

LEGISLATIVE SUPREMACY IN INDIAN FEDERAL CONSTITUTION

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ABSTRACT:

There is no watertight segregation of federal structure in the world. It has been developed in accordance with the actual exigency of modern political experiments and experiences. Indian Constitution is not an exception to it. Indian federal structure is a federal system of its kind which has been influenced by the history, by the present circumstances and by the need of the future. Historically, India has been ruled by different dynastic like Mourya, Gupta, Mugals and Britishers. There influenced can be clearly visible in Indian federalism. Ruling from the center was a common feature of these dynastic rules. The influence of the British Rule in Indian federal structure is visible from the fact that the makers of the constitution followed the Government of India Act 1935 while making Indian federal constitution. However, the contemporary situation of partition of India in 1947 led the makers of the constitution to make India a centralized federalism. Again they were aware about the fact that India is a land of diversities and its unity is essential and it must be preserved. It can be achieved if special power is given to the center. Thus, the present constitution is tilted toward the center while sharing the power between the center and the states.

INTRODUCTION:

Federalism is an organic concept. It has sprung not from any mythological speculation but from the actual exigency of modern political experiences. Though it was incipient during the Greek period but came to lime might only when the American adopted it. India on its independence decided to adopt the federal structure to preserve the great ideological heritage

of unity in diversity. Thus federalism became an integral part of the Indian Constitution. It is the basic feature of the Indian Constitution.

The Constituent Assembly was constituted to frame the Constitution for India on 6th of July, 1946. Pandit Jawaharlal Nehru moved the Objective Resolution in the Constituent Assembly on 13 December 1946 which envisaged a federal union for India in which the territory shall possess and retain the status of autonomous Units, together with residuary powers, and exercise all powers and functions of government and administration, save and except such power and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting their form.¹ The only reason behind this was that the Muslim League might be persuaded to co-operate for framing a constitution for a united India.

The federation on the above was a loose federation not like the United States under the Articles of Confederation. But many people in the Constituent Assembly argued in favour of a strong center. Mr. N. G. Ayyanger observed while introducing Union Powers committee's Report. The Committee came to the conclusion that we should make the Center in this country as strong as possible consistent with leaving a wide range of subjects to the Provinces in which they would have the utmost freedom to order as they liked.² Persons like Purushottamdas Tandon voiced 'for a strong center and opposed of giving residuary power to the provinces,' Sri Krishna Sinha argued "India must have a centralized Republic". S Radhakrishnan was also a supporter of a centralized federal system and said "there is an urgent need for a strong center". Dr B R Ambedkar was cheered by the house when he declared that as far as he was personally concerned, he would like to have a strong center, "stronger than the Center we had created under the Government of India Act, 1935."³ Austin observed that the Assembly had two main purposes when bestowing such broad powers on the Union government in the Union and Concurrent Lists. One was constitutional flexibility. The second purpose of these extensive powers was to enable the Union to meet the needs and to withstand the pressure of the times.⁴

CENTER – STATE LEGISLATIVE RELATIONSHIP:

¹ Para 3 of the Objective Resolution

² See III, Constitutional Assembly Debates,39

³ Hugh Tinker (1963) Tradition and Experiment in form of Government", in CH Philips, Politics and Society in India, London, P.157

⁴ Chaubey R. K.(2007) Federalism, Autonomy and Center-States Relation, Satyam Books, Delhi, P.60

There is not any calculative formula for the distribution of powers in the federal theory of the world. It differs from federal states to states. But in general the national important matters are placed in the central list and the local or regional issues or problems are dealt with the federal units. Again, distribution of powers between the federal government and the units is generally accomplished in accordance with the local needs and political background of that country and India is not an exception to it. The principle on which division of powers is based is, according to Professor K. C. Wheare, is quite clear and simple. He writes:⁵ “By the federal principle I mean the method of dividing the powers so that the general and the regional governments are each within a sphere, co-ordinate and independent.”

On its independence, India decided to form a federal state with a view to achieving national unity and integrity of the nation. So the makers of the Indian constitution decided to follow the Government of India Act – 1935 in dividing the legislative, executive and financial relationship between the center and its units. In fact, N Srinivasan has rightly observed that “it was by virtue of its provincial part and by placing the Center- Province relations on an unmistakably federal basis that the Government of India Act, 1935 marked a definite milestone in the constitutional history of India. For a student of the Indian federal system, it is both necessary and interesting to note that the pattern of union-state relations under the constitution of independent India bears so close a correspondence to the scheme of center-Province relations formulated in the act of 1935 that our new constitution has, not without some, justification, been described as a ‘palimpsest’ of the Act.”⁶ The Government of India Act 1935 had proposed to establish an All Indian Federation including the British Indian Provinces and the Princely States. The proposed federation had 11 Governor’s provinces, 6 Chief Commissioner’s provinces and all those states that agreed to join it. Again, it proposed the division of the federal subjects which has been followed by the makers of the Indian Constitution. In fact, it was the scheme of the federation and provincial autonomy which divided the subjects between the center and the states. It revised the division articulated under the Government of India Act 1919 and contained three lists, such as Federal, Provincial, and Concurrent Legislative Lists. And the independent India adopted this division while framing the constitutions.

⁵ Where K.C, (1947)Federal Government, Oxford University Press, New York

⁶ Srinivasan N. (1954) Democratic Government in India, The World Press Ltd. Calcutta,1954,p-143

Federalism in India-mainly Historical----- British Parliament had enacted a federal constitution for Canada in the BNA Act 1867 and a federal constitution for Australia in the Commonwealth of Australia Constitution Act, 1900. The Canadian Constitution conferred enumerated powers on the Provinces and residuary powers on the center, but this was done by reference to two Legislative Lists contained in sections 91 and 92 of the Act, a concurrent legislative list in respect of agriculture and immigration being provided for in sections 95. The Australian Constitution, following the American model, conferred enumerated powers on the center, section-51. Only very few of them were exclusive (section-52) and conferred residuary power on the States.

The Government of India Act 1935 (GOIA) and the problems before the British Government:

Under this Act, the Muslim demanded- residuary power on provinces & the Hindus demanded the residuary power to be vested on the federation. The Britishers found a solution out to it. They conferred the residuary power in the hand of the Governor General. The other provisions are as follows under the three Lists.

1 - List -1- the exclusive power of the center,

List -2- the Provincial legislature had the exclusive jurisdiction.

List-3rd-the central and the provinces had concurrent jurisdiction.

The Act of 1935 conferred the residuary power in the hand of Governor-General to be exercised in his discretion. The Indian Constitution followed the GOIA 1935 while accepting the entire three lists but they enlarged the lists and residuary power that have been conferred on the Parliament.

Gwyer C.J. observed that "The attempt to avoid a final assignment of residuary powers by an exclusive enumeration of legislative subjects has made the Indian Constitution Act unique among Federal constitutions in the length and details of its Legislative Lists." ⁷

⁷ Khanna. Hansraj, Making of Indian Constitution, Eastern Book Company, Lucknow P.219

It may be noted here that our constitution followed the Canadian Constitution in other two respects - 1- The Federal Canada was not formulated by the independent states having their own constitutions to form a Union. Nova Scotia and New Brunswick the two dominions under the name of Canada which was re-divided into Provinces. Indian Federal state was also formed by the merger of many states and then re- divided into Provinces.

2- In both the Canadian & Indian Federal systems, there is a single Constitution for the Federation and also for the states

The GOI Act 1935 was the third federal constitutions framed by the British Parliament. As a result, the framers profited from the experience gained from the working of the Canadian and the Australian constitutions. They not only gained on the political plane but also the interpretation made by the highest courts of their states and the Privy Council. It is clear that the GOI Act 1935 followed the Canadian models but with certain modifications to avoid the clashes between the Federal States and the Federal Union. The Constitution of India while adopting the GOI Act 1935 benefited largely to frame the Legislative Relations between the two sets of Governments - the Center & the States. The Framers of the Indian constitution prepared the Lists in the 7th Schedule exclusive for both the governments of the Center and the States. This mode of distribution of Legislative power has the effect of securing the States' exclusive legislative power to raise revenue by the taxes which could not ordinarily be impinged by the center. Our Constitution confers the Residuary powers on the Center, not like the US and Australia where it is vested with the federal units.

Constitutional Provisions in the Constitution of India:

The Constitution of India has exhaustively divided the Legislative, Administrative and Financial relations between the Center and the States. The Part-XI, Chapter- 1 contains the Legislative relationships which are mentioned in the Seventh Schedule of the Indian Constitution. In this, there are three Lists, such as Union List, State List and Concurrent List which are discussed from Articles 245-255. Article 245 defines the territorial jurisdiction of the Parliament and the States Legislatures. It means the Parliament may make laws for the

whole or any part of the territory of India and the State Legislatures on the other hand, may also make the laws for the whole or any part of the state.⁸

Article 246 of the Indian Constitution distributes the powers in different spheres of List-1, i.e., the Union List - 246(1) consisting of 100 items; List-2, i.e., the State List includes 61 items.

Under Article 246(3) the State Legislature has exclusive power to make law; and under Article 246(2) which is Concurrent List includes 52 items. Both the Parliament and the State Legislature make Law in the List – 3.⁹ But here also the Parliamentary laws have precedence over the laws made by the states.

Again, Article 248 vests the Residuary Power with the Center.¹⁰

A clinical observation on the above three lists reflects that all important and vital matters are either in the union or concurrent lists. The most important items of the Union list are defense, foreign affairs, banking, currency, coinage, postal, telecommunication, etc. The Concurrent list includes general law and procedure, civil procedure, evidence, marriage, divorce, property, law, contracts etc. It also includes economic and social planning such as social welfare, trade union, training of labour, legal, medical and other professions, price control, acquisition and requisition of property etc. The State List covers the matters which have local interests like law and order, police, local governments, public health and sanitation, agriculture, fisheries, state taxes, and duties etc. Though the lists of the Seventh schedule are fairly exhaustive, situations may arise when the parliament may have to undertake legislation on matters not covered by either the union list or concurrent list. Such cases have been rare so far and there are not many reported decisions, where union law has been attributed solely to residuary power.¹¹

The powers of the state legislature under List – II of the Seventh Schedule of the Indian constitution are also not an absolute one. It must be interpreted in accordance with the List-I and III. Certain heads of legislation which in the first instance belong absolutely to the states

⁸ Article 245

⁹ Article-246(1) (2) (3)

¹⁰ Article 248

¹¹ Chauby R .K (2007)Federalism Autonomy And Centre –State Relations, Satyam Books , Delhi, P.66

may become the subject of exclusive concern of parliament if an appropriate declaration is made by the parliament in this behalf.¹² Thus, by making such declarations under entries 23, 27, 52, 54, 56, and 64 of List –I, the Parliament has assumed jurisdiction over national highways, ports, industries, mines and mineral development, inter-state rivers and river valleys and institutions of scientific and technical education which are ordinarily State subjects. Further, there are certain heads, which are partly within the jurisdiction of the States and partly within the competence of the Parliament. Thus, entry 11 of the State List gives education together with universities to the legislative jurisdiction of the States but expressly makes this power subject to the provisions of entries 63, 64, 65, and 66 of List -1 and entry 25 of List-3¹³. Again under State List item 18 gives exclusive power to the state to make law on land but the 42nd item of the Concurrent List gives power for acquisition and requisition of property. Though these items look like in the State List when reading with other Lists, they seem like a part of the Concurrent List.

Constitutional Distribution of Legislative Powers from Article 245 to 255:

Article 245 (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.¹⁴

Article 246 (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State^{1***} also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).

¹² *Ibid*,P.66

¹³ Entry 11 of the State List was transfer to List 3 by the 42 amendment but restored under 44th amendment

¹⁴ Article-245(1) (2)

(3) Subject to clauses (1) and (2), the Legislature of any State 1*** has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included 2 [in a State] notwithstanding that such matter is a matter enumerated in the State List.¹⁵

Article 247 notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

Article 248 (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. (2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.¹⁶

Article 249 (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two- thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein: Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be

¹⁵ Article-246 (1) (2) (3) (4)

¹⁶ Article-248

in force, except as respects things done or omitted to be done before the expiration of the said period.¹⁷

Article 250(1) says that notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.¹⁸

Article 251, Nothing in articles 249 and 250 shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.¹⁹

Article 252 (1), If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

¹⁷ Article-249 (1) (2) (3)

¹⁸ Article-250 (1) (2)

¹⁹ Article-251

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.²⁰

Article 253, notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.²¹

Article 254 (1), If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State 1 *** with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.²²

Article 255- No Act of Parliament or of the Legislature of a State 1***, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given—(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

²⁰ Article-252 (1) (2)

²¹ Article-253

²² Article-254 (1) (2)

(b) where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) where the recommendation or previous sanction required was that of the President, by the President.²³

Parliamentary Supremacy in the sphere of Legislation:

Federalism believes in rigidity in which distribution of powers has been fixed by the constitution. But as the needs and situations of a country are not fixed, it needs the flexibility to meet the changing demands. The makers of the Indian constitution were wise enough to deal with this situation. They invented such a mechanism in which changes can be made without disturbing the federal set up.

The Congress government after 1947, unfortunately, chose not to 'develop an alternative State structure', but maintain the police, paramilitary and other civil organisations inherited from the British.²⁴

R.P. Dutt was not wide off the mark when he remarked:

The dominant moderate leadership in effective control of the Congress machinery and of the Ministries was in practice developing an increased cooperation with imperialism ... (and) acting more and more openly in the interests of the upper-class landlords and industrialists, and was showing an increasingly marked hostility to all militant expression of forms of mass struggle ... Hence a new crisis of national movement began to develop.²⁵ But then, the constitutional provisions of India reflect the parliamentary supremacy in Indian federal set up. Those are as follows.

a. National Interest under Article 249:-²⁶

²³ Article- 255 (a) (b) (c)

²⁴ Shepperdson M. S and Simmons C. (1998), *The Indian National Congress and the Political Economy of India 1885-1947*, Aldershot.

²⁵ Das Suranjan (2001) *The Nehru Years in Indian Politics*, University of Calcutta Centre for South Asian Studies, School of Social & Political Studies, University of Edinburgh, P.12

²⁶ Article-249

The Constitution of India empowers the Central Government to legislate on State List whenever the Rajya Sabha passed a bill by two third majorities with present and voting and it is of national interest.

Under the above provision, the Parliament passed the Essential Supplies (Temporary Powers) Amendment Act, 1950 and the Supply and Prices of Goods Act, 1950. In August 1986, The Central Government extended the operation of Article 249 to Jammu and Kashmir by amending the Presidential Order of 1954 as it was passed by the Rajya Sabha which was meant for national interest, i.e. to control the infiltration from Pakistan border.

b. Proclamation of Emergency under Article 250-:²⁷

It empowers the Union Government to make in State subjects when Emergency is in operation.

c. Legislation by Agreement-:

Under Article 252, the Union Government has the power to make laws in State List, when two or more States authorize the Central government.²⁸

The States of Andhra Pradesh, Bombay, Patiala and East Punjab States Union, Madras, Hyderabad, Madhya Bharat, Saurashtra and Uttar Pradesh passed resolutions authorizing the Union government to legislate for the control and regulation of prize competition. The Parliament accordingly passed the Prize Competition Act, 1955. After receiving a request from the Bihar and West Bengal Government who authorizes the Union Government to make law on Damodar Valley Corporation, the Union Government framed the law to control the river water. After the resolutions by the nine States, the Central Government passed the Estate Duty Act, 1953.

d. Legislation for giving effect to International Agreement-:

The Union Government has the power to make law on an international agreement under article 253 of the Constitution. ²⁹

e. Proclamation of Emergency under Article 356(1)(b)-:

²⁷ Article-250

²⁸ Article-252

²⁹ Article-253

If the Constitutional machinery of a State failed to carry out the administration in accordance of the Constitution, the Union Government may impose Emergency under article 356 (b). It is the duty of the union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution.³⁰

f. Residuary power:-

Indian Constitution vests the residuary power of Article 248 under the Union Government. It says that the Union Government has the exclusive jurisdiction over the residuary power and makes law on the subjects which do not fall under Union, State and Concurrent Lists.³¹

g. The Union supremacy:-

Article 246(2) says that in case of a contradiction in a law made by both the Center and the States which the Parliament is competent to enact, the Central law will prevail.³²

Different Commissions and Committees on Federalism: ³³

- **Administrative Reform Commission (ARC) of 1969:** The ARC believes that the unity of India is very important so center must have powers to protect the unity and integrity of India. But the concentration of power at the administrative level should be avoided as it brings inefficiency and resentment. Again, it says that no constitutional amendment is necessary for better center-state relations as the constitution has enough provisions to meet any situation and solve any problems that may arise.
- **Sarkaria Commission on Legislative Field:** The commission recommended that the residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament, while the residuary field other than that of taxation should be placed in the Concurrent List.
- **Punchi Commission (2010):** Federalism is a living faith to manage diversities and it needs to be supported by institutional mechanisms to facilitate co-operation and co-ordination among the Units and between the Units and the Union. Co-operative

³⁰ Article-356(b)

³¹ Article-248

³² Article-246(2)

³³ www.interstatecouncil.nic.in

federalism is easily endorsed but difficult to practice without adequate means of consultation at all levels of government.

Conclusion:

From the day of British era up to the present day, one nation one law is a fact of the Indian federal system. The impact of 'British Rule' on creating one nation one rule is clearly visible from the historical laws which have been framed by the Britishers and are still continuing. It was not limited to the pre-independence only but also after independence the central laws having all India implications can be seen in the Indian federal galaxy. Following the path of the British administration, the Indian Parliament enacted laws for the whole country with a view to fulfill the one nation one law theory. In almost all fields, the laws have been enacted for the citizens of India. It may be social, political, legal, economic, religious, personal laws, marriage, divorce, air, water, environment, security, public, private, etc. In every field, the Union Government has enacted laws which are applicable for whole India or has affected the Indian federal structure. It proves that centralisation of Indian federal system has a historical legacy, the demand of the present when the constitution was framed and the need of the future where the nation has to face many national and international challenges.

It is a fact that throughout these years of the working of the Indian Constitution, the items of Central List and the Concurrent List have been increased whereas the items of State List have been decreased. It is also true that the residuary power has been conferred to the center in our federal constitution. These facts of the Indian federalism were clearly observed by all the commissions and committees. All are agreed that the unity and integrity of India is important and it must be preserved. They believed in an indestructible union with a destructible state. All belief in cooperative and coordinating relations between the federal government and the federal units in Indian federal set up. However, from the above provisions it is clear that the supremacy of the Parliament has been established in Indian federal structure.