



## The upcoming crisis in Indian federalism

The national compact has to be reimagined so that post-2026, the most successful States are not punished politically.

### Waiting for 2026:

1. The Indian Constitution may face an unprecedented crisis in 2026 when there will be a dramatic change in the composition of the Lok Sabha. Since 1976, seats in the Lok Sabha have reflected the 1971 census and have not taken into account changes in the population.
2. The primary reason for this has been unequal population growth among States. India's most highly developed and prosperous States have been successful at family planning, while the poorer States continue to expand.
3. The freeze was thus a chance to ensure that India's most successful States are not punished politically for their success. Post-2026, when this compact ends, there will be a seismic shift in national power towards India's poorest and most populated States, which is sure to generate much resentment among the States that will lose political and economic power and influence.
4. This calls for a realignment in the balance between the democratic principle and the federal principle in the Indian Constitution.

### The essence of the Union

1. As Article 1 of the Indian Constitution says, India is a Union of States. The choice of words is deliberate: it is the several States that, together, make up the Indian Union. Admittedly, unlike in other federations, there is no separate State citizenship or State Constitutions.
2. However, one need only study the history that led up to the linguistic reorganisation of States in 1956, and to subsequent movements for Statehood afterwards, to understand that States are distinct associative communities, within the federal structure of the Indian Union.
3. Indeed, in a polity as plural as ours – linguistically, culturally, and ethnically – it could not be any other way.

### Big versus small States

1. Having established, thus, that States are important, self-contained units within the Indian constitutional scheme, we must turn to an inherent contradiction between the principles of democracy and federalism, when federal units are unequal in size, population and economics. This is easy to comprehend.



2. In a democratic setup, all citizens are equal and are thus entitled to equal representation in governance. But this would imply that bigger States are likely to dominate the national conversation over smaller States.
3. The small States fear that they would get a smaller share of the pie economically, a much reduced say in national issues, and be irrelevant in the political governance of the country.
4. In order to assuage this legitimate fear, federal democracies have incorporated into their governing structures various kinds of compromises to ensure a balance between democratic principles and federal ones.

### Protecting the smaller:

1. For example, when the Americans adopted their Constitution, they protected smaller States in four ways. First, national powers over the States were limited.
2. Second, each State regardless of size had two seats in the Senate, giving smaller States an outsized role in national governance.
3. Third, Presidents are elected by electoral votes, which means they must win States rather than the total national population.

### The Indian structure

1. However, India's quasi-federal structure has always been sui generis. Our founders knew that India's diversity made federalism inevitable, but, fearing fissiparous tendencies among States that had never been a single political unit, they also created a strong centre.
2. While history has been chequered, the fears for Indian national unity simply on the basis of giving States greater powers have proven to be unfounded — and if at all, it has been the other way.
3. The 1956 reorganisation of States on linguistic lines was a popular recognition of federal principles and yet did not result in separatist tendencies. Since then, new States within the Union have been created in response to the demands of people for greater autonomy.
4. In India, any clash between federal principles and democracy will inevitably also have linguistic, religious and cultural implications and may result in new forms of sub-regional chauvinism.
5. Thus, there is an urgent need to reimagine our national compact — another freeze will only kick this thorny issue down the road and will continue to perpetuate an increasingly undemocratic setup.



## Fine-tune these elements

1. We have the components of such a new balance that need to be fine-tuned to Indian realities. First, the powers of States vis-à-vis the Centre contained in the Lists and in the provisions dealing with altering boundaries of States must be increased to assuage the fear of smaller States that they will be dominated by bigger ones.
2. There is no reason to believe that empowering our States would cause national disintegration. On the contrary, more localised decision-making is bound to increase national prosperity.
3. Indeed, this was the entire goal of the creation of Panchayat governance through the 73rd and 74th Amendments to the Constitution, whose promise remains — unfortunately — unrealised.
4. Second, the role and composition of the Rajya Sabha, our House of States, must be expanded. This would allow smaller States a kind of brake over national majoritarian politics that adversely impact them.
5. Third, constitutional change and the change in financial redistribution between the States must require the consent of all or nearly all States (the fate of the Goods and Services Tax, or GST, serves as a salutary warning in this regard).
6. Constitutional provisions dealing with language and religion must also be inviolate. If India is a joint venture between majority and minority shareholders, the minority must be protected by a comprehensive list of “consensus items” that require unanimity — or at least, a super-majority — and not a simple majority.
7. Fourth, serious thought must be given to breaking up the biggest States into smaller units that will not by themselves dominate the national conversation.

## Competing claims

The unity of India is, of course, the fundamental premise underlying this discussion; but this unity does not depend on an overbearing Centre for its survival.

## Framing the legislation, forgetting the transparency

India, it appears, is charting a regulatory framework without discussion and openness, and with government overreach. The government pushed the new Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 without consultation.



## OTT in focus

1. The Government never put up for public discussion what it was seeking to amend and control. The November 2020 Executive order bringing Over-The-Top (OTT) platforms or video streaming service providers such as Netflix, Amazon Prime and others under the ambit of the Ministry of Information and Broadcasting, exposed the real intentions of the Government.
2. The Ministry had no fix on the number of OTT platforms and users in the country, the concern was legitimate. After all, this is a business and along with the entertainment industry, had reached ₹1.82 trillion in 2019 and has been projected to cross ₹2.4 trillion by 2022 (FICCI report on media and entertainment).
3. In fact, digital media overtook filmed entertainment in 2019. And to throw in some more figures, there are around 550 million television and smartphone consumers in the country. The figures are expected to double by 2025.
4. There are over 200 million OTT subscribers. The major draw of OTT is this: the content being served to you when you want it.

## Challenging the rules:

1. This is in danger now with the IT rules having come into effect with the Government giving digital publishers three months to comply.
2. The Digital News Publishers Association — a 13-member collective of some of the leading news media companies, the Press Trust of India and now the News Broadcasters Association, have moved courts petitioning them to intervene and stop the code which not only restricts free speech but also far exceeds the mandate of the IT Act in empowering the executive from controlling online content.

## Rules elsewhere

1. Since the best of rules and guidelines are often enriched by best practices around the world, here is a brief list of some of these.
2. The EU Audiovisual Media Services Directive, updated three years ago, encourages self-regulation and co-regulation among players, with a specific focus on child safety and violence and hate speech.
3. In the United Kingdom, programming on video-on-demand services, including TV and online film services, is regulated by Ofcom which not only provides editorial rules but also has specific provisions for protecting those under 18 and the prohibition of content inciting hatred.



4. The United States, perhaps the most liberal of countries, expects Pay-TV players to follow Federal Communications Commission (FCC) guidelines — OTT content remains unregulated.
5. So, from a light touch to content governing children, most countries have set up an enabling architecture for OTT platforms to grow. India, it appears, has not followed in their footsteps, instead, charting a regulatory framework that has been characterised by excessive government overreach.

### Unease over free speech

1. Much like the Constitution makers who had decided to retain some of the most draconian provisions of laws controlling freedom of expression, the present government too appears to have followed the same path and has expressed its uneasiness over free speech on numerous occasions.
2. At the heart of the content, both news and entertainment is the freedom of expression — the life-giving force behind the content.
3. Finally, discussions and transparency indicate trust in the people by an elected government. There is little evidence of that in the framing of the IT guidelines.
4. Now, we even have the Government's draft on the proposed amendments to the Cinematograph Act of 1952, seeking to control the Central Board of Film Certification's power of certification.

### An unproductive idea

Socio-economic empowerment is more effective than coercion in cutting fertility rates.

### UP Population control rules:

1. Incentives and penalties form an integral component of the measures to control population growth, announced by Uttar Pradesh.
2. These steps are aimed at reducing U.P.'s total fertility rate (TFR), recorded as 2.7 by the National Family Health Survey-4 in 2016, a figure only lower than that of neighbouring Bihar (3.1 as of 2020 in NFHS-5).
3. Aims in this direction — increasing the rate of modern contraceptive prevalence, male contraception, decreasing maternal mortality and infant mortality rates significantly by 2026 — are, on the face of it, in line with what was stressed at the Cairo International Conference on Population and Development in 1994.

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4. The Cairo Consensus called for the promotion of reproductive rights, empowering women, universal education, maternal and infant health to untangle the knotty issue of poverty and high fertility.
5. But rather than taking steps in this direction, the Government seems to have taken the beaten path of a mixture of incentives and penalties to tackle what is a socio-economic issue as a demographic one.
6. In a draft Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021, the Government aims to incentivise one-child families and reward those with two children with perks in government schemes, rebates in taxes and loans, and cash awards if family planning is done among other sops.
7. Disincentives for those with more than two children include denial of subsidies and welfare benefits, a bar on applying for government jobs and taking part in local elections. Assam, also led by the BJP, is mulling a similar policy.

### Flawed approach:

1. The incentives/disincentives approach has been denounced in the past by the National Human Rights Commission after such measures were introduced by several States in the 1990s and 2000s, i.e., Haryana, undivided Andhra Pradesh, Madhya Pradesh, Rajasthan, Chhattisgarh and Odisha.
2. The Supreme Court, in 2003, upheld a Haryana government law barring persons with more than two children from contesting local body polls, but the legal grounding of the moves impinging upon the informed choice of the individual remained questionable.
3. Empirical studies of coercive measures have shown their discrimination against marginalised people in particular and with no discernible effect on population control, while more substantive poverty reduction schemes and economic reforms have raised labour productivity and employment opportunities, allowed families to empower women and reduced fertility rates as rational choices.
4. India's TFRs have been reducing substantially across most States, even in U.P. and Bihar with the highest TFRs.
5. To hasten the drop to replacement levels of fertility, States should tackle the socio-economic issues confronting India's largely youthful demography rather than seeking neo-Malthusian approaches on population control.

### Disable unconstitutional sections

Recently, while hearing an application filed by the People's Union for Civil Liberties (PUCL), the Supreme Court expressed shock that despite its declaration of Section



66A of the Information Technology (IT) Act, 2000 as being unconstitutional six years ago (Shreya Singhal vs. Union of India), criminal cases are still being registered by the police under this Section.

### **Continuing the unconstitutional:**

1. The PUCL said that 1,307 cases had been registered since 2015 across the States and therefore the Court must issue guidelines against the registering of FIRs by the police under this head.
2. In 2015, the Supreme Court had declared Section 66A of the IT Act, which made the online posting of information considered as “grossly offensive” a crime punishable by jail, as being violative of Article 19(1)(a) of the Constitution and not saved under the ambit of reasonable restrictions defined in Article 19(2).
3. It had also said that the expressions used in Section 66A were open-ended, undefined and therefore arbitrary.
4. In 2018 (Navtej Singh Johar v. Union of India), the Court read down Section 377 of the IPC criminalising “unnatural sex” as being unconstitutional.
5. Similarly, in Joseph Shine v. Union of India (2018), the Court held adultery as defined under Section 497 of the IPC as being manifestly arbitrary, discriminatory and violative of the dignity of a woman and therefore, unconstitutional.

### **Negligence by the police**

1. Undoubtedly, the registration of FIRs by the police under these sections is illegal and violative of the Court’s directions. Though such cases may not always be registered intentionally, negligence by Station House Officers (SHOs) must be nipped in the bud.
2. The supervisory police officers at the sub-divisional level must ensure that such sections if invoked due to lack of knowledge at the police station level, are removed at the earliest. The Superintendents of Police must fix responsibility on the erring officer and take corrective action.
3. Everyone responsible for the negligence should not only be answerable to the courts for contempt but also be liable for departmental action.
4. If the SHOs and others don’t mend their ways despite reprimands, their annual confidential reports could be dented with adverse entries.
5. Action can also be initiated under the new Section 166A of the IPC which provides punishment for up to two years for disobeying directions under the law.



## Avoiding registration

1. The best way to avoid the registration of offences under sections held unconstitutional is to educate police officers of all ranks about such provisions in basic training institutes.
2. Second, as the Attorney General of India, K.K. Venugopal had suggested, there could be a mention in brackets near the provision that the provision has been struck down so that FIRs are not registered under those sections.
3. Third, unconstitutional sections of the IPC can be disabled in the Crime and Criminal Tracking Network and Systems (CCTNS). Most States register FIRs in the CCTNS either on a real-time basis or in offline mode and synchronise this data with the State Data Centre as soon as connectivity is restored.
4. In case police stations don't have connectivity, the data (i.e., FIR in electronic format) are taken to the nearest police station that has connectivity and uploaded.
5. The CCTNS came in handy when the Supreme Court directed the States in 2016 to upload FIRs on official websites within 24 to 72 hours of registration. In Chhattisgarh, we have disabled these Sections in the system. The other states could follow suit.

The police must ensure that no FIR is registered under unconstitutional sections and no one is harassed for the negligent actions of SHOs.

## Growth matters but income levels matter more

India needs a sharp revival of demand for which higher per capita incomes are necessary.

### Economic data and implication:

1. The provisional estimates of annual national income (2020-21), released by the National Statistical Office, did not have any surprises, but for one, that is, there is nothing encouraging in the numbers
2. The agriculture sector continued its impressive growth performance, reiterating that it still remains a vital sector of the economy, especially at times of crisis.
3. The manufacturing sector continued its subdued growth performance, failing to emerge as the growth driver, with production interruptions due to localised lockdowns to be blamed.
4. The contraction in trade (-18.2%), construction (-8.6%), mining (-8.5%) and manufacturing (-7.2%) is a matter of concern as these sectors account for the bulk of low-skilled jobs.





5. Gross Domestic Product (GDP) at Constant (2011-12) Prices in Q4 of 2020-21 is showing a growth of 1.6%, slightly better than expected, but for a period when the restrictions on mobility and economic activity witnessed reduction, this performance looks below par.
6. Further, this growth, which is an improvement over the 0.5% rate of growth in the previous quarter, is a statistical artefact as it is not devoid of the base effect and seasonality which plagues quarterly estimates. The magnitude of contraction in the economy and the policy responses towards it raises an important issue, that is, the question of growth prospects for the next year.

### **Rising unemployment rate**

1. Contextualising the current growth rates in terms of some other macroeconomic data would provide us with a better perspective on growth recovery.
2. First, the unemployment data released by the Centre for Monitoring Indian Economy (CMIE) says, "In May 2021, India's labour participation rate at 40 per cent was the same as it was in April 2021. But, the unemployment rate shot up to 11.9 per cent from 8 per cent in April.
3. A stable labour participation rate combined with a higher unemployment rate implies a loss of jobs and a fall in the employment rate.
4. The job losses also bring out the high informality and vulnerability of labour in India as of the total jobs lost during April-May, 17.2 million were of daily wage earners.
5. Elementary textbook economics tells us that employment and aggregate demand in an economy are related via the channel of disposable incomes of workers. We also know that aggregate demand and output growth have a positive correlation.
6. Hence, the prospects of growth revival in the next year look bleak at the moment and from this perspective, it is worrying that in just April and May 2021, India lost 25 million non-farm jobs.

### **Low business confidence**

1. This gets reflected in the business confidence of Indian companies, which is the second important data point that needs to examine. Business confidence index (BCI), from the survey by the industry body FICCI, plummeted to 51.5 from 74.2 in the previous round.
2. The survey also highlights the weak demand conditions in the economy. It says, With household income being severely impacted and past savings being already

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drawn on during the first wave of infections, demand conditions can be expected to remain weak for longer.

3. Manufacturing Purchasing Managers' Index (PMI) also throws some light on the shape of things to come. PMI has slipped to a 10-month low indicating that the manufacturing sector is showing signs of strain with growth projections being revised lower.
4. Both BCI and PMI slipping down indicates that the overall optimism towards 2021-22 is low, which could impact investments and cause further job losses.

### **Demand recovery**

1. Growth recovery depends on on-demand recovery. External demand looks robust as India's exports touched \$32 billion in May 2021, 67% higher than in May 2020 and 8% more than in May 2019.
2. The combined increase in exports of April and May 2021 is over 12% indicating that global demand rebound is much faster than the domestic demand.
3. Stimulus programmes and a sharp decline in COVID-19 infections seem to be aiding these economies. What needs to be addressed immediately is the crisis of low domestic demand.
4. Since last year, the policy responses have been to rely on credit easing, focusing more on supply-side measures, with more and more guarantees by the government to improve the flow of credit to important sectors.
5. There has been less direct action by the government to support the vulnerable to alleviate their hardships. There were some sector-specific measures to alleviate distress in certain sectors, which were timely.

What is required now is a sharp revival in overall demand. Focusing on short-term magnified growth rates resting on low bases might be erroneous, as income levels matter more than growth rates at this juncture. Focusing on growth rates has its merits in the long term as achieving higher income levels require sustained growth for longer periods. Bangladesh seems to be doing this without much fanfare, but the quest for sustained higher growth has been elusive for India for the last five years.