



DATE DOWNLOADED: Tue Mar 29 07:03:45 2022

SOURCE: Content Downloaded from [HeinOnline](#)

Citations:

Bluebook 21st ed.

Mihir Popat, *The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique*, 1 *Jus Corpus L.J.* 271 (2021).

ALWD 7th ed.

Mihir Popat, *The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique*, 1 *Jus Corpus L.J.* 271 (2021).

APA 7th ed.

Popat, M. (2021). The constitutional imbalance of power in the centre-state relationship a critique. *Jus Corpus Law Journal*, 1(3), 271-276.

Chicago 17th ed.

Mihir Popat, "The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique," *Jus Corpus Law Journal* 1, no. 3 (March 2021): 271-276

McGill Guide 9th ed.

Mihir Popat, "The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique" (2021) 1:3 *Jus Corpus LJ* 271.

AGLC 4th ed.

Mihir Popat, 'The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique' (2021) 1(3) *Jus Corpus Law Journal* 271

MLA 9th ed.

Popat, Mihir. "The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique." *Jus Corpus Law Journal*, vol. 1, no. 3, March 2021, pp. 271-276. HeinOnline.

OSCOLA 4th ed.

Mihir Popat, 'The Constitutional Imbalance of Power in the Centre-State Relationship - A Critique' (2021) 1 *Jus Corpus LJ* 271

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

THE CONSTITUTIONAL IMBALANCE OF POWER IN THE CENTRE-STATE RELATIONSHIP – A CRITIQUE

Mihir Popat*

ABSTRACT

The manuscript will throw light on the presence of articles 248, 249, 250 and 252 of the Indian Constitution. Further, it will critically scrutinize the powers vested with the Union Government via these articles. Lastly, the arguments are advanced to reflect that these are heavily tipped in favour of the Union Government considering the Centre-State division of powers and concluding that there is a need to re-examine the said provisions.

Keywords: Constitution, Government, Separation, Power.

INTRODUCTION

We commence by stating that the Union and the State Governments are required to cooperate and coordinate. To this effect, they are vested with powers to draw laws on various matters under the Concurrent List (i.e. List III). When we peek into the three lists under the Seventh Schedule of the Indian Constitution, we realize that the lists are detailed, and the Government could enter to frame laws on various subjects included in these lists. As we are aware, the framers of this beautiful piece of Legislation (i.e. the Indian Constitution) foresee the contingencies that might demand few alterations to this statute.¹

Despite the clear separation of powers by Articles 248, 249, 250, 252 and 253 of the Indian Constitution, the Union empowered to legislate over the States' subject matters under certain situations. Various Constitutional Debates lead to a clear division of powers between the two, the conflicting opinions concerning the separation of powers were brought to a standstill. One of the many essential features of the Constitutional system is to produce potential that allows the Union Government to be unbreakable. The justification for this is considering the

*LLB, SECOND YEAR, JINDAL GLOBAL LAW SCHOOL, SONIPAT.

¹ Rao, B. Shiva, The Framing of India's Constitution, II, 777.

historical and political scenario the Union Government has to maintain unity and integrity in the Country.²

CRITICAL ANALYSIS OF THE RELATED CONSTITUTIONAL PROVISIONS.

When we study Article 248³ of the Indian Constitution, it is clear that the framers opted for a Centre that could control exigencies. To this effect, they drew residuary powers in the form of article 248 for the Central Government.⁴ As per article 248, the court in *Union of India v. Harbhajan Singh Dhillon*⁵ stated that the Parliament empowered to frame laws on matters not included in Lists II and III. Further, the Parliament stepped over to tax the capital value of an asset, the subject which was absent for consideration by both the Lists.⁶

The Parliament has exclusionary powers to place their competence on two or more entries or two or more articles while exercising the Legislative Powers. In light of Dhillon's case, Chief Justice Sikri remarked that "there must be an enquiry about a law that concerns the matters of taxation enumerated in the State List when a Central Act questioned for going beyond its Legislative competence of the Parliament." Moreover, in the case of *Sat Pal and Co. v. The Lt Governor of Delhi*⁷, the Supreme Court viewed that the Parliament, to build a law, has powers to make entries with Lists I and III, Entry 97 in List I and Article 248.⁸

Article 249⁹ paves the way for "big intrusion" into the State Legislation¹⁰. What happens is that the Rajya Sabha could be passing a resolution through 2/3rd of its members, vote on such a necessity in light of the national interest and letting the Parliament frame laws on matters listed in the State List as per the resolution. Further, the Parliament draws codes for the whole or any part of the Indian Territory until it stays in force. Such a resolution could be in force

² Dr. Anil Kumar Dubey, 'Presidential Takeover of the State Government', ILI Law Review, Summer Issue 2018.

³ See Article 248 of the Indian Constitution.

⁴ *Id* 1.

⁵ (1971) 2 SCC 779.

⁶ See V.N. Shukla's Constitution of India, Legislative relations between the Union and the States, pp. 812-815.

⁷ (1979) 4 SCC 232.

⁸ *Id*.

⁹ See Article 249 of the Constitution of India.

¹⁰ H.M. Rajashekara, The Nature of Indian Federalism: A Critique, Asian Survey, March 1997, Vol.37, No.3, pp. 245-253, University of California Press.

for not less than a year and might be extended further as per the Rajya Sabha that might be specified therein.¹¹

Coming right down to Article 250¹² of the Indian Constitution, it delves into the Parliament's ability to border laws on any material mentioned within the State List if a "proclamation of emergency is operating." These laws tend to be binding over the whole of India or a portion leading to National Emergency as per Art. 352. Also, per Art. 356, these laws will apply to any state under President's rule or to a financial meltdown following Art. 360 of the Constitution. And it is crucial to note that State laws during this period remain inoperative to the extent of being repugnant by the Centre per Art. 251 of the Constitution.¹³

Lastly, in the Valluri¹⁴ case, the court remarked that "while the Parliament not entitled to legislate a subject matter of the resolution, the effect of passing such a resolution under clause 1 of Art. 252 enables the Parliament to do the same. But if we see, the State Legislature can no longer hold power to draw laws involving that matter."¹⁵

RE-EXAMINATION OF THESE ARTICLES THAT HEAVILY TIP IN FAVOUR OF THE UNION GOVERNMENT

- 1) One of the essential features of the federal polity is the residuary powers that empower the entity by whose hands the power vests. The reason why American Federation is so powerful is that the residuary powers rest with the State.¹⁶ Union Parliament could establish its supremacy through Articles 248 and 249 of the Indian Constitution. Now, it could be worth considering the various arguments advanced by the states to repudiate Art. 249. Why is it so?
- 2) Well, Article 249 qualifies one House to unilaterally transfer any concern from the State List to the Concurrent List giving rise to a "short-circuit" of the amending process under Article 368. Also, the states' majority consent would be absent considering the 2/3rd

¹¹ See Chapter 3, Union State Relations: Legislative, Administrative and Financial Relations. Available at: <[http://rmlnlul/union state relations/](http://rmlnlul/union%20state%20relations/)>.

¹² See Article 250 of the Constitution of India.

¹³ *Id* 10.

¹⁴ Union of India v. Valluri Basavaiah Chowdhary, (1979) 3 SCC 324, 343, 349.

¹⁵ *Id* 6.

¹⁶ Shodh Ganga, Chapter II, Basis of State Autonomy- Distribution of Powers between Union and States.

majority in the Council of states. Lastly, the initial life of the law extended through a successive resolution by the Rajya Sabha, though restricted to a year.¹⁷

- 3) Looking at the previous Constitutional Debates, the President put forward an interesting point regarding the break-up of resources between the Centre and the States. The President remarked and I quote, “while article 249 deals with the aspect of duties levied by the Union Government, the states collect and appropriate it. Article 249 deals with an ambit of recommendations. One of the few made by the expert committee was to undertake an immediate distribution and allocation of resources between the Centre and the provinces. Also, the Centre being the autocratic administration must give up the British Raj mentality and part with the legitimate resources to the states.”¹⁸
- 4) Moving on, clause 3 of article 249 clarifies that the powers of the Union cease to be in effect once the period of six months of the resolution expires. But we note that while the laws enacted by the Parliament during such a period would not have any effect, the rights and liabilities concerning any acts or omissions committed or undertaken during such might continue to operate. Also, even though the State Legislature enjoys autonomy over the State List, per article 249, the State law functions according to the Union laws.¹⁹
- 5) More on the Assembly Debates, M Venkatarangaiya has criticized Article 249 by stating that “the article is entirely out of line and yet, if retained, the Constitutional Amendment will lose its significance. Further, some of the essential members of the Constituent Assemble added that Art.249 could be superfluous if it is merely an extension of Article 252. The intention to move over and above the provisions in article 252 by the Union would amount to consequential mischief.”²⁰
- 6) Sir Alladi Krishnaswamy Aiyar viewed that states could give away their powers about a subject matter in the State List when it assumes national importance. The justification for such is that article 251 empowers the provincial legislature to act on a situation which the Parliament would do by passing a resolution under article 249. It implies that the anti-federal nature of Article 249 could come to a standstill if Article 251 eliminated. Moreover, Mr. Aiyar stated that rather than serving a subject as a provincial matter, it

¹⁷ *Id* 10.

¹⁸ Constituent Assembly of India Debates (Proceedings): Volume IX, Friday 5th August 1949.

¹⁹ *Id* 11.

²⁰ Venkatarangaiya, The Centre and the Units in the Indian Constitution, Indian Journal of Political Science, Vol.11, No.1, pp. 97.

must consider as under the Concurrent List because if not, then the Union would leverage over the State field and hammer the federal structure of the Indian Constitution.²¹

- 7) Diving further into article 249 by taking an illustration. The Council of States consists of a maximum of 250 members and, the quorum has only 1/10th of the total number. A resolution for voting over an issue of national interest takes place despite a large number of absentees. It indicates that the subject matter of crucial nature determined through a limited number of members of the Upper House enabling the Union Government to step over the states' powers even during the most usual times.²²
- 8) Under the Fourth Schedule, the number of representatives in the Council of States is not equal and could vary from 1-34. Also, the President is empowered to nominate the non-elected members to top it all off. Adding on, the party having a stronghold over some of the big states might impact the votes accompanied by the Central chambers' decision.²³ The smaller states could be at a disadvantage if the party's chamber is not in their favour. In turn, it puts the Central Government a step above since the article used as a weapon against these states ruled by other parties and not the Union Government. With this, the role of the Rajya Sabha as a federal chamber escalates with the departure of such dominance.²⁴
- 9) When we pose a question like, why does the United States of America not have a provision similar to Article 250 of the Constitution? The Federal Government in the US assumes powers via Section 8 of the Article during an emergency. But this does not imply that during such a phase, the plan of distributing power plagued. Although Congress assumes immense power during the state of emergency, it is powerless to legislate on a state subject. Chief Justice Hughes of the Supreme Court remarked that *“while an emergency does not create power, it may enhance occasion for the exercise of such power.”*²⁵
- 10) The observation here is that the State Legislature does not amend or repeal a law placed by the Parliament per clause 2 of Article 252 of the Indian Constitution. We could look at engrossing contention concerning the prior permission required to amend the act related to a state subject raised at the Lok Sabha. It says, as per the Government, the state does

²¹ A.K. Aiyar, Draft Constitution of India, pp. 213-214.

²² S.C. Gangal, An approach to Indian Federalism, Political Science Quarterly, June 1962, pp. 250.

²³ Shodh Ganga, Chapter V, Division of Legislative Powers between the Union and the States in India: Extraordinary Provisions.

²⁴ *Id.*

²⁵ *Id.*

not need to provide fresh permission for a subsequent amendment once the Parliament has stepped in to legislate the matter followed by enacting the law.

This argument seems to be flawed because the words “in like manner” reflected within the section. It indicates that the procedure followed in with the following amendment being a reproduction of the first and would ensure that the state has to give out firm consent per clause 1. Taking a peek into what Dr. Ambedkar had to mention, and that I quote, “the legislation went by a resolution concerning the State Legislature “in like manner” should agree such a regulation could either be amended or repealed.”²⁶

CONCLUSION

Any law of the State Legislature advanced before or after the State Law and is being repugnant to the Union Legislation must be void to the extent of such repugnancy. Unlike the proviso Article 248, the residuary powers should vest with the State Legislature instead of the Parliament. The reason behind such is that the State positioned to work on matters not conferred with the Union. Also, the Parliament could limit legislating over the State subjects during an emergency as per Article 250 of the Constitution.²⁷

We are in a position to say that the Constitution of India has been striving to incorporate and build cooperative federalism. But the Indian Federal system has indicated the Centre dominating over the States for the last six decades. Moreover, the Union tends to step over the States’ rights and leaves the state to demand autonomy. Lastly, constant efforts piled towards improving the tensions between the Centre and the States by assimilating integrated federalism to make a living reality of Indian Politics.

²⁶ *Id.*

²⁷ *Id.*