

INDIA'S INTERNAL SECURITY CHALLENGES VIS-A-VIS PRINCIPLES OF FEDERALISM: AN ANALYSIS

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ABSTRACT

Since gaining independence, India has been continuously grappling with a variety of internal security challenges. Being a federal country, India has been tackling internal security issues (such as naxalism, separatism and terrorism etc.) in its way and also within the parameters allowed under the broad contours of its Constitutional scheme. To deal with these emergent situations, the Constitution has made provisions to allow the required changes in its federal nature. The issue emerges when the Central government, under the guise of internal security or national integrity, attempts to infringe upon the States' jurisdiction.

The present research paper has widely covered the analysis dealing with the federal principles and their coexistence; contradiction; and correlation with internal security challenges. The research paper is organized into four sections. The first section serves as an introduction, providing a brief overview of India's internal security challenges and their impact on federal principles. It also discusses the need for the unique design of India's federal structure. The second section examines the constitutional mechanisms that establish India's federal system, along with provisions for internal and national security and the country's integrity. The third section analyses issues related to the application and misuse of special emergency provisions and their effects on federal principles. And, the last section of the paper has briefly concluded the whole analysis with area-specific suggestions.

Keywords: Federal Principles; Internal Security; National Integrity; Constitution of India; and Challenges etc.

- I. Introduction**
- II. The Constituent Position**
- III. The De-Facto Position**
- IV. Conclusion and The Way Forward**

I. Introduction

THE DIVERSITY of country can either be a valuable asset for its progress or a significant barrier to its development. If diversity is not managed effectively or is exploited by adversaries, it can pose a serious threat to the country's internal security and national

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integrity.¹ Taking all these factors into account and ensuring equitable development and a secure environment for its diverse population, India chose a federal form of government.

However, the Indian federal structure is a unique model crafted by the framers of its Constitution. This unique structure can be attributed to the circumstances prevailing during the drafting of the Constitution. Events like the partition of the country along communal lines, widespread communal riots, social disharmony inherited from colonial rule, the presence of 565 Princely States eager to declare independence, frequent famines, economic backwardness, widespread poverty, and other deteriorating conditions compelled the Constitution's framers to seek a government structure capable of handling severe law and order situations. To address India's specific needs, they chose a federal model that not only upholds federal principles in normal times but can also transition into a unitary model during emergencies.

While considering the special conditions of India's social, political and economic fabric, Constitution framers provided enough provisions to enhance the cooperative spirit in the federal structure as well as support the strong Central position. While upholding the federal spirit, the Constitution clearly delineates the powers and responsibilities across different levels of government and includes provisions for handling exceptional situations. For instance, to clarify the legislative jurisdictions of the Centre and the States, the Seventh Schedule of the Constitution outlines three Lists of legislative subjects. Nationally important subjects are assigned to the Centre (under List-I i.e., the Union List), while matters of local importance are allocated to the States (under List-II i.e., the State List) to ensure local issues are effectively addressed at the local level. Additionally, subjects of a common nature, having both local and national or inter-regional relevance, are included in List-III (the Concurrent List), granting legislative authority to both the Centre and the States. However, in case of conflict between the laws made by Parliament and those made by States legislatures, the Central legislation takes precedence.² Similarly, in other matters also the States were given their due roles but they cannot disregard the directions of the Centre.³ Thus, it can be said that the federal model in India has an inherent bent towards the strong Centre.

¹ Philip Vos Fellman, Yaneer Bar-Yam, *et. al.* (eds.), *Conflict and Complexity: Countering Terrorism, Insurgency, Ethnic and Regional Violence* 235 (Springer, USA, 2015).

²The Constitution of India, art. 254.

³*Id.*, art. 365.

After grasping the fundamental nature of India's federal structure, its essential to examine the security landscape in the country and the respective roles and responsibilities of both Central and State law enforcement authorities. Like other federal nations, India places a high priority on maintaining peace and security, both within its borders and at its boundaries. The issue of security always has a direct correlation with the law-and-order situation within a country. So, being a federal country, India has given the subject related to the law and order to its constituent units (that is, States).⁴ However, the experience of both the pre- and post-independence eras have imparted valuable lessons to India, leading to the creation of a special mechanism to address situations that threaten the country's security and integrity. To this end, the Constitution grants the Centre the authority to handle serious law and order issues.⁵

Before the research paper looks into the complexities of the need and violation of the federal principles, it is very much needed to have clarity about the Constitutional competency of the Centre and the State on this aspect. Under the existing Constitutional scheme, the legislative and executive jurisdiction of the Centre and the States are well defined and up to a large extent have been very well segregated.⁶ Under that scheme, the Central government is responsible for maintaining the issues related to 'national security'⁷ and the States are given the power to deal with the matters of maintenance of 'public order'⁸ and 'police'⁹ which includes the normal law and order situations. Furthermore, to address internal security issues, the Constitution's emergency provisions clearly state that "it is the duty of the Union to protect every State against external aggression and internal disturbances, and to ensure that the government of each State operates in accordance with the provisions of this Constitution".¹⁰ The above-mentioned Constitutional provisions clearly indicate that routine law and order issues fall under the jurisdiction of the State governments. But, to tackle the severe public disorder, having the potential to threaten the integrity and national security, the Union is constitutionally empowered to deal with it.

⁴Similar arrangements have been provided in the United States of America and also in Australia.

⁵K.H. Cheluva Raja, "Indian Federalism and Integrity of the Nation" 49 *The Indian Journal of Political Science* 3(1988).

⁶under the three lists of the VIIth Schedule, Constitution of India.

⁷The Constitution of India, VIIth schedule, list-I, item 1.

⁸*Id.*, list-II, item 1.

⁹*Id.*, item 2.

¹⁰*Id.*, art. 355.

The problem of insurgency, naxalism¹¹ and terrorism falls into the categories of extreme law and order situation which not only affect the concerned affected local areas but also create danger for the internal as well as the national security of the country. In the pre-independence period (till 15 August 1947), the laws on this issue were being enacted with the sole objective to secure and maintain the existence of British Colonial Rule in India. In the post-independence period, laws related to national security enacted to preserve and strengthen India's integrity. The Constitution aimed to accommodate diverse needs, including provisions to uplift the backward sections of society. However, these provisions were not fully realised, leading to some segments of society being exploited by those with separatist and anti-Indian agendas. For instance, Pakistan has used proxy separatist insurgents to destabilize Punjab and Jammu and Kashmir.¹² Pakistan's involvement in sponsoring international terrorism and fuelling insurgency in Jammu and Kashmir has been fully exposed. A report by the Task Force on Terrorism and Unconventional Warfare, part of the Republican Research Committee of the US House of Representatives, has detailed this role.¹³ Moreover, the State-supported Jihadi culture of Pakistan has a direct correlation with its objective to destabilize the internal security environment in India.¹⁴

Since 1950, India's integrity has faced challenges every decade. These threats have come in the form of insurgency, naxalism, terrorism, and external aggressions. The response to these challenges varied depending on the gravity of the problem. The Centre and States from time to time have legislated to provide a specialized legal mechanism to deal with these issues. However, States have often alleged that the Centre has encroached on their jurisdiction. They claim this has been done under the pretext of national or internal security, either through legislative or executive actions.

On the legislative side, grave issues such as - terrorism, belligerency or insurgency affect the overall national security of the country, thus these subjects¹⁵ put under the Central List of legislation. Additionally, the Concurrent List outlines areas¹⁶ where both the Centre and the State can enact laws. In case of conflict between these laws, the doctrine of repugnancy

¹¹ the term denotes a kind of insurgency spread in the east central part of India and got this name due to its beginning from a small village named Naxalbari, situated in the State of West Bengal.

¹² Rob Johnson, *A Region in Turmoil: South Asian Conflicts Since 1947* (Reaktion Books Ltd., London 2005).

¹³ Poonam Maan, "Fighting Terrorism: India and Central Asia" 24:11 *Strategic Analysis* 2037 (2008).

¹⁴ S. Kalyanaraman, "India and the Challenge of Terrorism in the Hinterland" 34:5 *Strategic Analysis* 704 (2010).

¹⁵ defence of India; armed forces; and preventive detention etc.

¹⁶ such as- criminal law, criminal procedure and the preventive detention related to the public order etc.

comes into play.¹⁷ The Constitution of India allows both the Centre and the States to enact laws based on the seriousness of a situation. However, issues arise when the Centre, on superficial grounds, encroaches upon the legislative jurisdictions of the States.

On the executive side, the responsibility for criminal investigations lies with the police, which is under the exclusive control of State governments. However, some crimes have inter-State implications and can threaten national security. For these specific cases, the Central Government is permitted to act within a limited scope.

At present under various legal instruments, multiple agencies are handling the investigation part of these specific crimes. And the overall working style of these agencies (e.g., the Central Bureau of Investigation (CBI)¹⁸; Enforcement Directorate (ED)¹⁹ and National Investigation Agency (NIA)²⁰ etc.) expressly or impliedly affects the principles of federalism. Federalism supports the idea of the autonomy of different levels of government. In reality, there is no strict formula for dividing powers and functions among different levels of government. Some areas remain complex and vague, allowing room for new approaches in emerging situations. The following sections of this paper explore both theoretical and practical aspects. They also analyze the mentioned allegations and experiments, considering constitutional, judicial, and practical trends.

II. The Constituent Position

The Constitution of India took two years, eleven months, and eighteen days to frame. During this period, the Constituent Assembly members debated and approved all provisions of the current Constitution. The nature of Indian federalism was a key topic in these debates. The members studied other federal systems worldwide and concluded that India's circumstances were unique. To protect national integrity, they chose a federal structure where federal principles would apply in normal times, but a unitary structure could be adopted in emergencies.

To uphold the federal essence, the Constitution, in the Seventh Schedule, clearly defines the legislative powers of each level of government. The Union List in the Seventh Schedule

¹⁷*Supra* note 2, art. 254.

¹⁸ a Central agency which deals with the serious crimes as well as the crimes affecting the inter-State areas.

¹⁹ a Central agency for dealing the economic offences.

²⁰ a Central counter terrorism law enforcement and investigation agency, constituted under the National Investigation Agency Act, 2008.

include 99 items²¹ over which Parliament has exclusive legislative authority. This list contains the subjects which are of national importance. The State List²² contains 59 items²³ and the State Legislature has exclusive jurisdiction to legislate on these matters. This list contains the kind of items that have regional or local level relevancy. And the Concurrent List²⁴ which is comprised of 52 items²⁵ provides jurisdiction to both the Parliament and the State Legislatures. The Concurrent List includes items that impact both local matters and areas of national importance. All these lists contain the subject of legislation in various areas but for the interest of the present research paper, here the subjects related to federalism and security issues are of prime importance and for that purpose, the concerned entries of these lists need to be looked into. The subjects covered under the Union List, such as Entry 1²⁶, 2²⁷, 2A²⁸, 4²⁹, 5³⁰, 6³¹, 7³², 8³³, 9³⁴, 14³⁵, 15³⁶, 18³⁷, 19³⁸, 21³⁹, 26⁴⁰, 29⁴¹, 31⁴², 65⁴³, 70⁴⁴, 72⁴⁵,

²¹ Initially there were 97 items only.

²² Also known as State List.

²³ Initially there were 66 items.

²⁴ Also known as Concurrent List.

²⁵ Initially there were only 47 items.

²⁶ defense of India and all its aspects includes preparations for defense, actions necessary during war, and effective demobilization after the war ends.

²⁷ naval, military, and air forces; any other armed forces of the Union.

²⁸ 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.

²⁹ naval, military and air force works.

³⁰ arms, firearms, ammunition, and explosives.

³¹ atomic energy and mineral resources necessary for its production.

³² industries declared by the Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

³³ central bureau of intelligence and investigation.

³⁴ preventive detention for reasons connected with Defence, Foreign Affairs, or security of India; person subjected to such detention.

³⁵ entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

³⁶ war and peace.

³⁷ extradition.

³⁸ admission into, and emigration and expulsion from, India; passport and visas.

³⁹ piracies and crimes committed on the high seas or in the air; offences against the law of the nations committed on land or the high seas or in the air.

⁴⁰ lighthouses, including lightship, beacons and other provisions for the safety of shipping and aircraft.

⁴¹ airways; aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

⁴² posts and telegraphs; telephones, wireless, broadcasting and other like form of communication.

⁴³ union agencies ad institutions for- a) professional, vocational or technical training, including the training of police officers; or b) the promotion of special studies or research; or c) scientific or technical assistance in the investigation or detection of the crime.

⁴⁴ union public service; All-India Services; Union Public Service Commission.

⁴⁵ election to the parliament, to the Legislature of the States and to the offices of President and Vice-President; the Election Commission.

80⁴⁶, 81⁴⁷, 93⁴⁸, 94⁴⁹, 95⁵⁰, and 97⁵¹ have a co-relationship between the concept of federalism and the security and integrity of the country. Similarly, the major entries of the State List, such as – Entry 1⁵², 2⁵³, 4⁵⁴, 64⁵⁵, and 65⁵⁶ etc. make it clear that the normal law and order problem falls within the exclusive jurisdiction of the State Legislature. Further, the Concurrent List through its Entry 1⁵⁷, 2⁵⁸, 3⁵⁹, 4⁶⁰, 11A⁶¹, 12⁶², 14⁶³, 29⁶⁴, and 46⁶⁵ provide the common jurisdiction to the Centre as well as to States for making the laws to ensure security-related needs.

Besides these above-mentioned legislative jurisdictions, the Constitution of India also made provisions where the interest of security found its correlation with the principles of federalism. To understand this correlation, a reading of the following provisions would be relevant:

⁴⁶The powers and jurisdiction of a State's police force can be extended to areas outside that State. However, this cannot be done without the consent of the government of the State where the area is located. Additionally, the powers and jurisdiction of a State's police force can also be extended to railway areas outside that State.

⁴⁷inter-State migration; inter-State quarantine.

⁴⁸offences against laws with respect to any of the matters in this List.

⁴⁹inquiries, surveys and statistics for the purpose of any of the matters in this List.

⁵⁰jurisdiction and powers of all the courts, except the Supreme Court, with respect to any of the matters in this List.

⁵¹any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

⁵²public order but not including the use of any naval, military, or air force or any other armed forces of the Union or of any other force subject to the control of the Union or of any contingent of unit thereof in aid of the civil power.

⁵³police including the railway and the village police subject to the provisions of entry 2A of List I.

⁵⁴prisons, reformatories, borstal institutions and other institutions of a like nature, and person detained therein; arrangements with other States for the use of prisons and other institutions.

⁵⁵offences against laws with respect to any of the matters in this List.

⁵⁶jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

⁵⁷criminal 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.

⁵⁸criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

⁵⁹preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essentials to the community; persons subjected to such detention.

⁶⁰removal 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.

⁶¹administration of justice; constitution and organization of all courts, except the Supreme Court and the High Courts.

⁶²evidence and oaths; recognition of laws, public acts and records, and judicial proceeding.

⁶³contempt of court, but not including contempt of the Supreme Court.

⁶⁴prevention of the extension from one State to another of infectious or contagious disease or pests affecting men, animals or plants.

⁶⁵jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

- Under Article 245, territorial jurisdiction is clearly defined. Laws made by a State Legislature cannot affect the jurisdiction of other States unless adopted by the concerned State.
- Article 246 States that Parliament has exclusive power to legislate on matters listed in the Union List.
- As per Article 247, the Centre can set up additional courts concerning the matters covered under the Union List. Thus, it empowers the Union to establish special courts to deal with matters of internal security and national integrity.
- Article 248, along with Entry 97 Of the Union List, grants Parliament exclusive power to legislate on matters not covered by the State or Concurrent Lists. This includes emergent issues like terrorism and related activities.
- Article 249 allows Parliament to legislate on any State List matter if it's in the national interest. If the Rajya Sabha⁶⁶ deems an issue of national importance, it can pass a resolution to bring it under Parliament's jurisdiction. Internal security, being of national interest, permits legislative action by the Union.
- Article 250 empowers Parliament to legislate on State List matters when an emergency is declared in the concerned State. And the challenges of internal security having dynamic nature can even cover issues ranging from the disturbed law and order situation to the armed rebellion. Thus, it also provides scope for the required intervention from the Union.
- Article 251 addresses conflicts between laws made by Parliament and State Legislature under Articles 249 and 250. It states that Parliament's law will prevail in such cases. This provision gives the Union an advantage in legislative power regarding national interests and emergencies.
- Article 252 allows Parliament to legislate on State List subjects if two or more States pass a resolution for it. States facing serious internal security challenges can use this provision to enable the Union to address urgent matters.
- Article 253 allows Parliament to legislate for any part or the entire territory of India to implement international treaties, agreements, conventions, or decisions made at international conferences or organizations.

⁶⁶ The Upper House of the Parliament also known as the Council of States.

- Article 254 outlines the doctrine of repugnancy. It states that if there is a conflict between a law made by Parliament and State Legislature on a Concurrent List matter, the law made by Parliament will prevail.
- Article 256 and 257, when read together, state that a State's executive powers must ensure compliance with laws made by Parliament and existing laws. The Union can issue directions on matters within Parliament's legislative power, including the construction and maintenance of communication routes deemed of national or military importance.
- Article 258 allows the Union to delegate its powers to State authorities, and the State is obligated to accept and act on these powers.
- Under Article 312 the Constitution made provisions for All India Services, such as Administrative, Police and the Forest. And Parliament is empowered to create new all-India services.
- Article 239 gives the Union authority over the administration of scheduled Areas and the welfare of Schedules Tribes, regardless of where they live. Although these areas are under State jurisdiction, the Union's directions guide State authorities.
- Article 352 allows the Centre to declare a national emergency if India's security and integrity are threatened by war, external aggression, or armed rebellion. In such cases, the federal structure shifts to a unitary one, and the Union's executive powers extend across the entire country.
- Article 355 increases the Union's power and responsibility to protect every State from external aggression and internal disturbances. It also ensures that State governments operate in accordance with Constitutional provisions.
- Article 356 allows for the dismissal of a State Government if it fails to administer the State according to Constitutional provisions, or if there is a breakdown in Constitutional machinery. If the State government cannot manage a worsening law and order situation that threatens public order, the President, based on the Governor's report, can declare President's Rule in the affected State.

The described scheme for legislative and executive powers address both normal and emergency situations. The Constitution permits the Parliament to bypass normal procedures in grave situations that threaten the country's security and integrity. Dr. Bhim Rao Ambedkar highlighted during the Constituent Assembly debated that India's structure in neither purely federal nor purely unitary. Dr. Ambedkar further emphasized that India's Constitution

provides a kind of mechanism where during normal times it will work as a federal system but in emergent conditions, it would turn itself into a unitary system.⁶⁷ To preserve the Constitution's basic structure and prevent misuse of special provisions, the judiciary can invalidate any legislation or executive actions that go against the Constitution's spirit.

The provisions discussed show that the framers of the Indian Constitution chose a federal structure with strong centralising elements. They also aimed to prevent excessive centralization by making the judiciary the final interpreter of Constitutional provisions. The centralizing tendency, as mentioned earlier, influenced the Constituent Assembly members, leading them to favour a strong Centre. Theoretically, there appears to be a balance between federal principle and national security needs. However, the true effectiveness of these provisions can only be understood through their practical application, which is analysed and discussed in the following section of this research paper.

III. The De-Facto Position

The nature of a federal structure is shaped by its features, which arise from the circumstances at the time of drafting the Constitution. In India, as mentioned earlier, the urgent conditions during the drafting influenced the framers to establish a strong central authority. In the preceding section also the research paper explains the theoretical aspect of the federal set-up and the correlated responsibility of the security-related matters, which collectively proves the strong Central bent. However, from the theoretical perspective, it looks like the unitary features are for the emergent times only but when we look at the experience of the past around 70 years then it presents a situation where almost in every decade there have been allegations on the Central government of incursion and encroachment on the domain of the States. And most of the time these domain encroachments took place under the vague ground of internal security or in the name of failure of the Constituent machinery in the concerned State. These allegations were founded on different grounds. In the initial decades, the Central encroachment was based on the ground to tackle the insurgency caused by the separated tendencies. Over time, the Central government has also used terrorism, religious extremism, and riots as grounds to intervene in State matters. This section critically examines these actions through Constitutional provisions, laws, and judicial observations. Although the relationship between federal principles and internal security is broad and cannot be fully explored in one paper, this section focuses on selected areas. The analysis will be limited to

⁶⁷XI, *Constituent Assembly Debates*, 573.

key legislation, commission, and the role of certain Central law enforcement and investigation agencies.

In the previous section, a combined reading of specific Union and Concurrent List entries, along with Article 249, 250, and 355, shows the Union has broad powers to act in State matters during emergencies. The Union has often used this broad authority to issue directions and enact laws. Parliament has also created central agencies for law enforcement and investigation. The functioning of these provisions and agencies has been a source of tension between the Centre and the State.

One of the first well-known central legislation that gave the free hand to the Union Government in the domain of the States was Armed Forces (Special Powers) Act (AFSPA), 1958. And, when it comes to the determination of the violation of federal principles, AFSPA has been one of the most criticised Acts. This legislation was enacted to deal with the emergent conditions prevalent in the north-eastern region of India. It is alleged that however, the circumstances were fulfilling all the necessary constitutional conditions for Parliament to enact such a legal instrument. But the problem arose when it continued for such a long time and was even implemented in other areas also. Its effect became visible when it began making encroachment on the jurisdictions of the State law enforcement agencies.

The Constitution has made significant efforts to address the diverse needs of the population and included provisions aimed at uplifting the backward section of society to the level of the more developed sections. However, due to various factors, these provisions were not fully realized. As a result, certain segments of society became vulnerable to exploitation by those seeking to use them for separatist and anti-Indian purposes. For instance, Pakistan has utilized proxy separatist insurgents to destabilize the States of Punjab and Jammu and Kashmir. The constitutionality of the AFSPA was contested on the basis that it violated federal principles, and in the case of *Naga People's Movement of Human Rights v. Union of India*⁶⁸, the court analysed every aspect and held that the Act pertains to matters related to the armed forces and their deployment, which falls entirely within the legislative authority of Parliament. The court further elaborated that Entry 2⁶⁹ and Entry 2A⁷⁰ of List-I and the residuary powers of the Union⁷¹ gives exclusive powers to the Parliament to make law. The

⁶⁸ AIR 1998 SC 431.

⁶⁹ Armed forces.

⁷⁰ deployment of the Armed Forces of the Union in any State in aid of the Civil Powers.

⁷¹ under Art. 248 read with the entry 97 of the Union List.

court clarified the finer points of Centre-State relations in this case. It ruled that even after the deployment of armed forces, civil authority remains functional. The armed forces are to cooperate with the State's civil authority. This arrangement is meant to address serious threats to public order. The deployment of the armed forces is not a replacement for the State's civil powers. The court further noted that AFSPA grants powers for search, seizure, arrest and destruction of arms dumps and training camps. However, functions like policing, prosecution, and court remain under the State's control. The armed forces' assistance does not replace the State's civil authorities. As a result, the AFSPA was deemed valid and within Parliament's legislative competence.

In the abovementioned case, the court examined the legal framework, but the issue lies in the real-world situation. State authorities often perform worse than Central forces. This could be due to the State's weak economy or irresponsible political leadership that may benefit from ongoing chaos. Whatever the cause, the prolonged presence of these conditions supports the belief that a strong central authority is needed to manage insurgency-hit areas. This assumption, however, is harmful to the promotion of federal principle.

Over the past seven decades, aside from AFSPA, several other Central laws have strengthened the Centre's control over matters usually within State jurisdiction. Some key laws include the Unlawful Activities (Prevention) Act, 1967 (UAPA), Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), Prevention of Terrorist Activities Act, 2002 (POTA), Delhi Police Special Establishment Act, 1946, National Investigation Agency Act, 2008, and the amended UAPA Act, 2019. These laws primarily operate in the States' domain, addressing issues of law and order. The UAPA however, was specifically designed to target activities threatening India's integrity, functioning as a complete legal framework.⁷² In practice, it is difficult to define which activities or situations threaten the security and integrity of the country. The TADA Act was introduced specifically to combat terrorism within India. It was prompted by the growing separatist insurgency and terrorism in Punjab. The Act granted broad powers to Central law enforcement, overshadowing the State police. The TADA Act was challenged for violating federal principles, and its validity was reviewed in the *Kartar Singh v. State of Punjab*⁷³ case. The court ruled that Parliament has the authority to pass laws on terrorism-related activities. It noted that Entry 1 of the State List covers

⁷²It is containing the provision for declaring the separatist associations as unlawful; controlling the funding and place of activities of these unlawful associations; adjudication by the tribunals and the penalties for the members of these associations etc.

⁷³(1994)3 SCC 569.

Public Order within the State's boundaries. However, if Public Order is disrupted to the point of threatening national security and integrity, it falls within Parliament's jurisdiction to enact laws to restore order. The court also ruled that Parliament has the authority to make laws on such matters, as empowered by Entry 1 of List I⁷⁴ and Article 248, along with Entry 97 of List I.⁷⁵ The court noted that the TADA Act is a specialized law enacted to address serious and urgent conditions caused by external forces, particularly cross-border elements and anti-national actors who threaten India's sovereignty and integrity.

Certainly the integrity and security of the country take precedence over any governance principle. Federal principles can only be effective and beneficial in an environment of peace and prosperity. However, the threat to national integrity should not be exaggerated to undermine the powers of State authorities.

The next major enactment in this area was the POTA. It was one of the most criticised pieces of legislation dealing with internal as well as national security challenges. The passage of POTA in an extraordinary joint session of the Parliament after it was rejected by the *Rajya Sabha*, bypassing the normal procedure of referral to a select committee of Parliament, was termed as undemocratic and a subversion of federalism in various quarters.⁷⁶ The validity of POTA was challenged on the grounds of violating federal principles. In *Peoples Union for Civil Liberties v. Union of India*,⁷⁷ the court upheld the Act's validity, stating it was within Parliament's authority. The court also clarified that while Entry 1 of the State List covers 'Public Order,' giving State legislature full jurisdiction to legislate in this matter, the Act remained valid. But the problem arises when a law is needed to tackle the grave problem of terrorism. The court further explained that the present-day problem of terrorism is a transnational problem and not a problem that affects only a State. Moreover, this problem also poses a grave threat to the integrity and sovereignty of the country. The court also came in line with *Kartar Singh's* case and observed that when the grave public disorder situation affects the overall security scenario of the country then it would fall within Entry 1⁷⁸ of the Union List. However, the Judicial validity of the POTA was established, but due to widespread uproar by the media and NGOs, the next government of that time, to take credit,

⁷⁴Which provides provision related to the defence of India.

⁷⁵Power of Parliament to legislate on any other matter not enumerated in List-II or List-III including any tax not mentioned in either of those Lists.

⁷⁶Ujjwal Kumar Singh, *The State, Democracy ad Anti-Terror Laws in India*221 (Sage Publication, New Delhi, 2007).

⁷⁷WP (Civil) 389 of 2002.

⁷⁸i.e., defence of India.

repealed the POTA. But the repealing of the POTA was only a political gimmick, as the government amended the UAPA and inserted the controversial provisions of the POTA. Apart from this, Constitution also allows the Legislature of the Centre and States to have some circumstantial overlaps with each other's jurisdictions. But in a situation where the conflict between the State legislation and the Central legislation is direct and which cannot be justified as a mere incidental overlap then Article 254 will be applicable, which provides for the '*Doctrine of Repugnancy*'.⁷⁹ State law even though affected by the provision of Article 254, can remain valid provided it has received the Presidential assent. In *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra*,⁸⁰ objections were raised regarding the overlap between the Maharashtra Control of Organized Crime Act, 1999 (MCOCA), and the UAPA, citing the doctrine of repugnancy. The court ruled that the scope of the two laws is different. MCOCA specifically targets organized crime syndicates, while UAPA focuses on preventing terrorism. Therefore, there is no direct conflict between the two legislations.

Another addition to the Central legislation in the exclusive jurisdiction of the States was the National Investigating Agency (NIA) Act of 2008. This legislation was a result of the worsening internal security scenario. The Mumbai terrorist attack of 2008 became the immediate and pressing reason for the enactment of this legislation. This Act was enacted to establish a Central agency that can deal directly with cases of terrorism and national security. The National Investigation Agency was established and given the free hand to deal with the investigation part of the matters mentioned in the NIA Act. While looking from the federalism point of view the NIA has been given the power to encroach upon the jurisdiction of the State law enforcement agency. The Act was created to establish a Central agency to handle cases of terrorism and national security. The National Investigation Agency (NIA) was formed and granted authority to deal with investigations under the NIA Act. From a federalism perspective, the NIA is empowered to intervene in matters that typically fall under the jurisdiction of State law enforcement agencies. The efforts to enhance centralisation, are getting a boost from the rising dimensions of internal security problems. The recent amendment in the NIA Act⁸¹ and UAPA Act⁸² has enhanced the power and grip of the Central Government. The amended law gives the NIA power to investigate terror crimes relating to Indians and the interests of India. But the term 'interests of India' is quite vague

⁷⁹Art. 254 says that whenever there is any conflict between the law made by the Parliament and the State Legislature on the Entries of the Concurrent List then the Central law will prevail over the State legislation.

⁸⁰(2010) 5 SCC 246.

⁸¹National Investigation Agency (Amendment) Act, 2019.

⁸²The Unlawful Activities (Prevention) Amendment Act, 2019.

and has not been defined under the amended NIA Act. This vague formulation gives wide discretionary powers to NIA. Moreover, the amended NIA Act extended NIA's power to investigate matters under various other legislations. For example, now the NIA has the power to investigate crimes related to human trafficking, offences relating to counterfeit currency, manufacture or sale of prohibited arms, offences under the Explosive Substances Act and cyber terrorism. These functions until now were performed by the concerned State law enforcement agencies. Besides this, the amended UAPA Act would further enhance the Central role in the policing jurisdiction of the concerned State. For example, now under the UAPA Act, the head of the NIA has been given the power to approve the forfeiture of the properties of those involved in terrorist activities. Earlier this power was with the Director-General of Police in the States. So, the critiques allege that it is another blow to federal principles.⁸³

The above-given legislative analysis creates a presumption that these Central laws were indirectly aimed at enhancing the unitary features of India's Constitution. But in reality, there is also substance in the facts of the worsening internal security scenario. The bare review of the events of the last seven decades can convince the necessity of these internal security legislations. For example, the challenges and threats posed by the North-East insurgency, the Left Wing Extremism (that is Maoist insurgency) in East-Central India and some part of Central India, the Punjab insurgency, the insurgency and religious extremism in the Jammu and Kashmir region, religious riots and the terrorist attacks in various parts of India etc. clearly made a case for the stringent legal mechanism to deal with these threats. Federalism, as a basic feature, should not be undermined through fabricated reasons to extend Central agency jurisdiction. However, States are also responsible for the weakening of federalism in India. They have often neglected police reforms, timely upgrades, and training of their law enforcement agencies. This neglect has contributed to the Central government's increased involvement in State matters. Poor law and order not only affect the local population but also hinder the political and economic development of the area and its surroundings. So, in those circumstances, if the concerned State Government is either unable to take the corrective

⁸³Editorial, "Riding roughshod", *The Indian Express*, July 30, 2019, available at: <https://indianexpress.com/article/opinion/editorials/uapa-act-amendment-bill-narendra-modi-govt-5861747/> (last visited on January 20, 2024).

measures or unwilling to do so, then the Central Government under Article 355⁸⁴ of the Constitution is duty-bound to take adequate measures.

Beyond legislative and judicial trends, several commissions and committees have examined violations of federal principles due to internal security challenges. One notable effort was the Rajmanner Committee, formed by the State of Tamil Nadu. In its 1971 report, the Committee noted that unitary trends in India were reinforced by one-party rule at both Central and State levels. This was further strengthened by the Planning Commission, limited fiscal autonomy for States, and financial dependence on Central grants. The Committee recommended deleting Article 249, 356 and 357 of the Constitution and proposed transferring several items from the Union and Concurrent Lists to the State List.⁸⁵ Similarly, the *Akalis*⁸⁶ in the State of Punjab adopted the *Anandpur Sahib Resolution* (1973) and demanded that true federalism should be incorporated by retention of only four subjects such as- 'defence', 'foreign affairs', 'communication' and 'currency' with the Central Government.⁸⁷ The West Bengal Government, in its fifteen-point 'Memorandum on Centre-State Relations', claimed that Central security agencies like the Central Reserve Police Forces, Central Industrial Security Force, and Border Security Force were encroaching on areas that are officially under State jurisdiction.⁸⁸ The Srinagar conclave in 1983 added to the analysis of federal principles violations. It observed that one-party rule at both the Centre and State levels had led to the erosion of State powers.⁸⁹ It was suggested that strengthening State autonomy is essential to preserve the country's multi-religious, multi-lingual, and multi-cultural character. Additionally, it was argued that law and order are State matters, and the deployment of paramilitary forces should require the prior approval of the concerned State.⁹⁰ Another argument also made here is that the political conditions conducive to ethnic insurgency include either a restricted "conception" of national identity not inclusive of minority ethnic groups or the erosion of effective federalism with the centralisation of power

⁸⁴ The Union is responsible for protecting each State from external aggression and internal disturbances and ensuring that the government of each State operates according to the provisions of the Constitution.

⁸⁵ Government of Tamil Nadu, "Report of the Centre-State Relations Enquiry Committee" (1971).

⁸⁶ The members of the *Akali Dal*, a political party in the State of Punjab.

⁸⁷ Cover story, "Akali Dal wants a ban on drinking and smoking at public places" *India Today*, September 22, 2014, <https://www.indiatoday.in/magazine/cover-story/story/19821115-akali-dal-wants-a-ban-on-drinking-and-smoking-at-public-places-805313-2014-09-22> (last visited on March 23, 2021).

⁸⁸ Conclave of four southern non-Congress(I) chief ministers surprisingly low-key', From the Magazine, *India Today*, 22 July, 2013, available at: <https://www.indiatoday.in/magazine/special-report/story/19830415-conclave-of-four-southern-non-congressi-chief-ministers-surprisingly-low-key-770599-2013-07-22> (last visited on January 23, 2024).

⁸⁹ Dr. (Mrs) Johani Xaxa, "Regional Political Parties Strengthening Federalism in India: An Analysis" 2:4, *IJSSHR* 293 (2014).

⁹⁰ *Ibid.*

at the national level.⁹¹ Further, it is also contended that it is important to see this process of centralisation as a tendency that is counterproductive in a polity that sees federalism as a manifestation of democratic decentralisation and a means to preserve political/ideological and cultural plurality.⁹²

The committees advocated for increasing State powers. However, a realistic view is needed. From the late 1980s to 2014, Central Government relied on the coalitions with State-level parties. During this period, internal security deteriorated. In such a situation, the strong Central authority envisioned by the Constitution's framers proved effective in maintaining India's integrity.

Now let's have a look at the allegations of the encroachments by the Central law enforcement and investigation agencies. The Central law enforcement agencies and armed forces include the Indian Army, CRPF, CISF, BSF, CBI, ED, and NIA. However, this paper focuses on the CBI and NIA. The CBI, a key Central agency, investigates crime with national impact or of serious nature. It operates under the Delhi Police Special Establishment Act, 1946, and though formed by a cabinet resolution, it requires State consent to function. While the CBI has been criticized for encroaching on State jurisdiction and political misuse, it has also handled inter-state crimes impartially, with States often requesting its involvement. Yet, allegations of political manipulation over the past decades remain. The NIA, established under the NIA Act, 2008, has jurisdiction over terrorism-related activities threatening national security. Unlike the CBI, it does not require State consent. The NIA was created in response to the 2008 Mumbai terrorist attack, with little opposition to its formation. But the recently amended NIA Act enhances the scope of powers and jurisdiction of the NIA. Now under the amended law, NIA would be having the power to investigate terror crimes relating to Indians and Indian interests abroad.⁹³ Further, the amended law also enhanced the jurisdiction of the NIA to investigate offences related to human trafficking, counterfeit currency, manufacture and sale of prohibited arms, cyber-terrorism and offences covered under the Explosive Substances Act, 1908. Furthermore, the amended law also empowered the Central Government to designate the session court to act as a special court or to create

⁹¹Jugdep S. Chima, *Ethnic Subnationalist Insurgencies in South Asia: Identities Interests and Challenges to State authority* 178 (Routledge, London, 2015).

⁹²Supra note 76 at 166.

⁹³Amit Shah, "Efficiency of NIA should not be degraded on political considerations" speech delivered by minister of Home Affairs at Parliament, 17 July 2019, available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=191894> (last visited on January 25, 2024).

new special courts for the trial of the offences covered under the Schedule of the NIA Act.⁹⁴ In conclusion, there have been several instances where Constitutional provisions were misused for political gains. This has led to frequent allegations of violating federal principles. Regarding the judiciary, it is evident that national integrity and security are crucial, which is why the judiciary has often upheld the validity of Central legislation.

From the analysis, it is clear that India's federal structure provides space for both the Centre and States to legislate on urgent matters. The unique federal model suits the country's circumstances, and the Constitution's framers included provisions allowing each level of government to handle emergencies. India's integrity and sovereignty are paramount, and in extreme cases, some unitary features are necessary. However, a mere pretext of internal security threats should not justify encroaching on State powers. A proper balance and maturity are essential to address these challenges.

IV. Conclusion and The Way Forward

The relationship between the federal principles and the threats to internal security cannot be defined in strict terms. This relationship changes with time. For example, at the time of framing the Constitution, India was facing different kinds of threats and challenges in the form of communal riots, the partition of the country and separatist tendencies etc. But as time changes the nature and dimensions of the threats to internal security and national integrity also change. In the 1950s and 1960s, India was facing the challenges of northeast insurgency but from the 1970s onwards the Maoist insurgency also became an additional threat. From the 1980s, religious extremists and separatists in Punjab and Jammu & Kashmir posed new challenges to internal security. By the 2000s, the threat of terrorism became a significant concern. So, from this brief overview, it can be understood that challenges to India's internal security scenario are decade by decade, getting complex and intense. And, to tackle these grave threats, special emergent actions are an unavoidable necessity.

Further, to tackle the above-mentioned complex challenges, the first responders (that is the State Police) must be adequately prepared and kept ready in every circumstance. State police, being closest to the people, are generally expected to ensure physical security and

⁹⁴Udit Mishra, 'Explained: What are the changes in NIA (Amendment) Bill 2019?', *Indian Express*, 16 July 2019, available at:<https://indianexpress.com/article/explained/changes-in-national-investigation-agency-amendment-bill-2019-5830797/> (last visited on February 03, 2024).

maintain a safe environment.⁹⁵ But in reality, the State police is completely backward in every sense. A police force with a colonial mind-set, outdated training and obsolete equipment cannot withstand the present-day complex internal security threats.⁹⁶ In cases where the State's law enforcement is outdated and the government resist police reforms (either due to economic constraints or lack of political willpower), challenges arise.⁹⁷ The Central government is constitutionally obligated to ensure national security and integrity. However, while fulfilling this duty, it must also respect the federal principles, a core feature of the Constitution. The analysis given in this paper makes it clear that in the face of every internal security challenge, the approach of the Central government shows little confidence in the affected State's law enforcement agencies. There is always a need to go for a proactive approach from the Central side. The Central government before sending its forces to the affected State, should try to take the State authorities in confidence. Furthermore, besides this, the Central government should continuously help the State law enforcement agencies to upgrade their modules of training and other related infrastructure. In the last decade, the special effort of Central government in tackling the problem of naxalism has shown the positive results. The coordinated efforts of the States and Centre ultimately contributing in the elimination of the naxal problem.

On the Constitutional aspect, there is ample space for the Centre and State to work in their jurisdiction and fulfil their constitutional obligations. But to bring that into reality there is a need to have a common platform where the Central and the States authority periodically communicate and come to a commonly acceptable ground. For ensuring a sense of security an effective preventive mechanism plays a big role and that mechanism can work only if it is supported by the accurate intelligence gathering. In the Indian context, the Central and State intelligence agencies are rarely working in a synchronisation manner. This lack of trust among these intelligence agencies is turning the internal security scenario into a fragile condition. To strengthen internal security, a shared understanding between Central and State intelligence and law enforcement agencies is essential. Instead of centralizing the control, the Central government should focus on empowering and preparing State authorities to handle serious security threats effectively. If the first responders (i.e., the State authorities) are well-

⁹⁵ P.D. Sharma, *Police: Internal Security and Development Disorder in India* 23 (Uppal Publishing House, New Delhi, 1988).

⁹⁶ Vikrant Singh Kushwah, "Why India Needs Urgent Police Reforms", Observer Research Foundation, December 04, 2018, available at: <https://www.orfonline.org/expert-speak/why-india-needs-urgent-police-reforms-46003/> (last visited on February 05, 2024).

⁹⁷ *Ibid.*

trained and equipped with modern technology, then even the gravest security challenges can be handled at the initial level. So, the first responder must become a priority for reforming the overall security setup.

The legislative analysis in the paper suggests that constitutional provisions should not be viewed in isolation. For addressing internal security holistically, the entries in the Seventh Schedule's three Lists should be read together. For instance, Central laws should require prior consultation with States before deploying Central forces. Additionally, internal security should not be influenced by political opportunism. Further, the unused constitutional provision such as Article 263⁹⁸ should be proactively utilized as a platform for deliberation on the conflicting jurisdictions. To establish and make an effective internal security set-up there is an undeniable need for collaboration among the Central, State and local level authorities. The Sarkaria Commission highlighted this point, noting that the deployment of Union armed forces to restore public order cannot succeed without the active assistance and cooperation of the State's entire law enforcement system.⁹⁹

Further, on the aspect of encroachment by the Central investigation and law enforcement agencies, in the States sphere, it can be said that the present mechanism is the result of the mistrust between the Central and the State authorities. And this mistrust is the creation of the Central Government's misuse of the Central agencies for securing the political interest. This is high time that this mistrust should be abridged and a new tradition of entrusting and supporting the work of each other should be evolved. The culture of securing the political interest should be completely done away with, at least in matters of the security and integrity of the country. There is an urgent need to evolve the mechanism, so that the Central and the State can collectively put their efforts into securing a peaceful internal environment, instead of blaming each other. And to achieve this goal the undeniable need is not the competitive federalism but cooperative federalism. The National Commission to Review the Working of the Constitution, while quoting the State Reorganisation Commission (SRC) report said, "It is the Union of India which is the basis of our nationality...States are but a limb of the Union, and while we recognize that the limbs must be healthy and strong...it is the strength and stability of the Union and its capability to develop and evolve that should be governing

⁹⁸It deals with the provisions concerning the Inter-State Council.

⁹⁹Government of India, "Sarkaria Commission Report", Chapter VII: Deployment of Union Armed Forces in a State for Public Order Duties, para 7.5.01.,(Ministry of Home Affairs, 1987), available at:<http://interstatecouncil.nic.in/wp-content/uploads/2015/06/CHAPTERVII.pdf> (last visited on February 17, 2024).

consideration of all the changes in the country.”¹⁰⁰ Besides these jurisdictional arguments, there is an urgent need to give focus on another important aspect (i.e., the funding to the insurgents and terrorist groups) of the internal security threats. The lifeblood of any violent non-state organizations is their ability to generate funds. Terrorists, insurgents, warlords, and militia rely on both licit and illicit means to generate funds. These funds are then applied to build, consolidate and sustain the group’s operational and organisational capabilities. Cutting this bloodline would effectively help the Centre as well as the States to tackle this grave challenge.¹⁰¹ Thus, in concluding remarks, it can be observed that in the matter of security, politicization would not help the cause. The Central and State governments, instead of running for independent working, should come together and work interdependently for the common objective of internal security and national integrity.

¹⁰⁰Government of India, “The National Commission to Review the Working of the Constitution Report”, Vol. I, Chapter 8: Union-State Relations, para 8.1.4., 2002, available at: <http://legalaffairs.gov.in/sites/default/files/chapter%208.pdf> (last visited on February 17, 2024).

¹⁰¹Colin P. Clarke, *Terrorism, Inc.: The Financing of Terrorism, Insurgency, and Irregular Warfare*1 (Praeger Publishers Inc., Santa Barbara, 2015).