the Union and the states was between the state of Tamil Nadu and the Union of India. Upon refusal to implement emergency laws by the state of Tamil Nadu and rising political tensions between the then Chief Minister of Tamil Nadu, Kalaignar Karunanidhi, and Mrs. Gandhi, the state government of Tamil Nadu was dismissed on 31 January 1976. This was followed by the incarceration of senior political leadership in Tamil Nadu under the Maintenance of Internal Security Act, 1971 – a popular tool during the emergency to stifle political dissidents. This was not just a blow to civil liberties but also to the federal ideals that form the basic structure of the Constitution of India.[91]

Guillaume Tusseau posits that periods of crisis in federal states are often marred by concentration of powers.[92] A parallel of their observation, as recorded below, can be drawn with the state of Tamil Nadu.

> By affecting the identity of the empowered actor, emergency is a competence entitlement, or an entitlement for a transfer of competence. It legitimates the fact that an actor be substituted to another to exercise a power, which can as well remain unchanged or be modified.

Exercising the powers under Article 356, the President declared state emergency and assumed to themself the functions of the state government of Tamil Nadu based on the Governor's report of failure of constitutional machinery on charges of corruption. This was followed by the appointment of a Commission of Inquiry by the Union government under the Commission of Inquiry Act, 1952, to inquire into the allegations made against

[89]See (n 33).

[90]See, Upendra Baxi, *The Indian Supreme Court and Politics* (India: Eastern Book Company, 1980).

[91]See (n 9).

[92]Guillaume Tusseau, '*The Concept of Constitutional Emergency Power: A Theoretical and Comparative Approach*' (2011) 97(4) Archives for Philosophy of Law and Social Philosophy 498–530.

the state government as per the Governor's report. In an unsuccessful challenge to the initiation of inquiry by the Union government against the state government, the Madras High Court's observation is noteworthy to encapsulate the centrality of the federal semantics: '…the words 'federation', 'autonomy' and 'federating States' have varying meanings and what a particular word means will depend upon the context. For example, there may be a federation of independent States, as it is into he [sic] case of United States of America. As the name itself denotes, it is a union of States, either by treaty or by legislation by the concerned States…To apply the meaning of the Word 'federation' or 'autonomy' used in the context of the American Constitution, to our Constitution will be totally misleading'.[93]

Goods and Services Tax Council

Another instance of a federal vocabulary perpetuating centralizing tendencies could be the constitutional sanctioning of the Composition of Goods and Services Tax Council ('GST Council') – touted as a model of 'cooperative federalism' in India. Addressing the implementation of the GST Council in India as the 'Dawn of the Grand Bargain', Prof. Singh notes that the prerequisite for successful implementation of the GST Council was states' agreement to share their indirect tax base – a revenue source that up till 2017 was majorly within the competence of states.[94]

The validity of the Constitution (One Hundred and First Amendment) Act, 2016, which introduced the GST Council, was upheld by the Supreme Court in *Mohit Minerals*.[95] Reiterating that the Indian Constitution is sometimes described as 'quasi-federal', the Supreme Court posited that in the absence of a repugnancy clause to resolve legislative inconsistencies between the Union and the State, the GST Council must 'ideally function' through cooperation and collaboration.[96] Ironically, this utopian idealism that the Supreme Court alluded to had already witnessed federal friction during the COVID-19 pandemic upon the failure of the Union to disburse GST compensation to the states.[97] Sinha, critiquing the GST compensation model, disputes the federally 'shared' relationship of the states and the Union under the GST scheme. They claim that the transfer of taxation power and source of revenue in favour of the Union resulted in a 'compromised position' for the states.[98] The only states that challenged the unilateral decision of the Union not to disburse the GST compensation were those led by political parties in opposition to the ruling party at the Union.[99] The working of the GST Council, which had laid the foundation for an impasse between states and the Union, would later be lauded by Chief Justice D.Y. Chandrachud by theorizing that 'Indian federalism is a dialogue in which the states and the Centre constantly engage in conversations'.[100] While

[93]*M. Karunnanidhi vs Union of India*, AIR 1977 MAD 192.

[94]Rav Pratap Singh, *Constitution of Tax: A Tale of Four Constitutional Amendments and Consumption Taxes* (India: Oak Bridge, 2021).

[95]*Union of India vs Mohit Minerals*, (2022) 92 GST 101 (SC).

[96]Ibid.

[97]'The Impasse over GST Compensation' (2020) 55 (38) *EPW*.

[98]Yash Sinha, 'GST Compensation to States: An Ineluctable Obligation on the Union' (2021)14 *NUJS Law Review* 149–176.

[99]'Supreme Court's GST Ruling Emboldens States against Modi's Government' (2022) *The Economic Times* (June 16).

[100]See (n 95).

upholding the composition of the GST Council, *Mohit Minerals*[101] had, identified it as a '*sui generis* provision' containing 'unique features of federalism'. Thus, the Supreme Court espoused the federal vocabulary of 'cooperative federalism' and 'marble cake federalism' to justify the incorporation of a constitutional provision that led to an institutional bargain altering fiscal federalism and diluting states' taxation autonomy.

Abrogation of Article 370

In August 2019, the Union of India, through Presidential Orders dated 5 August 2019 and 6 August 2019 and the Jammu and Kashmir Reorganization Act, 2019 ('Act of 2019'), made two frontal attacks on the federal relationship shared between the Union of India and State of Jammu and Kashmir. First, the Presidential Orders altered the constitutional interpretation in order to abrogate Article 370, which was followed by the reorganization of the state of Jammu and Kashmir that led to the bifurcation of the states into two Union Territories, thereby stripping the state of Jammu and Kashmir of its statehood.

From the perspective of this section to trace the institutional consequences of 'quasi-federal label', it is interesting to note the federal vocabulary that the Supreme Court alluded to while upholding the validity of both – the Presidential Orders and the Act of 2019. The court observed that certain 'unitary' characteristics in the Constitution have led to the label of 'quasi-federal'.[102] One can witness a succinct demonstration of lexical choices shaping constitutional interpretation in the court's interpretation *vis-à-vis* the reorganization of Jammu and Kashmir. As per the proviso to Article 3, the Constitution's mandate postulates that it is incumbent for the Parliament to seek recommendations from the Legislative Assembly of the State prior to territorial reorganization.[103] However, at the time of the introduction of the Reorganization Bill in the Parliament, the state legislative assembly was dissolved for Jammu and Kashmir, which was under the President's Rule.[104] One of the consequences of the declaration of the President's Rule is that the legislature of the state is suspended and substituted by the Parliament in all capacities. Essentially, the recommendations that ought to have been given by the state legislative assembly of Jammu and Kashmir were given by the Parliament acting in the state legislative assembly's stead. This constitutional manoeuvring was upheld by the Supreme Court, noting that the Parliament can give the recommendation contemplated under the proviso to Article 3 on behalf of the State Legislature, and the same would not amount to 'obviating the federal structure'.[105] This observation is noteworthy because it was followed by a federal vocabulary that was resorted to by Chief Justice D.Y. Chandrachud earlier in the judgement to identify (as also recorded in the preceding paragraph) the Constitution of India as 'quasi-federal'. The court, here, noted:

> The principle that the Indian Constitution is both, unitary and federal, must, thus, be appreciated in this context.

[101]Ibid.

[102]See (n 8).

[103]Constitution of India (1950), Article 3.

[104]'Central Rule to Continue in Jammu and Kashmir through Lieutenant Governor' (2021) *Hindu BusinessLine* (December 6).

[105]See (n 8) 78.

The court, thus, first acknowledged the presence of 'unitary features' to justify the 'quasi-federal' characterization and then proceeded to exercise the defence of those unitary features to rationalize centralization of power.

A common thread that could be mapped through the above instances is that though federalism is identified as a basic structure of the constitution, yet, ironically, the verbiage outlining the Indian federal model legitimizes centralizing outcomes.

Over time, the presence of centralizing tendencies – identified as 'quasi-federal' – has trailblazed atypical judicial semantics identifying Indian Federalism. Often, the courts, either to sanction a centralizing outcome, to delimit the state's authority, or to rationalize the nature of Indian federalism, have mediated the federal tensions through certain lexical choices. The Supreme Court in the *State of Rajasthan*,[106] dismantling the constitutional tensions between the Union and the states during times of emergency, described the Indian Constitution as 'cooperative federalism'. In 2018, the Supreme Court in *NCT of Delhi*[107] and, as recorded above, in *Mohit Minerals*[108] (2022), could be seen resorting to the similar constitutional vocabulary of 'collaborative/cooperative federalism' calling for a greater degree of coordination amongst the Union and the State Governments. This pattern could further be observed in 2023, when the Supreme Court, in *In Re Article 370 of the Constitution*,[109] referred to Indian federal constituent units as an 'indestructible union of destructible states', and thereby, ascribed the term 'asymmetric federalism'. The cause-and-effect relationship of taxonomy and lexical choices with constitutional interpretation can be deciphered from the following observation of the Supreme Court in *S.R. Bommai*,[110] which relied on the 'quasi-federal' classification of Prof. Wheare:

> …the significant absence of the expressions like 'federal' or 'federation' in the constitutional vocabulary, Parliament's powers under Articles 2 and 3 elaborated earlier, the extraordinary powers conferred to meet emergency situations, the residuary powers conferred by Article 248 read with Entry 97 in List 1 of the VIIth Schedule on the Union, the power to amend the Constitution, the power to issue directions to States…have led constitutional experts to doubt the appropriateness of the appellation 'federal' to the Indian Constitution.

Thus, it cannot be denied that the constitutional vocabulary and taxonomical choices guide the development of doctrines leading to varied theories of federalism that are continuously deployed by the courts to reconcile federal tensions and have often led to delimiting states' autonomy.

Conclusion

The Constitution, which is considered a universally accepted model of federation – the Constitution of the United States – does not ascribe to a federal vocabulary. Dr BR Ambedkar was also unwilling to prescribe any label to federal identification of the Indian Constitution. Thus, 'federalism' does not find an express mention in the constitutional text but is theorized to be a part of its spirit.

[106] *State of Rajasthan vs Union of India*, 1977 AIR 1361.
[107] See (n 12).
[108] See (n 95).
[109] See (n 8).
[110] See (n 9).

In addition to the federalizing features discussed in the preceding parts, various Supreme Court judgments have recognized federalism as innate to its constitutional spirit.[111] Responding to the political history under British colonial rule, the Constitution of India inculcated federalism, which was designed as a product of compromise and resulted in a melting pot of assimilating cultural, linguistic and religious identities.

The working of the Indian Constitution has demonstrated a post-colonial legacy as the Union government had forged a greater degree of centralizing power. At the time of the commencement of the Constitution, the little experience the political leaders had at the time was functioning under a highly centralized colonial power.[112] Mapping the choice to refer to the Union government, as 'Central Government', Singh and Singh record that:

> From Nehru to Modi, all the successive governments have promoted only the spirit of centralization through the word 'Central' and have spurned the principles and the axis of the Constitution of India by running the government from a distant point with a single source.

They identify a 'super government power' as being superimposed on the federal division of power.[113] Granville Austin branded India as a 'Union' or 'a composite state of novel type'.[114] The elements of cooperation amongst the constituent units have been preserved in the Constitution's workings, albeit to a limited extent. The most recent incident of centralization is the stripping of the erstwhile state of Jammu and Kashmir into two Union Territories.

The concerns of certain members of the Constituent Assembly of India discussed earlier (in Part II) for want of the word 'federal' in the constitutional text have come true on more than one occasion (see, Part V). The contemporary practices of centralization of power and the doctrinal development of 'collaborative', 'cooperative' and 'asymmetric' federalism, as discussed in the preceding part, illustrate a semantic chain reaction of the choice to not opt for the term 'federal' in the constitutional text by the Constituent Assembly. The words 'federal' and 'Union of States' paint distinct imagery. This has fashioned a vocabulary for identifying the Indian Constitution as 'quasi-federal', 'holding-together federation', 'salad bowl federalism', 'melting pot federalism', 'marble cake federalism', 'cooperative federalism', etc., Singh & Singh identify the value attached with labels in the following words:[115]

> Incidentally, in the field of federal–state relations, it needs to be specially stressed that a great deal of damage has been caused as a result of the wrong use of the terms centre–state relation, central Act, central legislature, central laws, etc.

The taxonomical choice to classify India as 'quasi-federal' has also resulted in granting more autonomy to the Union and for the courts to chart the federal discourse. Though the courts have recognized federalism sporadically, they have erred in interpreting the true

[111] *S.R. Bommai vs Union of India*, 1994 AIR 1918; *In Re: Article 370 of the Constitution*, 2023 INSC 1058.

[112] Arun K Thiruvengadam, *The Constitution of India: A Contextual Analysis* (India: Hart Publishing India, 2017).

[113] See (n 61).

[114] G. Austin, *The Indian Constitution: Cornerstone of a Nation* (New Delhi: Oxford University Press, 1966) 186.

[115] Ibid.

spirit of Indian federalism on certain occasions. The dictum of the Supreme Court of India in *In Re: Article 370 of the Constitution*[116] illustrates the tendency of accepting an overarching centralized power while, paradoxically, defending federalism.

Elucidating Dr Ambedkar's view *vis-à-vis* the presence of federal elements in the Indian Constitution, the court recognized federalism as a basic feature of the Constitution.[117] Nevertheless, it erred in interpreting the limits of the Parliament to reorganize the state territories, particularly the conversion of a state into a Union Territory. The court did recognize that the Union cannot alter the division of powers between the Union and the states[118], yet failed to adjudicate the validity or invalidity of the Jammu and Kashmir Reorganization Act, 2019, that converted the erstwhile state of Jammu and Kashmir into two Union Territories. The court opted for a hands-off approach while holding that converting a state into a Union Territory 'impinges on federalism'.[119] The national emergency of 1975[120] and the court's reluctance to uphold fundamental rights in *ADM Jabalpur*[121]; the central dictate of compulsory sterilization and population control policy[122]; the handling of the COVID-19 crisis,[123] particularly the migrated labour crisis[124]; the issue of non-disbursement of GST compensation to states[125]; the abrogation of Article 370 and consequent stripping of statehood of the erstwhile state of Jammu and Kashmir[126] are all fallouts of a lack of consistent vocabulary that favours centralization.

The centrality of verbiage associated with identifying forms of government cannot be denied. The lack of consistent and categoric vocabulary has promoted the spirit of centralization. The abstractness of qualifying 'federal' with 'quasi' confuses the federal design of the Indian Constitution. This has allowed the redefining of centre–state relations while misplacing asymmetries of the Constitution of India to mean a central dominance.

As recorded throughout this scholarship, semantic and taxonomical choices carry significant institutional and interpretative consequences. The categorization of the Indian Constitution as 'quasi-federal' has pioneered the evolution of federal design into collaborative and asymmetric federalism to justify the Union's overreach, furthering centralizing tendencies. The central critique advanced in this scholarship is that federal doctrines in India must be critically re-examined to assess the taxonomical ascriptions and constitutional vocabulary underlying federal discourse. A rigid categorization of varying models of federalism globally, benchmarked against the Constitution of the United States of America, calls for a review. Federal dynamics operate across a spectrum, and the ascription of single-axis vocabulary for India, hinged around the word 'quasi', has resulted in lowering the normative expectations from federalism in India and have resulted in overlooking or justifying the centralizing tendencies, despite federalism running as a significant thread throughout the constitutional fabric of India.

[116]2023 INSC 1058.
[117]Ibid.
[118]Ibid.
[119]Ibid.
[120]See (n 33).
[121]*ADM Jabalpur vs Shiv Kant Shukla*, AIR 1976 SC 1207.
[122]SoutikBiswas, 'India's Dark History of Sterilization' (2014) *BBC News* (November 14).
[123]See (n 60).
[124]Y.V. Misra, 'The Long Walk Home: India's Migrant Labor, Livelihood, and Lockdown Amid COVID-19' (2022) 50(1) *Journal of Applied Communication Research* S10–S17.
[125]R. Ramakumar, 'Are States Getting Funds they Are Entitled from the Centre?' (2024) *The Hindu* (February 28).
[126]Jammu and Kashmir Reorganization Act, 2019, s 3.

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