

Indian Constitution—Federal in Form and Unitary in Bias: With Special Reference to the Judicial Interpretation of Parts I, XI and XVIII of the Constitutional Text

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Abstract

Federalism refers to the Constitutionally established relationship structure between the Centre and the States of India, which delineates and distributes powers within these divisions for better governance. However, the Indian system is a culmination of this federal format with certain qualities of a unitary system. There by the statement of Indian Constitution being federal in nature, but unitary is bias connotes to this mixed and modernist form of separation of power. The nature of the Separation of Powers in India is known to be more unitary or unitary in bias because of the unclear demarcation of legislative powers which lean towards according to precedence to the Union. This paper aims to examine this federal state of powers in light of the Constitution (One Hundred and First Amendment) Act, 2017, The Goods and Service Tax Act, 2017, the congressional emergencies in the late 19th century and other relevant court judgements.

Keywords: Unitary State, Federal State, One Hundred and First Amendment and Basic Structure Doctrine

INTRODUCTION

The federal nature of Indian administrative system for both the States and the Union is collectively derived from the Constitution of India. A federal nation is a concept under democratic institutions which divide the power almost equally amid the states and the union as a whole, with the perfect example as the United States of America. However, the Indian system is a culmination of this federal format with certain qualities of a unitary system. Thereby the statement of Indian Constitution being federal in nature, but unitary is bias connotes to this mixed and modernist form of separation of power. The India citizens enjoy a single citizenship accorded duly by the Central and subsequently, the states do not have the power to draft and enact their own Constitutions. The Constitution of India is the sole legal document that provides the power to legislate to both the states and the central government. This power is divided under the Seventh Schedule of the Constitution into three

consecutive lists that enlist matter on which a particular government (state or central) may legislate upon. The State List and the Union List contains 61 and 100 items respectively that accord exclusive power to legislate upon. The Concurrent List has 52 Items that include matters which have joint domain for both States and the Union. However, it has been established through case laws and under Article 254, the Union shall have a precedence over the State's legislation in times of a dispute regarding the power to legislate and enact.

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SCRUTINY UNDER PART I OF THE CONSTITUTION

The nature of the Separation of Powers in India is known to be more unitary or unitary in bias because of the unclear demarcation of legislative powers which lean towards according precedence to the Union. By examining the Constitution of India, the nature is evidently established to be more unitary in bias than quasi-federal. Part I of the Constitution deals with the distinction between the Union and the States in terms of territory. The States and its territories enlisted under First Schedule can only be changed or amended by the Parliament alone as provided under Article 2. Elaborating this power, under Article 3, The Parliament is the sole authority to form a new state by making amends to existing state territories, increase, diminish, alter the boundary of state including the power to alter or change names of existing states. This power is conferred solely upon the Union and the states shall not have the power to alter any aspect with regard to the territory or integrity of a state in India. The formation of states in India, does not have an exhaustive list for qualification, however, through history and precedence separation has been on the basis of linguistic or cultural differences. The formation of the then Andhra Pradesh from Madras was based on linguistic differences and to give effect to the same, Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 was passed by the Parliament. The Telangana movement, which first came to eminence in early 1953, was only considered with the passing of the Andhra Pradesh Reorganization Act, 2014 despite over half a century struggle. The bifurcation was demanded on basis of lack of development and opportunities which was a shift from the regular linguistic and cultural differences, although the move was also politically motivated wager by the then Sonia Gandhi led Congress. This unchecked power to alter states has not been yielded far too many times by the Union in the past until the abrogation of Article 370 by the NDA led Government in 2019 through the enactment of The Jammu and Kashmir Reorganisation Act, 2019. This move too was criticized to be politically motivated with other biases taking control. The power to alter the territory of Jammu and Kashmir is incidentally derived from Part I of the Constitution to the effect of declaring the state as Union Territories. This power is unhindered and gives an entirely unitary form to the separation system in terms of amendment of state territories.

CHANGES POST THE ONE HUNDRED AND FIRST AMENDMENT TO THE CONSTITUTION

Certain other provisions that demarcate specifically, the power division between the State and the Union are under Part XVI of the Constitution which deals with the Legislative and Administrative relations. As discussed above, the power to legislate has been divided through lists under Article 246. While it is impermissible to legislate against the Basic Structure Doctrine, various laws have been successfully challenged in the Supreme Court for violating this doctrine. The ‘three-fold distribution of legislative power’ accord supremacy to the Parliament over any State Legislatures. The Constitution provides for separate lists to avoid repugnancy which shall arise when both the central and state legislate upon same items, therefore, the courts ruled that in order to avoid such repugnancy, shall have to legislate on topic which are allied and cognate in nature [1] Apart from legislating on the items enumerated under the respective three lists, another express provision with respect to law making power is for the purposes of Taxation. Under Article 246A, sub-section(s), the State has the power to enact laws for the purposes of goods and service tax for intra-state purposes, and the Parliament has the power to do, on such tax for inter-state trade and commerce purposes. Prior to The Constitution (One Hundred and First Amendment) Act, 2017, Indirect taxes are within the states domain to enact laws on. This amendment included and simultaneously excluded any such items that had concurrence to both union and state under the Concurrent List. Post the amendment, enactment of The Goods and Service Tax Act, 2017 is a bypass to such power, leaving the state to legislate upon smaller indirect taxes such as toll-road, entertainment etc. The GST Act legislates and covers both inter and intra state indirect taxation provisions.

Similarly, Article 248, the Constitution, accords Residuary Power to the Parliament which provides for the power to enact any law on an item which is not enumerated under Concurrent or State list and

sub-section (2) vests the express power to legislate on any law in respect to taxation when such item is absent from the preexisting lists. To avoid repugnancy as stated above, the Constitution provides under Article 254, a primacy to laws enacted by the Union over that by States. According to this Article, any law so enacted by the Union, irrespective of time of enactment, takes supremacy over the state law, rendering the latter void. This is the meaning and application of the Doctrine of Repugnancy. In the case of *M. Karunanidhi v. Union of India* [2] it was held that for this doctrine to apply, the state and the union law must be directly inconsistent with each other and such must be irreconcilable, and a situation of harmonious construction is impossible for both the acts. Sub-section (2) of Article 254 provides that any certain state provision which is inconsistent to that of a Union Act shall require President's assent. Additionally, under Article 249, the Union has the power to legislate in national interest provided the state consents to such legislation through a majority. Under Administrative relations, Article 257 accords control to union over states in certain matters such as matters related to military or security. This supremacy also expressly grants a unitary framework as opposed to the quasi-federal nature. Another interesting observation is the enactment of The Constitution (One Hundred and First Amendment) Act, 2017 which made possible for the Parliament to make certain changes to the lists as they deem fit in order to pass the GST Act without legal reproach.

EMERGENCY PROVISIONS AND THE FEDERAL STATE

Emergency Powers in India are part of the Basic Structure of the Constitution. Thereby, cannot be amended by the Parliament under any circumstance. These emergency provisions enumerated under Part XVIII of the Constitution deal with the procedure and processes during an emergency. Under Article 352, only the President has the authority to proclaim an emergency anywhere within India post the Union cabinets approval in writing for such proclamation. There are essentially, three types of proclamation: National Emergency, Failure of state machinery, and Financial Emergency. Article 356 provides for proclamation of emergency in case of failure of constitutional machinery in state, which provides that on this own accord or from a report from the governor, may proclaim a state emergency and assume the control of the state's framework which includes the power to direct the executive, enact any necessary laws as provided under Article 357, declare it as a union territory, and suspend Article 19 for a period of six months which can be further extended in the Houses. This assumption of power previously has been waived in every state in India, except in Telangana and Chhattisgarh. The incumbent Congress under Indira Gandhi regime and the post-emergency Janata Party were notoriously known for proclaiming president's rule in a state and have successfully done so around 39 times between 1966 and 1977 to subdue rising insurgent groups in a state (*For instance, Gujarat in 1974, against the protests lead by student forces due to the rise in food grains, and corruption among other things*). In the case of *S.R. Bommai v Union of India* [3] when the emergency was questioned, the court held that the federal structure in India is unique and cannot be compared to that of any other country. Such unhindered power, although open to judicial review is a mammoth provision which is easy to abuse to bring a state into abeyance just as done by the Congress in the late 20th Century.

CONCLUSION

Considering the Parliament is the sole authority to amend the Constitution, barring some elements, the shift from a quasi-federal to unitary system is wholly through amendments such as the 101st one. The unitary in bias format is due to the primacy and supremacy union enjoys and usurps through various existing provisions in the Constitution and through such amendments. While the textual interpretation is to promote national interest and public good, politically motivated actions and wagers are taking precedence over any intended national interest, making the separation of powers lean towards union's supremacy.

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