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CENTRE V. STATE: THE LOOPHOLE

-Aditi Vishnoi, student, ICFAI University, Dehradun

Introduction:

The Constitution is a very influential part but it has failed in some aspects. This article sheds light on the conflict between the Center and the State, which serves as the major loophole in our Constitution.

India is a quasi-federal country and the distribution of powers is one of the main characteristics of our federalism. To achieve the goal of a federal state, a separation of powers between the national government and the individual states is required. The federal constitution establishes dual politics with union and state edge at the center, each with sovereign powers over the territory assigned by the constitution. But wait, there is something wrong with this in our democracy.

In India, the central government or union is responsible for the governance of the entire country. There should be effective administrative regulations between the union and the states. The Supreme Court found that the executive power of the Union was related to the power of Parliament, with the limitation that the Executive could not act against the provisions of the Constitution or any law enacted by Parliament.

The Indian quasi-federal structure gives more power to the Parliament and if there is any inconsistency or conflict between the laws made by the Parliament and the State Legislature, the laws framed by the Parliament prevail. There is a bias of power in favor of the union. The Residual Legislative and Residual Executive are governed by the Union of India. There is union occupation in the state.

Part XI of the Constitution:

Part XI of the Constitution of India defines the relationship between the Center and the State. According to Article 245 (1)¹ of the Constitution, Parliament and the State Legislature have the power to make laws, respectively, on the whole, or any part of India or the State. This means that state laws are invalid if the state has the extra-territorial operation, which means it is effective outside the state. However, the state law of additional spatial operation is valid if there is sufficient nexus between the object and the state.

If we study Article 245 (2), any law made by Parliament cannot be considered invalid because it has jurisdiction. It cannot be construed as an independent source of the power of an Act of Parliament to enact laws for territories beyond India where the factors or causes are not related to India, or the purposes of those laws are for India. Such a translation may result in Article 245 (1) being an additional or excessive. Article 245 (2) thus prohibits the courts from repealing the law

¹ <https://blog.ipleaders.in/doctrine-of-territorial-nexus/>

on the basis that the exemption of the law applies. In a true federation, there must be a clear division of power between the center and the state.

States are demanding for Economic Autonomy:

In a federation, revenue sources are distributed to give the states significant autonomy in the financial sector. But the resources allocated to the states in India are not satisfactory. A total of 96 important revenue sources are listed in the Union and the status of the states is very weak, they are at the center points.² The states fund the center, but the political or partisan strings behind them can also be identified. Hence, opposition leaders often complained about the Centre's attitude towards the government of more than one party in power at the Center. Thus, states must rely on the center. The person who generates electricity on the purse also generates electricity in other ways. Thus, the center is in a position to control the economic policies of the states. Therefore, from time to time, many states seek economic autonomy. As the resources of the states are limited, the demand from the states for more and more economic powers is increasing.

One of the most important complaints of the states against the Center was that the Center monopolized control over the production, distribution of industries, trade, and goods. Entry 24 in industry, entry 24 in trade and commerce, and entry 2 argued that these were elements of the state legislative list, while the center brought them under its control to take advantage of non-constitutional provisions for the production, supply, and distribution of goods.³

According to Article 269, the Center seems to have failed to take the adequate initiative to enforce all taxes, of which the total net estimates are to be made by the States.

In *State of Andhra Pradesh v. National Thermal Corporation Ltd.*⁴, the Supreme Court considered sections 3 and 6 of the National Tax Act, 1956. The Supreme Court ruled that the transfer of goods after the completion of a transaction to the State, is not a matter for sale between the States. The Bench also set out a number of criteria for processing trade or commerce between the States:

- 1) The existence of a contract of sale includes a statement, presentation or suggestion in respect of the transfer of goods between the States;
- 2) The goods must actually move from one state to another according to that contract;
- 3) Such transfer of goods must be from one State to another, where the sale ends.

In the case of *Goodyear India Ltd. V. State of Haryana*⁵, the question was about two acts of sales tax relating to delivery of the goods. Section 9 (1) (b) of the Haryana General Sales Tax Act, 1973

² Finance Commission of India-
<https://www.prsindia.org/theprsblog/central-transfers-states-role-finance-commission>

³ <https://www.mea.gov.in/Images/pdf1/S7.pdf>

⁴ Appeal (civil) 3112 of 1990

⁵ (1997) 116 PLR 252

and Section 13AA of the Bombay Sales Tax Act, 1959 are excise duties and these regulations are higher than the State Legislatures as they derive power from Parliament. Therefore, it was considered invalid. Clause 3 of this Article provides that Parliament may make rules for determining when such a transaction or purchase or sale occurs during a trade between states.

Suggestions for Centre and State Conflict:

One reference is to the role of state governors when the constitutional mechanisms in a state are broken (what is the role of the governor and the President).

It is also suggested that the Finance Commission should not be concerned only with very limited legal funds. Indiscriminate money must be kept at it for distribution to perform its role effectively.

Another suggestion is that the central government should adopt a policy of at least interfering in the affairs of the states, thereby giving the states a relatively free hand in economic, legislative, and administrative matters.

An inter-state council could be set up to avoid any central-state disputes that may exist between other Chief Justices, Prime Ministers, and Attorney Generals. The Council may deal with matters such as the imposition of presidential rule and the justification for the appointment of governors.

It was also suggested that the decisions of the Council (for interstate disputes) should be adhered to whether they are in favor of both parties.

Conclusion:

These are all major issues and tensions in Union-State relations. They tended to form the Indian Federation, developing a characteristic of antagonism and conflict. The goal of cooperative federalism was undermined in the wake of the center-state conflict over these issues and regions. While there is some substance to the demands of the states, the irresponsible behavior of some states cannot be ignored, largely ruled by regional parties. Similarly, examples of the political and partisan use of the constitutional provisions of the central leadership cannot be ignored. Both the Union and the States must accept cooperative federalism and accommodate each other on issues of national and regional importance.

There are still many loopholes in our legislature (rape and marital rape) that require reform. We can take the example of the laws of the land because there is not much about it in our Constitution.