

The Role of Indian Judiciary in Upholding the Spirit of Federalism: A study

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Abstract: *Federalism basically concerns the allocation of authorities (Legislative and Executive) between the Central Government and provincial governments, enabling each entity to operate autonomously within its designated domain. In a large nation such as India, the significance of federalism is crucial due to the diversity of individuals from different backgrounds and cultures. The necessity for an independent body like the Apex Court to maintain the delicate equilibrium of governing powers assigned between the central authority and the constituent units and to avert any intrusions by either party into the jurisdiction of the other, is a fundamental attribute of a federal state. An autonomous institution such as the Supreme Court is vital for preserving the delicate equilibrium of governing powers between the central authority and its constituent subdivisions, and for preventing either entity from infringing upon the jurisdiction of the other, which is a fundamental characteristic of a federal state. The Supreme Court and High Courts in India are crucial in delineating and advancing “Indian Federalism”. This article analyses the Supreme Court’s protection of federalism throughout the pre- emergency and post-emergency periods through numerous court rulings.*

Keywords: Judiciary, Supreme Court, Federalism, Central legislator, State Legislators, Distribution of powers, Central Government, State Governments

I. INTRODUCTION

Federalism emphasises the distribution of legislative and administrative authority, enabling government at dual levels, which may encompass municipal administrations inside a state. A federal system necessitates a distinct delineation of authority between the central government and provincial governments, each of them functioning autonomously within their designated spheres

and devoid of hierarchical supremacy. To prevent anarchy and discord between the two competing jurisdictions, authority has been distributed between the central government and the States, with the division of power being a fundamental characteristic of federal constitutions. The Constitution of India classifies legislative subjects into three categories: the Union List, the Concurrent List, and the State List, as specified in the VII Schedule of the Constitution.¹ The three legislative lists delineated the powers conferred upon Parliament, the state legislature, and those jointly held by both entities. If a subject is not included in any of the three Lists, it shall be deemed a residual authority of Parliament.² The conventional horizontal division of governmental powers among the legislative, executive, and judicial branches is augmented by the vertical aspect of federalism, which asserts that subordinate levels of government obtain their authority and legitimacy directly from the populace, rather than from higher levels. Federalism denotes an allocation of political authority. Federalism is defined as a system of power distribution among multiple governmental entities. This framework guarantees that various tiers of government possess formal authority over the identical territory and populace. The various administrative layers, including a central authority and subordinate regional bodies termed states or provinces, possess significant responsibilities and powers at their respective tiers. Thus, federalism is

¹ V.N. Shukla’s *Constitution of India* 794 (EBC, 2017), Reprinted 2019.

² *Ibid.*

inherently a component of constitutionalism as it creates a structure for vertical governance. Federalism is a spatial structure for allocating authority, in contrast to the functional distribution of power between the legislative and executive arms of government³ Subsequent to the establishment of the judicial concept pertaining to the “basic structure of the Constitution”⁴, The Supreme Court may evolve into one of the most formidable intrinsic tribunals in the nation, owing to a significant expansion of its judicial review authority, much exceeding the legislative and administrative actions pertaining to constitutional modifications. This enlargement encompasses the augmentation of the Apex Court’s jurisdiction to examine the Constitution. The Supreme Court’s jurisdiction to sanction constitutional amendments renders this possible. Subsequent to the nation’s attainment of independence, the Judiciary has primarily transitioned from stringent legalism and constraints to legal liberalism. This movement has transpired since the nation attained independence. The courts have largely refrained from regularly applying a rigorous federalist or fixed interpretive approach in their decisions over time. This indicates that they have refrained from acquiring such an attitude. They have consistently abstained from implementing such a strategy. Its response to legislative content and changing conditions leads to diverse and sometimes impartial assessments of the union. This is attributable to its reaction to both factors. This demonstrates its susceptibility to both factors. A scholar contends that “the Supreme Court of India has failed to establish impartial procedural regulations that prevent the conflation of partisan governmental motives with genuine federal interests” Subsequent to the 1989 election and the decline of the Congress party’s dominance. This comment addresses the Supreme Court’s inability to enforce such regulations. This argument is predicated on the absence of regulations set by the Supreme Court of India. The Supreme Court's failure to enforce such statutes validates this reasoning⁵.

Federalism In Indian Context

During the initial phase of the pre-emergency period, the courts adopted a notably moderate and rather centrist viewpoint on the matter. The investigation’s results indicated that cases involving the safeguarding of fundamental rights were assessed more positively than those pertaining to the maintenance of state rights. Moreover, the superior courts rendered decisions about the conflicting viewpoints articulated by the legislative and state administrations. Furthermore, the superior courts delineated the standards for constitutional interpretation regarding the relationship between the federal government and the individual states. In contrast, these patterns have become more complex due to additional breakthroughs, leading to a range of effects of differing magnitudes. The Supreme Court has been striving to attain equilibrium among state viewpoints while operating within the intricate framework of the Constitution's distribution of powers in the federation. This clarifies the nature of situations as they occur. The Indian legal system has developed a definitive framework of adjudicative procedures to address the identified difficulties. This was performed to ascertain that reaction.

Structure of Legislative Authority Distribution

The distribution of power between the national government and provincial governments are arguably the foremost issue of federalism that the court has sought to address. The federal government is empowered to assume specific responsibilities. Numerous cases occur where legislation relevant to one legislative body’s jurisdiction simultaneously affects or relates to another legislature's domain. In such instances, The judiciary examines specific elements of the

³Stefanovic, A. (2017). Role of the judiciary in shaping federations: cases of the Supreme Court in the United States of America and the Court of Justice in the European Union. *Journal of Liberty and International Affairs*, 3(Supp. 1), 74-90.

⁴Keshavananda Bharti vs State of Kerala, (1973) 4 SCC 225

⁵Sudhir Krishnaawamy, “Constitutional Federalism in the Indian Supreme court in Unstable Constitutionalism: Law and Politics in South Asia”, ‘Cambridge University Press’, (2015), 380

contested regulation to determine its “pith and substance”⁶ regarding the relevant statute. P.M. Bakshi contends that “In categorising a specific issue, the judiciary assesses its fundamental nature.” Consequently, as the substance is included in the Union List, The inadvertent breach of List II by the statute would not compromise its legitimacy. An outline relates to

“F.N. Balsara”⁷ The responsibility was to execute the “Bombay Prohibition Act, 1949.” The inquiry pertained to the classification of the “Bombay Prohibition Act, 1949” as either Section 31 of List II of the Constitution” or “Entry No. 19 of List I.” The Court determined that although the alcohol prohibition would influence its borrowing ability, this was an unintended outcome of the act's primary objective. The Supreme Court of India ruled in favour of the provincial administration based on the notion of “pith and substance”⁸ “The doctrine of colourable law”⁹, There are parallels between the notion of “colourable law” and other associated notions. The Court use this concept to ascertain the essential intent and outcome of the statute, rather than concentrating on its superficial objectives and effects. Judicial opinions demonstrate the diverse factors employed to understand the limitations placed by central and regional authorities on both central and state powers. Article 248 of the Constitution mandates that the judiciary's interpretation of the legislature's residual powers includes all matters not enumerated in List II.

This is illustrated in the case of “Attorney General for India vs. Amrat Lal Prajivandas”¹⁰. The overwhelming finding by a nine-judge panel that affirmed the previous result in the case of “UOI vs. H.S. Dhillon”¹¹. The Court determined that Parliament possesses the authority to legislate both scrutinized statutes. These legislative ideas pertained to comprehensive state security, smuggling, and foreign currency. According to the Court's interpretive framework, where the legislative integrity of Parliament was contested, the Court needed to assess whether the legislation pertained to all items in List II. If this is not the case, additional inquiry is unwarranted, and it can be inferred that the legislature possesses the authority to legislate in accordance with the stipulations in Lists I and III, as specified in Article 248 of the Constitution¹².

Centers Encroachment on State's Executive Power

A key concern in federalism law is the capricious implementation of emergency measures by the central government regarding the states pursuant to Article 356 of the Indian Constitution. The Supreme Court in “State of Rajasthan v. Union of India”¹³, assessed the intricate issue as a “constitutional quagmire” intended for settlement by the central government in accordance with the Constitution. The Court acknowledged that Article 74(2), pertaining to the president's authority, prohibits courts from evaluating the recommendations of the COM¹⁴ to the union executive. The

⁶The philosophy of pith and substance asserts that the real subject matter, rather than its analogous effect in a different domain, is under scrutiny. Consequently, it can be asserted that the notion of pith and substance pertains to identifying the fundamental nature of a statute.

⁷The State of Bombay & ors vs. F. N. Balsara, (1951) SC 318

⁸Madhaav Khosla', “Oxford India short Introduction: the Indian Constitution”, “Oxford Delhi Publication” 2012, PP-60

⁹The theory of colorable laws concerns the legislature's ability to pass a statute.

¹⁰Attorney General of India Vs. Amrat Lal Prajivandas, (1994) 5 SCC 54

¹¹Union of India Vs. H S. Dhillon, (1972) AIR 1061

¹²Residuary powers of Legislation

¹³State of Rajasthan Vs. Union of India, (1977) INSC 145

¹⁴Council of Ministers

Court determined that the president's actions were consistent with Article 356.¹⁵ This relates to the collapse of constitutional governance in a state, creating a legal provision subject to judicial review; thus, it does not exclude judicial evaluation of further relevant elements. A.K. Roy versus Union of India¹⁶, Conversely, it signified a strategic evolution. The Supreme Court observed that, following the repeal of Clause 5 of Article 356¹⁷, The reasoning utilised in the Rajasthan case cannot in any manner dictate virtue.” S.R. Bommai v. Union of India”¹⁸, The aforementioned factors signify a significant shift in the judiciary’s interpretation of the law about the central government's authority to acquire control regarding a state’s governance under Article 356. The Supreme Court elucidated the rationale underlying the Bommai case, determining that it has the power to restore a state legislature that has been unjustly suspended. Considering that the Election Commission has previously revealed the forthcoming votes, the Court acted judiciously in this regard¹⁹ Concerns regarding judicial review, the rearrangement of party structures, the formation of coalitions and minority administrations, and the existence of a conflicting ruling in the federal second chamber have collectively led to a significant reduction in the use of Article 356. The authority to enter into agreements is a multifaceted topic, representing an administrative move by the Indian Government that circumvents Parliament. Article 253 of the Indian Constitution authorises Parliament to legislate for the implementation of international accords. The Supreme Court conducted deliberations²⁰ Article 253 of the Constitution empowers Parliament to legislate for the implementation of any agreement, arrangement, or convention with a foreign State regarding the jurisdiction of the State Legislature, irrespective of Article 246(3) or directives from international assemblies, organisations, or entities. The judiciary dismissed the assertion that a treaty employing GATT's Dunkel criteria would impact agricultural products, irrigation infrastructure, and raw cotton, all of which fall under provincial jurisdiction. The Supreme Court reiterated its ruling in the Maganbhai Patel case.²¹

Courts Intervention in Protecting Federal Relations

A considerable influence on federal choices, which has broadened to encompass many forms of state action, such as The execution and possible abuse of emergency powers by the president, the governance of fair and transparent elections, the rejection of unendorsed ethical norms, and constitutional revisions. The judicial rulings have significantly improved the functional effectiveness of the Constitution's cooperative federalism With the foundation of a multiparty system and the rise of fragmented democracies, the judiciary has taken on a crucial role in addressing intricate and often contentious issues, resulting in the exercise of judicial review powers that verge on judicial activism. The judiciary has garnered assistance from several community organizations and the media. A public opinion survey from the late 1990s indicated that citizens considered the Supreme Court of India and the Election Commission to be the most trustworthy organizations within the federal framework. The judiciary has become a crucial element in promoting federal autonomy and government, while enhancing ethnic diversity. India is the sole nation that has incorporated the “Basic Structure” doctrine into its legal framework.

¹⁵Provisions in case of failure of Constitutional machinery in state

¹⁶A.K. Roy vs Union of India & Another, (1982) AIR 710

¹⁷44TH Constitutional Amendment Act, 1978

¹⁸S.R. Bommai & Ors Vs. Union of India, (1994) SCC (3) 1

¹⁹Rameshwar Prasad vs Union of India, (2006) INSC 35

²⁰Maganbhai Vs. Union of India, (1969) AIR 784

²¹P.B. Samant Vs. UOI, (1994) AIR BOM 324

II. CONCLUSION

In conclusion, the Indian system exemplifies all of the qualities of a federal system, which is characterised by the fact that both the central government and the state governments have the authority to legislate while operating within the boundaries that are specified by the Constitution. Despite this, the Constitution stipulates that there are certain situations in which the central government is in a position of superiority. Given that the Supreme Court is both the guardian and the guarantor of the Constitution, it is essential to have a judiciary that is capable of operating independently in the event that any administration seeks to go beyond its limitations. The independence of the judicial branch is an essential component of federalism; in the event that a governing body exceeds the limitations established by the constitution, the Supreme Court has the authority to interpret any phrase. A number of decisions concerning federalism have been handed down by the Supreme Court. The principle of collaborative federalism was recently emphasised by the Supreme Court in the case of the National Capital Territory of Delhi. The court stated that both the central government and the state governments must demonstrate a willingness to pursue shared objectives and engage in harmonious coexistence and interdependence despite their differences.