

# EVA STALIN IAS ACADEMY - BEST IAS COACHING IN CHENNAI

12/24, Muthurangan Muthali St, West Tambaram, Chennai - 600045

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## *The Delhi ordinance is an unabashed power-grab*

**I**n May 19 this year, the Union government promulgated an ordinance to amend the Government of National Capital Territory of Delhi (NCTD) Act, 1991 that effectively nullified the Supreme Court judgment of May 11 on the powers over bureaucratic appointments in Delhi. After an eight-year long protracted legal battle, a five-judge Constitution Bench led by the Chief Justice of India D.Y. Chandrachud had unanimously held that the elected government of Delhi had legislative and administrative powers over "services".

The ordinance removes Entry 41 (services) of the State List from the Delhi government's control and creates a National Capital Civil Service Authority, consisting of the Chief Minister, Chief Secretary and Principal Secretary-Home, to decide on service matters in Delhi. Decisions of the Authority will be made through majority voting, which means that two Union-appointed bureaucrats could overrule the Chief Minister. Further, the ordinance provides that if a disagreement arises between the Authority and the Lieutenant Governor (LG), the decision of the LG shall prevail. The ordinance raises multiple legal and political questions regarding federalism, democracy, bureaucratic accountability, executive law-making, and judicial review. Several Opposition parties, barring the Congress, have supported the Aam Aadmi Party (AAP) government in its opposition to the ordinance. Congress leader Ajay Maken said that "cooperative federalism principles don't fit" Delhi since it is the "National Capital". In this context, it is important to examine how the ideas of federalism fit in unique contexts such as Delhi.

### **Asymmetric federalism and Delhi**

The position of Delhi in India's federal constitutional scheme is not straightforward. The Supreme Court, in its May 11 verdict, had noted that the addition of Article 239AA in the Constitution accorded the National Capital Territory of Delhi (NCTD) a "*sui generis*" status.



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The ordinance, which is an attack on federalism and democracy, erodes judicial independence, is an act of constitutional subterfuge, and destroys established norms on bureaucratic accountability

The Court held that there is no "homogeneous class" of Union Territories and States; rather, India's Constitution has several examples of special governance arrangements which treat federal units differently from each other. It noted that the special provisions for States under Article 371 are in the nature of "asymmetric federalism" made for "accommodating the differences and the specific requirements of regions".

Scholars of federalism have long argued that for countries with deep social cleavages along ethnic, linguistic, and cultural lines, an asymmetric model of federalism, which accommodates the interests of various social groups through territorial units, is desirable. India's federal system has been described as asymmetric due to the special status it accorded Jammu and Kashmir under Article 370 (before its dilution) and special protections under Article 371, and 5th and 6th Schedule Areas.

What is striking about the Court's judgment is that it used the asymmetric federalism framework to clarify the position of the NCTD in India's federal scheme. It remarked that though NCTD is not a full-fledged State, since its Legislative Assembly is constitutionally entrusted to legislate upon subjects in the State and Concurrent Lists, the insertion of Article 239AA created a "asymmetric federal model" for the NCTD. So, while the NCTD remains a Union Territory, the "unique constitutional status conferred upon it makes it a federal entity".

While the invocation of asymmetric federalism for Delhi is interesting, the Court was a mute spectator when this idea was annihilated in Jammu and Kashmir. Nevertheless, an articulation of the underlying principles of federalism in this case is welcome. The Court noted that the principles of federalism and democracy are interlinked since the States' exercise of legislative power gives effect to people's aspirations and that federalism creates "dual manifestation of the public will" in which the priorities of the two sets of governments "are

not just bound to be different, but are intended to be different". Such a clear expression of the federal principle punctures hollow exhortations of "cooperative federalism" that have been weaponised to centralise Indian politics.

### **The law and politics of federalism**

The presidential ordinance is problematic at different levels. First, the government's swift and brazen act of undoing a Constitution Bench judgment does not augur well for judicial independence. While the legislature can alter the legal basis of a judgment, it cannot directly overrule it. Further, executive law-making through an ordinance, as the Supreme Court held in *D.C. Wadhwa* (1987), is only to "meet an extraordinary situation" and cannot be "perverted to serve political ends". Most crucially, adding an additional subject of exemption (services) to the existing exemptions (land, public order, and police) of Delhi's legislative power listed in Article 239AA, without amending the Constitution, is arguably an act of constitutional subterfuge. Finally, creating a civil services authority where bureaucrats can overrule an elected Chief Minister destroys long-established norms on bureaucratic accountability.

For all of these reasons, the ordinance is a direct assault on federalism and democracy. Such an unabashed power-grab by the Union government needs to be opposed by all who care for the future of India as a federal democracy. However, Opposition parties do not often take a position on federalism on first principles or articulate it as a normative idea. Hence, AAP cheered the dilution of Article 370, and now the Congress refuses to oppose this ordinance. This poses limits for federalism to act as a counter-hegemonic idea. As the foundations of India's constitutionalism are threatened, we need a new politics of federalism that reflects and articulates the underlying values of federalism consistently.

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## Citizen activism that is missing from the wrestling ring

Over the past four months, a few nationally acclaimed wrestlers have been protesting against their federation chief, a strongman politician, who they accuse of both misusing his authority and of sexual harassment. On paper, the neat moral contrasts embedded in the saga seemed well suited to mobilise civil society opinion and force the government into a conciliatory posture.

Yet, as the protests met a disturbing denouement last week, the spurt of 'citizen activism' we saw a decade ago in the Nirbhaya protests and the Anna Andolan was nowhere to be seen.

The apparent impotency of the wrestler protests exhibits the narrow moral universe of middle-class rooted 'citizen activism'. This brand of activism was what steadily gained currency post-liberalisation, particularly through the spread of television and social media.

Historically, the high point of middle-class activism has lain in the colonial period. In the book, *Serving the Nation: Cultures of Service, Association, and Citizenship* (2005), the historian, Carey Anthony Watt, described "a vibrant 'associational culture'" in early 20th century India. Although this associational culture was hardly free of social conservatism and caste/community-based fractures, it also contained a pluralistic and egalitarian dimension. According to Watt, the "richly variegated, autonomous" public sphere revolved around socio-economic initiatives "undertaken by urban elites of the upper castes, lower-middle and middle classes, and directed towards individuals of lower social status."

### An evolution from the Nehruvian era

However, the middle classes retreated from active civil society participation from the Nehruvian era onwards, as they assumed control of the power networks within the state-centred political economy. Meanwhile, civil society came to be hinged around the framework of "segmental loyalties", which the social-anthropologist, Ernest Gellner, held to be an inescapable fate of the 'civil' space in all traditional, heterogeneous societies. While some scholars have taken the preponderance of caste/community-based organisations to claim that the country effectively lacks a modern civil society, others have appreciated the role of these organisations in aiding democratisation and exemplifying the "modernity of tradition". "In India, religion, caste, ethnicity and language have been effectively mobilised in articulating and representing group identities and interests," as Sarbeshwar Sahoo wrote in *Civil Society and Democratization in India* (2013).



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It was only in the decade of rule under the United Progressive Alliance that we saw a marked resurgence of urban, middle-class activism, particularly around issues of political corruption. In her book, *India's New Middle Class* (2006), the sociologist, Leela Fernandes, captured the rising discontent of the middle classes with the "corrupting influences of mass-based politics and vote banks", combined with latent "suspicions" towards "unions, subordinate castes and Muslims".

Brand 'Aamir Khan' symbolised this middle-class worldview, where technocratic governance and entrepreneurialism were equated with progress, and the realm of politics represented social division and 'barriers to development'.

Of course, forceful critiques of this "consumer citizen" activist model were mounted by many academics. John Harriss (2007) demonstrated, through research in the city of Chennai, that the "new politics of empowerment" ignored the concerns of the urban poor, viewing them to be "denizens" who need to be 'disciplined' and 'patronized' rather than "citizens" to be centred in the discourse and practice of development.

### A 'changing Indian sensibility'

Post-2014, the ideology of the Bharatiya Janata Party (BJP), and the personality of Prime Minister Narendra Modi, have effectively captured this middle-class space. In a recent paper, the political scientists, Aseema Sinha and Manisha Priyam, have framed the dominant political discourse as more of a demand-side phenomenon, reflecting the "changing Indian sensibility, especially among India's professional and middle classes."

Thus, the middle classes now represent a kind of a civil society base of the BJP, which perhaps explains a weakening attachment towards independent social actors, as the wrestlers discovered. "The consolidation of Hindu nationalism in India is being authored not only by parties or the state, but also by societal actors, specifically, ordinary middle-class Indians," as Ms. Sinha and Ms. Priyam wrote.

The frailties of the populist, personality-driven activism of the Anna Andolan have become clearer in hindsight. The same could be said about a similar brand of Leftist or neo-Gandhian activism, such as the Narmada Bachao Andolan (NBA) in Gujarat, centred around Medha Patkar. Championed by celebrities as diverse as Arundhati Roy and Aamir Khan, the anti-dam movement ultimately ended in failure. The scholar, Judith Whitehead, explained this failure to be a function of the NBA's disinterest in mobilising a wider political constituency among peasants and workers in rural Gujarat, and a narrow "ecological romanticism" which "tended

to privilege urban middle class perspectives".

However, we have not quite entered into a post-civil society era, and there still exists a (albeit circumscribed) space for popular mobilisation. In Tamil Nadu, labour rights organisations, led by the Communist-leaning Centre of Indian Trade Unions (CITU) compelled the M.K. Stalin government to stall the implementation of a new labour law. And, of course, the long-drawn farmers agitation succeeded in forcing the otherwise dour hand of the Modi government, demonstrating the continuing heft of these organisations in parts of northern India. Some of these groups have now given their support in favour of the protesting wrestlers.

Yet, we must remember, the activism of these organisations is also weighed down with inherent limitations. Even as the farmers' movement sought to cultivate "new solidarities across class, caste, gender, religion and regions" (Kumar 2022), many of them continue to be associated with the interests of landed "Jat" caste. Hence, the broad political support commanded by them in certain political contexts should not be seen as an automatic function of stable bonds of programmatic solidarity. The lower castes in Haryana, for example, might remember the experience of recurring anti-special economic zone protests, where farmer organisations have been critiqued for privileging the material interests of the Jat farmers and ignoring those of the landless workers.

Similarly, while certain forms of militant labour activism can succeed in getting significant concessions in Tamil Nadu, they are likely to be firmly suppressed in States such as Uttar Pradesh and Haryana. This is because labour activism, particularly of left-wing organisations, often requires the political umbrella of communist parties. These communist parties, which have largely been a part of government coalitions since the Dravida Munnetra Kazhagam-CPI(M) alliance of 1965. In Uttar Pradesh and Haryana, left-wing labour activism has been ruthlessly put down not just by the Congress but also by their erstwhile socialist/farmer allies. This regime continuity was immediately apparent in the Charan Singh government's fierce suppression of the 1970 Communist-led agitation of landless agricultural workers, perhaps the last such large-scale mobilisation of workers in Uttar Pradesh.

The state of the wrestlers' protests clarifies the need to look beyond the superficial, celebrity-dependent model of civil society activism. It is also a reminder that only a democratic process of building durable, programmatic solidarities can become truly capable of transcending the social ceiling of "segmental loyalties".

The state of the wrestlers' protests also points to the changed state of 'citizen activism' that India once saw a decade ago

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