

## **Abstract**

This paper attempts to study how **in India federal powers** Dr. Ambedkar said that power vested under Article 356 would rarely be used. But this was not the case. Until the Supreme Court judgment of *S.R. Bommai v Union of India*, the power under Article 356 had been invoked 90 times. Supreme Court in this case restored the federalism by saying that if the decision is mala fide, then the court can reinstate the government dismissed or if the Assembly is dissolved, the court can revive and restore the dissolved Assembly. Now SC has said that once the president rule is imposed, the Assembly should be immediately dissolved. It should be kept in suspended animation until the proclamation is approved by both the houses of the parliament. Both Article 352 and 356 have been borrowed from the Weimer Constitution of Germany.

Residuary Power i.e. the power to legislate on the areas which do not find mention in any of the three lists under Schedule 7 lies with the Centre. For example, the laws like POTA, TADA which are now included in the Unlawful Activities (Prevention) Act, National Investigation Agency Act under which NIA was set up on the lines of FBI in US, to investigate federal crimes like terrorism is a trans-border phenomenon, so although public order is a state entry, terrorism is a problem which has a magnitude beyond public order, it concerns more with the security of India.

*Key words: residuary power, federal powers, constitutional constraints, quasi federal , India.*

## **Introduction**

Division of governmental powers into national and regional governments by the way of 3 lists – the Union, State and the Concurrent lists is provided in the 7th Schedule to the Constitution. Only the Centre deals with the issues mentioned in the Union List, States on the areas mentioned in the State List while the Concurrent List contains areas where both the Center and the State can legislate. This concept of 3 Lists has been adopted from the Canadian Constitution. However, there are certain powers which do not find mention in any of the three lists. These are called residuary powers and lie primarily with the Centre as per Entry 97 of Article 248. The rationale behind the residual power is to enable Parliament to legislate on any subject which is not recognizable at present. Thus, the principle of division of powers which this concept imbibes highlights the federal structure of the Indian Constitution. When the Lokpal Bill was passed by the Parliament, the States opposed, they said that in one legislation you cannot provide both

---

which the central government is supreme and any administrative divisions (sub national units) exercise only powers that the central government chooses to delegate. These are some unitary features also present in the Indian Constitution which make it ultimately Quasi-Federal in nature –

Article 1 which provides that India i.e. Bharat, shall be a Union of States. It is to be pondered here that the use of the word 'Union' was deliberate or not. Because the word 'Federation' is nowhere to be mentioned in the Constitution. It was there in the draft Constitution but was subsequently dropped and it was deliberate omission on the part of the drafting committee. The Chairman Dr. Ambedkar, justified this deletion by saying that the addition of the word Federation was not done after the ratification of the States.

Article 2 and 3 of the Constitution, give the power to the Parliament to redraw the political map of India; to create and abolish the states, change the boundaries of the States or even change their names and this can be achieved by simple legislation by way of simple majority in the Parliament and the Constitution only provides for consultation by the Centre of the concerned State. For eg – when Andhra Pradesh was divided recently into Telangana, Andhra Pradesh Assembly had passed a resolution opposing the step irrespective of that the Central Government went on with the separation. So, what the provision provides is consultation of the State Assemblies and not concurrence and the President can only prescribe a time frame within which the State Assembly has to take a call on the proposal of separation of the State or to merge 2 or more State. Also are the examples of Uttarakhand, Jharkhand and Chattisgarh. In 2007 also, the name of Uttranchal was changed to Uttarakhand. And this was achieved without amending the Constitution. So, the Central government has upper hand so far as the creation or abolition of the States concerned.

### **Constitutional provisions and Bias for the Centre, Federal powers and constitutional constraints**

The Constitution of India has established a Single and Uniform Citizenship for the whole of the country. In a federal State like the United States of America there is dual citizenship where a citizen firstly owes allegiance to the States and secondly to the union. But in case of India though it is a Federal State there is single citizenship. It implies that all Indian citizens owe allegiance to the Indian Union. Any citizen, irrespective of his birth or residence, is entitled to enjoy civil and political rights throughout India in all States and Union Territories. The Indian Constitution does not recognize State citizenship and as such there is no distinction between the citizens of two or more States, the only exception being the State of Jammu and Kashmir. No one other than a permanent resident of Kashmir can acquire landed property in Kashmir; but it is a purely temporary provision to be abolished when Kashmir is fully integrated to