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Federalism and Emerging Challenges

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Why in News

Recently, several states have complained about the growing crisis of **Indian federalism**. They have argued about the **Ordinances** and the Bills brought by the Centre which encroaches on their area of legislation, which is an assault on the federal structure of the Constitution.

Key Points

- **Federal Issues Raised by States:**

- The refusal of the Central government of its legal commitment to **compensate for Goods and Services Tax (GST)** shortfall on account of lower revenue.
 - The Centre argued that the lower revenues are the result of an “act of God” for which it cannot be held responsible.
 - As per the **GST Act**, states are guaranteed compensation for any revenue shortfall below 14% growth (base year 2015-16) for the first five years ending 2022.
- **Centre transgressing into the powers of the state government.** E.g
 - The **recent Farm Acts** which allow farmers to sell their produce outside the **Agricultural Produce Market Committee (APMC)** and aim to promote inter-state trade. However, the Acts **encroach upon the State list**.
 - Entry 33 of the Concurrent List mentions trade and commerce, production, supply and distribution of domestic and imported products of an industry; foodstuffs, including oilseeds and oils; cattle fodder; raw cotton and jute.
 - However, if foodstuffs are considered synonymous with agriculture, then all the powers of states in respect of agriculture, listed so elaborately in the Constitution, shall become redundant.
 - The Parliament cannot legislate a law in respect of agricultural produce and markets under the Seventh Schedule of the Constitution because **agriculture and markets are State subjects**.
 - The amendment in banking regulations by bringing **cooperative banks under the Reserve Bank of India (RBI) supervision**.
Cooperative societies come under the State list i.e. list 2 of the Seventh Schedule to the Constitution of India.

- **Provisions Related to Federalism:**

- Nations are described as ‘**federal**’ or ‘**unitary**’, depending on the way in which governance is organised.
 - **Federalism** essentially means both the Centre and states have the freedom to operate in their allotted spheres of power, in coordination with each other.
 - In the **unitary system** all powers of the Government are centralized in one Government that is Central Government.
- In the ***State of West Bengal vs Union of India (1962)***, the Supreme Court held that the Indian Constitution is not federal.

- However, in *S R Bommai vs Union of India (1994)*, a nine-judge Bench of Supreme Court held federalism a part of the **basic structure of the Constitution.**
 - It stated neither the **legislative entries in Seventh Schedule**, nor the **fiscal control by the Union** per se are decisive to conclude the Constitution is **unitary**. The respective legislative powers of states and Centre are traceable to **Articles 245 to 254**.
 - The Court has observed that **Indian federation differs from the USA** significantly. **Indian Parliament has the power** to admit new States (**Article 2**), create new States, alter their boundaries and their names, and unite or divide the States (**Article 3**).
 - Recently, Jammu and Kashmir (J&K) State was converted into two Union Territories - J&K and Ladakh.
 - The **concurrence of States is not needed** for the formation and unmaking of States and Union Territories.
 - Further, the court noted the **existence of several provisions of the Constitution that allow the Centre to override the powers of the States** e.g. legislation on a Concurrent List.
 - Even though the **States are sovereign** in their prescribed legislative field, and their **executive power is co-extensive with their legislative powers**, it is clear that the **powers of the States are not coordinated with the Union**. This is why the Constitution is often described as ‘**quasi-federal**’.
- The **Seventh Schedule of the Constitution** contains **three lists** that distribute power between the Centre and states (**Article 246**).
 - There are **98 subjects (originally 97) in the Union List**, on which Parliament has exclusive power to legislate.
 - The **State List has 59 subjects (originally 66)** on which states alone can legislate.
 - The **Concurrent List has 52 subjects (originally 47)** on which both the Centre and states can legislate,
 - In case of a conflict, the law made by Parliament prevails (Article 254).

- **Mechanism to Solve Dispute:**

- The Supreme Court has used two mechanisms to solve the dispute between Centre and states over the entry list in Seventh Schedule. The mechanisms are **Doctrine of Pith and Substance** and **Doctrine of Colourable Legislation**.
- The **Doctrine of Pith and Substance** says that the constitutionality of legislation is upheld if it is largely covered by one list and touches upon the other list only incidentally.
 - The doctrine relates to **finding out the true nature of a statute**.
 - Pith denotes the 'essence of something' or the 'true nature', while substance states the most significant or essential part of something.
- The **Doctrine of Colourable Legislation** tests the competence of the legislature against an enacted law. This doctrine states the fact that what cannot be done directly, cannot also be done indirectly.

The doctrine restricts the overstretching of the constituted power of the legislature in a disguised, covert or indirect manner.

Way Forward

- A diverse and large country like India **requires a proper balance between the pillars of federalism, i.e. autonomy of states, national integration, centralisation, decentralisation, nationalisation, and regionalisation**.

Extreme political centralisation or chaotic political decentralisation can both lead to the weakening of Indian federalism.
- **Reforms at the institutional and political level** can deepen the roots of federalism in India. e.g.
 - The contentious **role of the Governor** in suppressing the states for the Centre's interest needs to be reviewed.
 - Proper utilisation of the institutional mechanism of the **Inter-state Council** must be ensured to develop political goodwill between the Centre and the states on contentious policy issues.
 - The gradual **widening of the fiscal capacity** of the states has to be legally guaranteed without reducing the Centre's share.

Source: IE