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The Big Picture- Article 131 - Special Powers of Supreme Court

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the Kerala government filed a civil lawsuit Article 131 violative Doctrine of Basic Structure-principle of equality, freedom, and secularism Recently, in the Supreme Court (SC) challenging the Citizenship Amendment Act (CAA) 2019, under the provisions of of the Indian Constitution. Kerala claims that the Act is of the as it is against the which forms part of the basic structure of the Constitution.

CAA Indian citizenship to persecuted non-Muslim minorities The 2019 grants viz. Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who migrated to India from Afghanistan, Pakistan and Bangladesh on or before December 31, 2014.

Constitutional Provisions

Article-131: Original Jurisdiction

SC (as a federal court of India)

- Centre and one or more states; or
- Centre & any state(s) on one side and one or more states on the other; or
- Two or more states.

The possesses Original jurisdiction to decide the disputes arising between different units of the Indian Federation like:

Note: exclusive original In the above-mentioned cases, the Supreme Court has jurisdiction, which means that no other court in the country can decide such disputes and SC has the power to hear such disputes in the first instance & not by the way of appeal.

- **question of law or fact legal right** The dispute must involve a on which the existence/extent of a depends. Thus, the questions of political nature are excluded from it.
- **private citizen cannot be entertained** Any suit brought before the Supreme Court by a against the Centre or a state under this article.
- **subject to other provisions water disputes Article 262 of the Constitution** Also, the provisions mentioned in this Article are of the Constitution, i.e., if a remedy to any issue is present under any other Article of the Constitution, then this Article will not be available. For example, in cases of between two or more states, the remedy to such conflicts is entertained under and not under Article 131.

However, a few points need to be noted:

Part XI and the Seventh Schedule

Part XI (Articles 245-263) of the Indian Constitution consists of articles that describes the legislative, administrative, and financial relations between the Union and the States.

Article 246: legislative subject matters 3 lists of Seventh Schedule.

- **Parliament Union List.** has exclusive powers to make laws on the subjects mentioned in the Parliament is also empowered to make laws for territories which presently do not form part of any state.
- **State Legislature State List.** (in normal circumstances) has exclusive powers to make laws on subjects enumerated in the

Defines the on which the Parliament and the State Legislatures can make laws. These matters are enumerated in the According to it,

Note: Under 5 scenarios, Rajya Sabha National emergency, President's Rule, requested by two or more States, International Treaty. the Parliament is empowered to make laws on State List subjects viz., if a resolution is passed to that effect by the (Article 249), during if under obligation to implement an

Parliament & State Legislature Concurrent List. Central law prevails. Both can make laws on items described in the However, in case of any conflict, the

Seventh Schedule: three-fold distribution

- **Union List: national importance uniformity of legislation nationwide. 100 subjects naturalisation & citizenship (entry 17),** This List contains matters of and the matters which require This list has at present (originally 97) like defence, banking, foreign affairs, atomic energy, communication, census, etc.
- **State List: regional and local importance matters which permit diversity of interest. 61 subjects** This List contains matters of which require state-specific solution and the It presently contains (originally 66 subjects) like public order, police, public health and sanitation, agriculture, local government, gambling, etc.
- **Concurrent List: uniformity of legislation throughout the country is desirable but is not essential. 52 subjects** This List contains matters on which This List at present has (originally 47 subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, economic and social planning, etc.

The Constitution provides for a of legislative subjects between the Union and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List), described in this schedule:

Articles 256 and 365

- **Article 256 compliance with the laws made by the Parliament.**
 - **Article 256.** Kerala has said in its suit that, under CAA it would be compelled to comply with its provisions because of Kerala considers CAA to be arbitrary, unreasonable, irrational and violative of fundamental rights.
 - If it does not follow the same, the repercussions could be seen in the form of Article 365.
- of the Constitution states that the executive power of every State must ensure
- **Article 365:** In case of failure to comply with, or to give effect to, directions given by the Union, the President is empowered to make a decision thinking that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution. Hence, the President's rule could be enacted.

Issues

Question of legality- Can a State Challenge a Central Law under Article 131?

- o If a State can claim that its legal rights are violated (even if some fundamental rights of some individuals within the State gets violated), and
 - o Also, what are those legal rights which have been violated?

In Kerala's filed petition, the question of legality arises as Kerala claims that CAA is violative of Fundamental rights. Now the SC has to decide:

- **West Bengal government's 2017, 'Aadhaar Act' "Fundamental rights are available to individuals: citizens or non-citizens against the State (under Article 32 or Article 226) and not to the State entities."** However, in the case in the SC proclaimed that the State government cannot ask for any remedy related to Fundamental rights. The case was filed under Article 32 of the Constitution challenging the validity of the . The Court also held that,

- **Similar Petitions:**

- o **Chhattisgarh government National Investigation Agency (NIA) Act, 2008**

NIA Act, 2008 takes away the state's power to investigate offences categorised as 'scheduled offences' under the Act, though they are within State's jurisdiction.

also recently filed a suit in SC (under Article 131) against the claiming that 'Police' & 'Public Order' are the state subjects and States have the ultimate authority to make laws related to it.

- o **West Bengal government (Coal Bearing Areas (Acquisition and Development) Act, 1957)**

- The State claimed that the Act did not apply to lands vested in or owned by the State, and even if it applied to such lands, the Act was beyond the legislative competence of the Parliament.

- **State had legal rights** In 1962, the SC entertained the West Bengal's petition under Article 131 as the in this case, however, it also upheld the Central law.

The earlier filed a case with regard to 'Rights in Mines in Coal-bearing areas' against the Central law under Article 131.

- **Conflicting Judgments:**

- o **State of Madhya Pradesh vs Union of India, 2011 case, electricity** In the the issue dealing with was raised and the Court held that States cannot challenge a central law under Article 131.

- o **State of Jharkhand Vs State of Bihar, 2015 case, question of law larger Bench** In the the SC took the opposite stance and referred the to a for final determination.

There have been two conflicting judgments given by the Supreme Court on whether a State can file an original suit under Article 131 to challenge the constitutionality of a central law:

Can Supreme Court test the validity of a law under Article 131?

- **Legislative Competence: *excess of the legislative competence***

which of the three Lists Competence can be checked by checking the subject matter of the law forms part of and has the competent authority framed the law on that matter.

A law must be challenged in the Court if it is in of the framing authority.

- **Violation of Rights: *particular law violates which kind of rights-***

Kerala's petition is about violation of Fundamental rights and not about the legislative competence of the Parliament. Had the law been filed by any individual for the violation of their Fundamental Rights, the SC would have looked into the legality of the issue.

The Court can check whether a whether Fundamental or Constitutional rights?

- **Violation of the Constitution: *ultra-vires the Constitution.***

- **Doctrine of Basic Structure: basic features** The Doctrine of Basic Structure signifies the of the Constitution, which cannot be changed/amended, as they form the foundation of the Constitution on which its core principles/existence stands.

- **Doctrine of Pith & Substance: Pith 'true nature' or 'essence of something' Substance 'the most important or essential part of something'. incidental encroachment does not make it invalid.** means and means Doctrine of Pith and Substance says that where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the Court looks for the substance (i.e., the essential feature) of the matter. Thus, if the substance falls within Union List, then the by the Central law on the subject mentioned in the State List

- **Doctrine of Colorable Legislation: 'color' or 'appearance' of the power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose**

covert attempt For example, under the guise of exercising a legislative power, if an attempt is made to exercise judicial power, then this would imply a to overcome one of the limitations imposed on the legislature by the Constitution.

The literal meaning of Colorable Legislation is that under the which it is otherwise not competent to legislate on. It comes into play when a Legislature does not possess the power to make laws upon a particular subject but it indirectly makes law on it.

The Court can test a law if it is In this regard, there are following Doctrines which have been evolved by the SC over a period of time:

Way Forward

- **Politically motivated pleas** must be abandoned and must not be entertained by the SC. Instead, determined efforts must be made to resolve them within the political arena.

- **NITI Aayog NIA: creation of a list enumerating the federal crimes Central Bureau of Investigation (CBI).**

The Parliament must ensure the implementation of these recommendations as this will eliminate the confusion which Chhattisgarh faces regarding the cases to be dealt by the NIA and will bring in more clarity on the overlapping provisions. In case of in its report (submitted in 2017) suggested for the and this List crimes must only be investigated by the NIA or the

- **Representatives of states** must speak up in the Parliament when the laws are being framed & passed rather than making hue and cry later.
- **Federalism**

- **breakdown of constitutional machinery.** The States must restrain themselves while defying the implementation of Central laws, if done it might lead to the
- **Motor Vehicle Amendment Act, 2019,** Like, in case of the subject matter and provisions of which falls under List-III of the Seventh Schedule, both Parliament and State Legislature can form a law. The States cannot outrightly reject the framed Central law by not implementing its provisions.
- Hence, States are bound to implement the Central laws until and unless they are declared as void and unconstitutional by the Higher Courts of the country.

is a two-way street. Both the parties to it must respect the boundaries (or 'Lakshman Rekha') of one another that has been drawn by the Constitution.