

ARTICLE 131: THE EXCLUSIVE POWER OF THE SUPREME COURT

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A.V. Dicey observed, "Federalism means the distribution of the force of the state among a number of co-ordinate bodies each originating in and controlled by the Constitution."¹ Ivo D. Duchacek in his comparative federalism has identified ten Yardsticks of federalism out of which eighth one talks about: "Is there a judicial authority in the Central authority but standing above the Central authority and the component units to determine their respective rights?"²

Answer to this is in Article 131³ of the Constitution of India (hereinafter referred as Article 131). Therefore, in a federal or quasi-federal structure, which the Indian constitution sets up, disputes may arise between the Government of India and one or more states, or between two or more states⁴. A forum should be provided for the resolution of such disputes. The forum should be the highest court so that final adjudication could be achieved expeditiously⁵. Article 131 serves that idea very well. Thus there is a judicial authority in India, standing above the central authority as well as the component units that can determine their respective rights.

The purpose of Article 131 is to afford a forum for the resolution of disputes which depend for their decision on the existence or extent of a legal right. It is only when a legal, not a mere political, issue arises touching upon the existence or extent of a legal right that Article 131 is attracted.⁶ The Constitution aims at maintaining a fine balance not only between the three organs of power, the legislature, the executive and the judiciary, but it is designed to secure a similar balance between the powers of the Central Government and those of the State

¹ D.D Basu; *Introduction to the Constitution of India*, p. 46.

² *Ibid* at p.48.

³ *Original jurisdiction of the Supreme Court*: Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

⁴ Bhagwati J.in *State of Rajasthan v. Union of India* (1977) 3 SCC at para 167-8, p. 611.

⁵ *Ibid*.

⁶ *State of Rajasthan v. Union of India*, (1977) 3 SCC at para 110.

Governments. The legislative lists in the Seventh Schedule contain a separation of legislative powers between the Central and State Governments. The executive power of the Central Government extends to matters with respect to which Parliament has the power to make Laws while that of the State extends to matters with respect to which the State legislature has the power to make laws. The object of Article 131 is to provide high powered machinery for ensuring that the Central Government and the State Governments act within the respective spheres of their authority and do not trespass upon each other's constitutional functions or powers.⁷

The scope of Article 131 was considered by the Supreme Court in the case of *State of Bihar v Union of India*.⁸ The real issue in that case was whether the six suits filed by state of Bihar against the Union of India and the Hindustan Steel Ltd. as defendants, and the three suits filed against the Union of India and the Iron & Steel Co. Ltd. were maintainable under Article 131. As the cause of action in all these suits was the negligence of the servants of both the defendants, the Supreme Court rightly held that a dispute between a State and the Union could be determined by the Supreme Court under Article 131 only if private parties were not impleaded in that suit.⁹ Therefore, the suit failed because it was filed against the Union of India and other parties who were not states.

“Under Article 12, all local or other authorities within the territory of India or under the control of the Government of India are 'States' for purposes of Part III which defines and deals with the Fundamental Rights enshrined in the Constitution. The expression "*the State*" has the same meaning in Part IV of the Constitution under Article 36. But, there was no reason as to why the enlarged definition of 'State' given in Parts III and IV of the Constitution would be attracted to Article 131 of the Constitution”¹⁰ and therefore the word ‘State’ in Article 131 would not include agencies and instrumentalities of state which may come under the enlarged definition under Article 12. Thus, a body like the Hindustan Steel Ltd. cannot be considered to be "a State" for the purpose of Article 131 of the Constitution.

⁷ H.M Seervai; *Constitutional Law of India*, Fourth Edition, Universal Law Publishing Co., Vol. 3, pg. 2628 at para 25.26.

⁸ (1970) 1 SCC 67.

⁷ *Ibid* 5 at para 25.23, p. 2625.

¹⁰ *State of Bihar v Union of India* (1970) 1 SCC 67 at para 17, p.68.

Although the maintainability of suit in the Bihar case was failed in respect of private parties but if the facts of the Bihar case had been remembered and the object of Article 131 i.e. to provide a high powered machinery for ensuring that the central Govt. and the State Government acts within the respective spheres of their authority is considered, no one can describe a suit for breach of contract for the sale of goods as de-limiting the constitutional powers of the Union and the State.¹¹ Thus, Article 131 would be attracted only when the dispute rises between or amongst the states and the Union in their constitutional and not in their Contractual Capacity.

Now, the issue with respect to right of States and right of State Governments need to be looked upon. Whether there is a distinction between a State's right and those of its Government or its members?

This issue came up before the Supreme Court in the case of *State of Rajasthan v Union of India*¹² and then later in *State of Karnataka v Union of India*.¹³ In both the cases, a preliminary objection was that the suits were not maintainable because the dispute in suits was not between the Government of India and any State as such, but between the Government of India and the State Governments. The absence of the expression "*State Governments*" in Article 131 and the use instead of the word "State" was said to furnish intrinsic evidence that for a dispute to fall under Article 131, it must arise between the Government of India and the State and not between the Government of India and State Government.¹⁴ This conclusion was further supported by the use in Article 131 of the expression "The Government of India" and not "The Union of India".

Although *Untwalia J.*, one of the dissenters, held in Rajasthan case that the suit was not maintainable as he made the distinction between the State and State Government.¹⁵ The use of the expression "the government of India" in Article 131 in opposition to the use of word "the State" in Article 131 signified that the dispute may be with the government of India but the other party to the dispute must be the State only and not any part of State- the government, the legislature or the judiciary.¹⁶

¹¹ *Supra* note 7.

¹² (1977) 3 SCC 592.

¹³ (1977) 4 SCC 608.

¹⁴ *Supra* note 7 at para 25.24, p. 2626-7.

¹⁵ *Supra* note 7 at para 25.25, p 2628.

¹⁶ *Ibid.*

However the majority view was that the suit was maintainable and especially the Chandrachud J. in his Judgment affirmed his position stating that the expression “Government of India” in Article 131 meant the “Union of India”.

The author wants to submit that the majority view is correct, especially the view of the Chandrachud J. Although the conclusions are correct but the reasons behind the conclusions are not correct. The reason attached to that is the Supreme Court’s attention has not been drawn to the legislative history of Article 131 which will show that the expression “Government of India” in Article 131 was an *inadvertent drafting error*¹⁷. The impact of Article 300 on Article 131 has not been considered. Even, the *absurd consequence* will follow if the words “Government of India” in Article 131 will not be read as the “Union of India”¹⁸. Now, coming to the legislative history of *Section 204*¹⁹ and *Section 176*²⁰ of Government of India Act, 1935.

The Supreme Court observed in *Bihar v Union* that “Like many of the provisions of our Constitution this article had a fore-runner in the Government of India Act, 1935. Section 204 of that Act provided for conferment of original jurisdiction on the Federal Court of India”²¹

¹⁷ *Supra* note 7.

¹⁸ *Supra* note 7 at para 25.31, p. 2631.

¹⁹ *Original jurisdiction of Federal court.*- (1) Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to--

(a) a dispute to which a State is a party, unless the dispute-

(i) concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or

(ii) arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or

(iii) arises under an agreement made after the establishment of the Federation, with the approval of His Majesty’s Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute];

(b) a dispute arising under any agreement which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.

²⁰ *Suits and proceedings.*- (1) The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and, without prejudice to the subsequent Provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or been sued if this Act had not been passed.

(2) Rules of Court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules].

²¹ *Supra* note 10 at para 4, p.71.

Therefore, Section 204 conferred exclusive original jurisdiction on the *Federal Court* in a dispute between the *Federation* and any of the *Provinces*. Equally under sec. 176, the Federation may sue or be sued by the name of the *Federation of India* and a Provincial government may sue or be sued by the name of the *Province*. An *ad hoc* Committee on the Supreme Court consisting of five eminent lawyers,²² had been appointed to submit its report to the *Union Constitution Committee* in respect of Article 204 (Article 131). In its Report, the committee said,

“4. A *Sup. Ct.* for certain purposes being thus a necessity, we consider that the court may well be given the following additional powers under the new Indian Constitution: (a) Exclusive jurisdiction in disputes between the Union and a unit or between one unit and another. 5. The *Sup.Ct.* is the best available forum for the adjudication of such disputes, and its jurisdiction should be exclusive.”²³

The Union Committee accepted the proposal. Focus should be here to the point that the recommendation spoke of a dispute between the Union and a Unit. How the expression “*Union*” came to be replaced by the “the *Government of India*” in draft article 109 (Article 131) cannot be explained from the *published documents* or from the *Constituent Assembly Debates*²⁴.

However, the Drafting Committee proposed the following changes in draft Article 274 (Article 300).

“ Article 274....(i) That in Clause (1) of article 274, for the words ‘Govt. of India’ in the second place where they occur, the words ‘Union of India’ be substituted. (ii) That in sub-clause (a) of clause (2) of article 274, for the words ‘Govt. of India’ the words ‘Union of India’ be substituted.”²⁵

Thus on 15 June 1949, Dr. Ambedkar moved an amendment to substitute the words “*Dominion of India*” for the words “*Govt. of India*” in draft Art. 274. He said: “*There is a difference between the Govt. of India and the Union of India. The Govt. of India is not a legal entity; the Union of India is a legal entity, a Sovereign body which possesses rights and*

²² Sir S. Varadachariar (a retired judge of the Federal Court), Shri Alladi Krishnaswamy Ayyar, Sir B.L. Mitter, Shri K.M.Munshi and Sir B.N. Rau.

²³ *Supra* note 7 at para 25.30, p. 2630.

²⁴ *Supra* note 7.

²⁵ *Supra* note 7 at para 25.30, p. 2630.

obligations and therefore it is the only right that any suit brought by or against the Central Government should be in the name of the Union or against the Union."²⁶

This same reasoning would apply equally to Draft article 109(article 131) and if it was not amended by substituting "Union of India" for "the Government of India", it can only be because the Drafting Committee inadvertently omitted to make the corresponding change in draft article 109(article 131) which had been passed earlier, unless it was assumed that the amendment in Draft article 274(article 300) would necessarily lead a court to interpret the words "Government of India" to mean " the Union of India", since that was the name by which Govt. of India could sue or be sued also under article 131²⁷. Even if the 'Government of India' in article 131 were not read as the 'Union of India', it will lead to absurd consequences. If State as a legal entity is separate and distinct from the Government of the State, then also is the Union, a legal entity distinct and separate from the Government of India. Suppose if the dispute between the Union and a State affecting the legal right of Union and not the government of India does not fall within article 131. Hence such a dispute cannot be brought before the Supreme Court in a suit under article 131, but must be brought before in the courts of a state- the very thing which article 131 was designed to prevent²⁸. Such a construction puts the legal right of the government of India and even State for that matter above those of Union²⁹. No rationale ground can be given for such putting a construction on article 131 which leads to such absurd results. Therefore the author is with the majority view that the expression, "*Government of India*" meant the "*Union of India*".

*"In the Columbia Government v. Rothschild(1 Sim. 94), it was held that an unknown and undefined body such as 'the Government of State could not sue under a name and that if the persons so described could sue at all, they must come forward as individuals and show that they were entitled to represent the state. It is therefore better to sue in the name of the state itself"*³⁰.

²⁶ *Supra* note 7, p 2631.

²⁷ *Supra* note 7.

²⁸ *Supra* note 7 at para 25.31 ,p .2631

²⁹ *Supra* note 7.

³⁰ *Supra* note 7 at para 25.30, p. 2630.

Therefore On the same line of reasoning as discussed above, there is no distinction between a *State's right* and those of its *Government*. The State is not defined in the constitution, but the *General Clauses Act, 1897* which applies to the interpretation of the Constitution through article 367, defines "State"³¹ to mean a state specified in the 1st Schedule to the Constitution. Before making a distinction between the State and the Government of the State for the time being, it is necessary to see whether the distinction is relevant to the subject matter in hand³². Here, the distinction by the General Clauses Act, 1897 is not helpful in interpreting article 131. Similarly the distinction drawn through Article 3³³ of the Constitution of India is not relevant to settle the dispute presently at hand.

Therefore, the author would like to conclude that the expression "*Government of India*" in Article 131 meant the "*Union of India*" and there is no distinction between a State's right and those of its Government or its members.

³¹ "State".

(a) as respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State, a Part B State or a Part C State;

(b) as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory : " On the other hand S. 3(23) defines the word "Government" or "the Government" as including both the Central Government and any State Government.

³² *Supra* note 7 at para 25.30, p. 2631.

³³ *Formation of new States and alteration of areas, boundaries or names of existing States*: Parliament may by law

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State; Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired Explanation I In this article, in clauses (a) to (e), State includes a Union territory, but in the proviso, State does not include a Union territory Explanation II The power conferred on Parliament by clause (a) includes the power to form a new State or Union territory by uniting a part of any State or Union territory to any other State or Union territory