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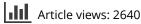
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# Understanding multilevel dynamics in India: constituent power and multilevel governance

Wilfried Swenden <sup>1</sup>, Rekha Saxena <sup>1</sup> and Chanchal Kumar Sharma

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#### ABSTRACT

This introduction to the special issue introduces readers to the specificities of Indian federalism and places the various contributions within a broader conceptual and comparative framework. It argues for an approach that understands centre–state relations in India by 'blending' elements of a 'constituent' and multilevel governance framework. Such an approach acknowledges that constituent power matters alongside an understanding of the resource strength of national and subnational governments linked to political leadership, policy communities and networks. Overall, we argue that constituent and informal subnational power reinforce each other and have contributed to India's resilience as a multilevel polity, even under conditions of one-party dominance at the centre.

#### **KEYWORDS**

federalism; centre-state; India; multilevel governance; constituent power; intergovernmental relations

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## **INTRODUCTION**

The Covid-19 pandemic has shown the difficulties and opportunities that multilevel political systems have encountered in fighting an unprecedented health crisis. At its inception, the effect of the pandemic was often localized, with outbreaks in specific areas, thus necessitating locally tailored approaches to testing, tracing and containment. At the same time, in the event of wide-spread community transmission, a more nationalized and coordinated response is necessary to halt cross-national and cross-regional transmission, to coordinate the provision of personal protective equipment (PPE), or indeed to deal with the massive economic fallout of widescale lock-downs and their effect on the livelihoods of citizens, workers and the vulnerable sections of society. Although multilevel systems, by virtue of making lower tier governments responsible for certain tasks, may be well placed to offer localized responses, they also often lack the fluidity required to shift to more coordinated or national approaches to crisis management (Schnabel & Hegele, 2021). There are two reasons for this: one constitutional, the second political.

Constitutionally speaking, different authorities may be responsible for handling different aspects of a health crisis such as a pandemic (Dodds et al., 2020). As Saxena (2021) and

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Sahoo and Ghosh (2021, p. 6) have argued in relation to India, as per the constitution, the states are largely responsible for health, but the union (centre) controls interstate quarantine and interstate migration. The states occupy the fields of public health and sanitation, hospitals and dispensaries, but social security, social insurance, employment and unemployment as well as 'the prevention of the extension from one state to another of infectious or contagious diseases or pests affecting men [*sic*], animals or plants' are concurrent subjects. In these concurrent areas both levels can operate, but the centre assumes a dominant role in case of centre–state conflict. Clearly, even if central and state politicians are willing to provide a joined-up response, this may be slower to materialize in such a complex federal set-up than in a unitary system with a more concentrated and top-down command structure.

*Politically* speaking, central and state politicians in a multilevel system must be willing to work for the common good, but also to respect each other's autonomy as they each hold democratic legitimacy and are entrusted to govern in areas which have been assigned to them. However, what is best for the system as a whole is not necessarily best from the viewpoint of a central or a state political leader. Central incumbents may be tempted to 'overstep' their constitutional mandate and use the crisis as a pretext for centralization rather than for facilitating and extending coordination. The latter requires the presence of intergovernmental institutions in which state leaders (individually or at least collectively) retain a power of veto. Conversely, subnational political leaders may not wish to trade autonomy for coordination, perhaps especially so, if doing so is seen to empower political opponents rather than co-partisans. In all of this, multilevel systems, given the complex distribution of authority, provide plenty of opportunities for political buckshifting and credit-scoring, both of which undermine the goal of mutually beneficial cooperation.

The management of the Covid-19 pandemic in India, although not the subject of any contribution here, touches upon some of the core themes in this special issue: How important is the constitutional distribution of authority for understanding how the Indian multilevel system operates in practice? Does it empower the centre or the states, or constrain both levels given the role of the Indian Supreme Court in policing their powers? What is the relevance of political considerations: does it matter who is in power at the centre (which party or parties and with what majority) for how the states are governed (and vice versa)? What is the nature of intergovernmental interactions when different parties operate at different levels: do such interactions merely become more adversarial when the centre and states (or a particular state) are controlled by different parties, or do they also generate a logic of centralization? Under such a scenario, can states fall back on their constitutional autonomy to protect themselves from central encroachment? Or can the centre, by invoking its parliamentary majority and a nationalist or even populist discourse, defy the states? Finally, are there situations in which politics does not really matter at all that much, but rather what drives centre-state relations or policy outputs is influenced more by well-established policy networks, the role of 'last-mile bureaucrats' or the influence of social movements, civil society or even transnational organizations? Put differently, beyond democratic legitimacy and constitutional powers, what determines the resource strength of central and state governments?

The tension between the 'constitutional' and the 'political-functional', or between 'constituent power' and 'multilevel governance' runs through all contributions of this special issue. Indeed, an approach that centres on *constituent power* focuses on the strength of the material competencies (legislative, administrative and fiscal), which the centre and the states derive from the constitution, and on the procedural rules that determine how both levels address issues of mutual concern through shared rule or mechanisms for intergovernmental collaboration. In contrast, a *multilevel governance* framework, while not oblivious to constitutional rules, highlights the significance of administrative, fiscal and economic resources associated with governments at different levels, as well as the role of political leadership, policy communities and networks for shaping centre–state relations and intergovernmental dynamics more generally (Hooghe, 2002; Bache & Flinders, 2004; Rhodes, 2007; Piattoni, 2010; Bolleyer et al., 2014). This tension, so we argue, has shaped the dynamics of conflict and cooperation in India on a range of issues from territorial finance to the management of security, health, social policy, rural employment and ethnic conflict.

# CONSTITUENT POWER VERSUS MULTILEVEL GOVERNANCE AND ITS APPLICATION TO INDIA

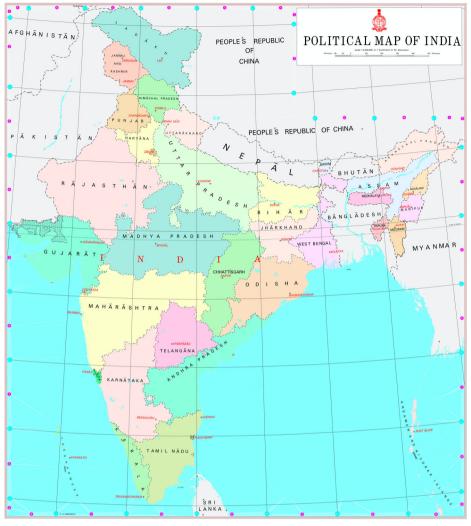
From the perspective of comparative constitutionalism, the Indian multilevel set-up is mostly referred to as a federation, albeit a comparatively centralized one. A federation, so Watts (1996, p. 8) reminds us, is a:

compound polity, combining strong constituent units and a strong general government, each possessing powers delegated to it by the people through a constitution, and each empowered to deal directly with the citizens in the exercise of legislative, administrative and taxing powers, and each directly elected by the citizens.

Writing in 1996, Watts lists India as one among – then – 23 federations. Indeed, the Indian constitution complies with these criteria. Although it is a 'holding-together' or even 'putting-together' federation (Stepan, 1999), given how states were reshaped and princely states incorporated after independence, all the present 28 Indian states and two of its union territories have directly elected assemblies (Figure 1).

India is a federation because the constitution specifies the legislative, administrative and fiscal powers of the centre and the states. Schedule VII of the Constitution, which lists the legislative powers of both levels, cannot be amended without the consent of a majority of the states and both chambers of the national parliament. The constitution also attributes considerable spending – if not borrowing and tax autonomy – to the states and makes the centre largely dependent on the states for the implementation of its action programmes and social policies (Appleby, 1953). Finally, the Indian Supreme Court can strike down central and state laws that violate the constitutional division of powers and, at times, it has also read 'federalism' into the basic structure of the Indian constitution, making it a 'basic and unamendable feature' of the Indian constitution (see *Kesavananda Bharati vs. State of Kerala* [1983] 4 SCC 225; AIR 1973 SC 1461; for a discussion, see Swenden & Saxena, 2021, in this issue).

And yet, the constitution, despite its overall 'federal features', also contains attributes that are 'centralizing' (i.e., which strengthen the power of the centre at the expense of the states) or even 'unitary' (which obliterate state autonomy altogether). Overall, the strong position of the centre chimes with the integrationist vision of the founding fathers who placed a strong emphasis on territorial integrity - especially in the wake of Partition; the division of British India into India and East and West Pakistan at independence - and considered a powerful centre as key to the rapid industrialization and human development of the country (Adeney, 2007; Khilnani, 2004; Khosla, 2020; Sharma, 2011; Swenden, 2018; Tillin, 2021a). This resulted in a constitutional arrangement so flexible that it could lead to India being governed as a 'unitary or federal state according to the requirements of time and circumstance' (B. R. Ambedkar, as cited in Raju, 1991). This 'flexibility' is facilitated by the centre's access to sweeping emergency powers, which can either transform the polity into a unitary one by temporarily suspending all state autonomy (as in 1975–77 during a national emergency) or establish a unitary relationship vis-à-vis a particular state through the application of Article 356 or President's Rule, following which the powers of the state are transferred - temporarily - to the union executive and parliament. The states also have no guaranteed input in the process of state reorganization, a highly unusual feature among the group of federal states (Tillin, 2015). The centralized nature of India's



**Figure 1.** Map of Indian states and union territories, as of August 2019. Source: Government of India (2020), Survey of India, Department of Science and Technology, https:// www.surveyofindia.gov.in/pages/political-map-of-india.

constitution can be read further from the dominant role of the centre in the field of taxation and from its capacity to coordinate administrative relations through the presence of an all-India elite civil service (Indian Administrative Services, alongside equally integrated police and forest services).

Finally, the Indian federal system provides few constitutional mechanisms to strengthen shared rule. In India's parliamentary system, the powers of the *Rajya Sabha* (federal second chamber) are subordinate to those of the popularly elected lower house (*Lok Sabha*); 'senators' do not need to reside in the state from which they are elected, and each contingent of *Rajya Sabha* MPs from a particular state is roughly proportionate to that state's electorate in the population. Each of these factors undermines the capacity of the *Rajya Sabha* to operate as an effective 'territorial chamber' or 'Council of States'. With the exception of the Inter-State Council and Goods and Services Tax (GST) Council, both of which are relatively recent additions (1990 and 2016, respectively), no constitutionally mandated multilateral intergovernmental forums exist.

Given the inbuilt 'flexibility' in the Indian constitutional settlement, how the Indian multilevel system is read at a particular moment in time (as 'unitary' rather than 'federal', as both, or – the predominant view – as federal, but 'more or less centralized') very much depends on how the centre and the states have chosen to *exercise* their powers. This is even more important in the Indian multilevel polity which has experienced strong *variations* in the level of (de)centralization, in spite of a remarkable *stability* in the constitutional distribution of authority between the centre and the states (Saxena, 2006, pp. 137–138; Singh, 2019; Sharma, 2021, in this issue). To understand the dynamics that led to such important variations in spite of constitutional stability, a multilevel governance framework that highlights non-constitutional factors is appropriate.

Such a framework highlights amongst others the significance of the national party system, given that executive office at the national and state levels comes with access to state resources. The Indian party system was one-party dominant between 1952 and 1989, and again since 2014, albeit with a different party in charge at the centre: the centre-left and secular Congress Party during the first period (except between 1977 and 1979) and the centre-right and Hindu Nationalist Bharatiya Janata Party (BJP) since 2014. This contrasts with the period of minority and/or coalition government at the centre (1989–2014), during which neither the Congress nor the BJP could survive in central office without the support of state-based parties (see Chhibber & Verma, 2018; and Schakel et al., 2019, for longitudinal analyses). One-party dominance makes the working of Indian federalism susceptible to centralization, whereas a pluralized party system has the opposite effect.

Another important factor is the shift from a state- to a market-led economy (Sáez, 2002; Singh & Saxena, 2013) since 1990. Indeed, market liberalization heightened the capacity for state agency by no longer subjecting private investment decisions to central regulatory consent. Thus, it pitted states (and often state chief ministers or executives) against each other in their quest for attracting (foreign and domestic) private investment (Jenkins, 2003; Sharma et al., 2020). Furthermore, market liberalization weakened the ability of central incumbent parties to direct central grants to politically aligned states and starve opposition-ruled states (Sharma & Swenden, 2020).

A third factor, as highlighted below, which accounts more for cross-case than cross-temporal variation, relates to the role of specific policy fields, with states being in a stronger position to mobilize and fend off central incursion in policy areas in which they have built up localized expertise tied into relevant bureaucratic and clientelist networks.

#### OUR APPROACH: WORKING A FEDERAL–UNITARY HYBRID AND SITUATING THE CONTRIBUTIONS

In this special issue, we argue for an interpretation that 'blends' elements of the constituent and multilevel governance perspectives. Our approach acknowledges that while a pluralized party system and economic liberalization increased state agency in India, even under central coalition government, the states operated within a broader logic of hierarchy with the centre in a comparatively stronger position. Furthermore, these processes unfolded in a context in which the Indian National Congress or the BJP emerged as the most important nodes of two alternative coalition poles structuring national party competition. Leaders from both parties have always adopted a 'national' outlook linked to national development and/or cultural (Hindu) nationalism. (Attempted) constitutional reforms in this period (e.g., associated with indirect tax reform or the introduction of a GST predating the recent 2016 GST constitutional amendment) were seen as means to 'integrate', rather than 'federalize', the Indian polity and market. As various contributions to this issue attest (Jeffery, 2021; Kumar, 2021; Sharma, 2021; Tillin, 2021b, all in

this issue), this period also coincides with a significant rise in the number and relative amount spent on national development programmes (or centrally sponsored schemes), even in areas of exclusive state competence.

Conversely, the unexpected re-emergence of one-party dominance since 2014 has enabled a partial return to centralization, which somewhat resembles party dominance under the premierships of Indira Gandhi (1966-77; 1980-84) and Rajiv Gandhi (1984-89), both members of the Indian National Congress. Indeed, 'unitary' or 'centralizing' approaches are easier to discern in the unilateral abrogation of the special status of Kashmir (in 2019) or in more vigorous attempts to use the office of the centrally appointed governor to shape state political dynamics (Sharma & Swenden, 2018). These actions may not be 'unconstitutional', but they lay bare the more centralizing features of the Indian constitution. However, even in this more centre-favourable context, whatever state-protecting guarantees the constitution offers can be seized upon by state governments to protect their autonomy. Hence, just as the centralizing features of the Indian constitution can be used to curb centrifugal forces when the centre is partially captured by statespecific interests (as during the period of coalition government), so the states can mobilize their more state-protecting safeguards to slow down or stop central encroachment under oneparty dominance. As Sharma (2021, in this issue) shows, the constitutional protection of the states' power to levy tax, and a stringent amendment formula to alter the constitutional assignment of powers, forced the centre into a process of 'negotiated cooperation' in which it offered significant concessions rather than 'imposed cooperation' on states.

Furthermore, we acknowledge that centre-state relations unfold against the backdrop of processes of *longue durée*, irrespective of who is in charge of the central government or what is the underlying constitutional context. This means that centre-state relations are not always reflective of the nature of the party system or the constitutional distribution of competencies. They are also shaped by institutional and ideational legacies that have created a 'logic of appropriateness' within which centre-state interactions are expected to unfold. For instance, justifying or strengthening the unitary features of the Indian polity would have looked easier for Rajiv Gandhi who inherited a highly centralized regime associated with the prime ministership of Indira Gandhi, than for Narendra Modi, who entered the Prime Minister's Office in 2014 on the back of more than two decades of central coalition or minority government. This may explain why Modi, despite the restoration of one-party dominance, couched his centralizing moves in the language of 'competitive-cooperative federalism', or why the Supreme Court has continued to police applications of President's Rule despite the changing political circumstances since 2014 (Swenden & Saxena, 2021, in this issue).

A key argument that runs through the various contributions of this issue is that the dynamics of multilevel governance are not isolated from their constitutional and institutional moorings. The 'flexible' but also centralizing features of the Indian constitution can be exploited successfully by the centre under favourable party conditions (more likely under one-party dominance) and when the leading parties or actors in central office justify their interference in state matters by invoking the 'national interest', either for security reasons or for the purpose of national development. The ability to resist such central incursions is limited given the relatively weak investment of successive Indian central governments – irrespective of party ideology or party complexion (single party or coalition government) – in durable and multilateral intergovernmental relations (IGR) and the paucity of constitutional provisions necessitating IGR. Swenden and Saxena (2021, in this issue) show that even under more favourable party conditions (coalition government), the Supreme Court has not insisted on the strengthening of intergovernmental mechanisms either.

While the above characteristics relate to the Indian multilevel set-up as whole, there can be significant variations in centre–state dynamics across policy fields, as the other contributions to this special issue attest. These variations may reflect a difference in constitutional position, with

some fields being granted greater protection from central encroachment than others. However, they can also reflect different priorities among central incumbent parties, driven by their own ideology, their intent to use policy as a means to cement or increase electoral support or the extent to which a particular policy is seen as essential to secure the integrity of Indian territory and the nation. Finally, the ability of the centre to influence state policy is curbed by the capacity of state incumbents to mobilize protest or to draw from policy networks, social movements or civil society more widely. The upshot is that constituent power, agenda-setting and resource capacity shape the nature of centre–state relations. Our contributions demonstrate that these interactions vary by policy field, ranging from security to territorial finance, health and social assistance.

Table 1 presents this categorization visually. It plots a number of policy areas, based on whether (1) the constitution acknowledges the dominant position of the centre (central hierarchy versus state autonomy); and (2) central incumbents have identified certain policy areas as vital to their or the 'national interest (agenda-setting). The latter may be consistent across time (e.g., security concerns are always high on the agenda of any Indian government irrespective of its party political make-up) or vary, reflecting divergent party priorities or the ability of certain issues to 'work themselves up the agenda' in view of certain events (e.g., pandemic) or successful mobilization by party agents, social movements or civil society organizations. Table 1 further identifies which is the most likely form of centre–state interaction given the constitutional and political context, and it locates the various contributions to this special issue within the appropriate

		Central incumbent issue preference		
		High priority	Low priority	
Constitutional position of the states	Weak	Security	Secondary education	
		Hierarchy and Centralization	Moderate to medium scope for	
		[Singh, Hausing, in relation to decentralized and devolutionary autonomy in the North-East]	state policy divergence	
	Strong	Land acquisition Indirect taxation Naga self-rule Concessionary federalism [Sharma, Hausing, in relation to homeland state autonomy in the North-East]	Social assistance Health (lower priority under BJP- led central governments pre- pandemic) High scope for state policy divergence	

**Table 1.** Categorization of policy issues (examples) based on constitutional position and central incumbent issue preference and their impact on centre–state dynamics (in italics) and link to contributions (in brackets).

cell. Hence, it provides a meaningful contextual framework against which the various contributions of this special issue can be situated.

Hierarchical relations are most pronounced in those policy fields that the centre has designated as top priorities *and* in which the constitution already recognizes the centre's room for expansion, for instance, through the ability to invoke 'emergency powers'. Such areas are located in the top-left quadrant of Table 1. Security, the topic of Ujjwal Singh's contribution, fits in here. Irrespective of whichever party controlled the centre and in whichever complexion (coalition versus single party), Singh (2021, in this issue) demonstrates how the long-term trajectory is one of centralization, facilitated by the constitutionally superior position of the centre. Similarly, in his contribution on the management of diversity in the North-East, Hausing (2021, in this issue) also demonstrates how security concerns have shaped the relationship between the centre and those areas benefiting from decentralized and devolutionary autonomy. In fact, these mechanisms are tolerated where they benefit stability, but are they are open to centralization when deemed in the national (security) interest.

In contrast, Schedule 7 of the Indian constitution, although favourable to the centre overall, grants considerable legislative autonomy to the states in the fields of social policy, health, land or policing. The same is true for indirect taxation. Changing these provisions requires the consent of a majority of the states, and thus cannot be simply imposed by the centre alone. Similarly, Nagaland benefits from a specific constitutional status that cannot be altered unilaterally by the centre even if it is seen to benefit India's security.

However, successive central governments have placed different priorities on getting involved in some of these issues, at least for some of the time. This differentiates their location between the bottom-left and bottom-right quadrant of Table 1. For instance, Sharma (2021, in this issue) shows that since marketization, successive central governments have attempted to abolish a set of national and state indirect taxes and replace them with an integrated GST instead. Eventually the centre was successful in this regard, but not without offering concessions to the states, notwithstanding the political alignment of most with the centre at the time of the reform. The outcome therefore is one of concessionary federalism. Similarly, as Hausing (2021, in this issue) shows, even though security concerns are paramount in the centre's relationship with Nagaland, its options are restrained due the state's constitutional status and the strongly held view that the Nagas constitute a distinctive people. This has forced the centre into negotiations and accepting concessions.

Similarly, the centre could seek to expand its scope in matters such as health, social assistance or rural employment, even though the states are in a constitutionally strong position to act in these fields. Yet, Jeffery (2021, in this issue) shows that the centre was often disinterested in health (as were several of the states), until the Congress-led United Progressive Alliance (UPA) coalition gave it a higher priority (and at present the BJP in light of the Covid-19 pandemic). Arguably the inability to give sufficient heed to state concerns in the design of the National Rural Health Mission, a programme which the UPA had prioritized, undermined its effectiveness when it hit state politics and health bureaucracies. The constitutional strength of the states in social policy, coupled with limited engagement of the centre for much of the time, also contributed to 'distinctive subnational welfare regimes rather than straightforward variation within a national regime', as Tillin (2021b, in this issue) demonstrates. Similar state and substate variations have also been noted in Kumar's analysis of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), despite its designation as a 'centrally sponsored scheme'. Indeed, the role of last-mile bureaucrats and their embeddedness in local political networks plays a more seminal role in accounting for substate variations in policy performance (Kumar, 2021, in this issue).

Of course, issues can move up and down the centre's priority list, considering different ideological views of central incumbents or changing circumstances. The UPA's interest in health and social policy more generally fitted the centre-left ideology of the then coalition government (especially between 2004 and 2009). As Tillin (2021b, in this issue) asserts, it is too early to tell whether the increasing prioritization of welfare as a 'vote-buying' tactic by the current BJP will reduce the capacity of states to chart their own policies in this area.

Either way, the various contributions suggest that the centre's ability to become more active in certain areas is constrained the most where states are in the strongest constitutional position and have access to deeply entrenched subnational policy networks and interest groups. This limits the ability to centralize decision-making out of hand by constitutional amendment (we would argue even in circumstances when the central incumbent also controls most of the state governments) unless the centre offers concessions. In such instances, constituent and informal subnational power reinforce each other and contribute to India's resilience as a multilevel polity notwith-standing one-party dominance at the centre.

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