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# Division of Powers Essential for Federation

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## ABSTRACT

*This paper talks about the division of powers which is an essential ingredient for a state to be federal. The paper delves with this importance by using various case laws and provisions in the statute that talks about these division of powers. Then the article talks about the situation that is prevalent in the country at the moment with respect to the resolutions which can be passed by the government. Lastly the article focusses on certain measures which can be taken keeping in mind the current situation to exercise the division of powers and to ensure the concept of federalism is upheld.*

The Distribution of Legislative powers between Centre and state is a very important means and tool so as to ensure that there is a system of checks and balances in the government and no such disputes, when it comes to the conflicting matters of who handles the matter when it comes to certain topics like Defense or Public health. This demarcation is pretty much important for the system of federation to prevail. When it comes to division of legislative powers between Centre and state, the government follows three lists as stated under the 7<sup>th</sup> Schedule of the Constitution, First being the Union List, Under which matters which are of national importance are stated, it has around 97 items in the list, which can only be implemented by the Parliament at the Centre, Some of them being matters related to Defense of the country, War expenditure, Peace resolutions with other nations, Relations with Foreign countries, Trade includes import and export, Handling of Essential important Mineral Resources such as Atomic energy, Contracts related to Highway building and Railway Construction. All of these matters as we can infer are the matters which effect the nation as a whole and not any particular state, that's why Centre has the control and say over all these matters, which can also be said to be the building blocks of our nation. Second is the State list, which comprises of around 66 items that are of importance for a state or a local government, the state government exercises the say in the matters listed under this list, some of the matters are related to local governmental disputes, Agriculture and matters related to farming, Oil and Gas related matters, Fisheries department, which deals regarding Breeding, taking care of them, Matters concerning the Sanitation and public health of the people,

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institution that are of relevance to general public Markets, Libraries. Third and final list was the Concurrent List which was made so as to ensure that there is a balance of power between the state and Centre, both of them have a important say in these matters, but when if there is a dispute between Union and state, Centre will have an importance over the state. There are around 47 items in this particular list, which include the likes of Professions, Medicine, Law and others, Civil and Criminal procedures of the Country, Matters related to the Marriage and Divorce, Transfer of rights of Property, Matters related to Electricity Board, Housing and Economic Planning of the Country. In all of these matters Centre and State have a collective say and get to decide the matters jointly. Now we move to the Discussion of Articles that are related to the how and to which extent can the Parliament can interfere or cross the line when it comes to the matters of a state government. Firstly we look at Article 245 of the Constitution, according to this Parliament can make or amend Legislations for the whole country, this also includes the state legislations, and any kind of legislation that is made by the parliament cannot be held as invalid just because it is outside the Indian Territory. In the case law of *A.H Wadia vs Income Tax Commissioner*<sup>3</sup>, it was held that in case of a legislation made by the Parliament which is sovereign in nature, its validity cannot be questioned before a domestic or municipal corporation just on the grounds of it being Extraterritorial, whether it violates the international law or not should not be a matter of concern. According to Article 246, of the Constitution it clearly lays down as to when and where Parliament or the state has the power to legislate. For firstly the Centre has the power to legislate issues that are listed in the Union list. Similarly when it comes to the Concurrent list, the state and Centre both have the power to legislate. When and where the state list is concerned, the state has an important say. Meanwhile the Centre or the Union parliament has the authority to make legislations for the whole country. Article 247, of the Constitution on the other hand gives the Parliament special powers so as to make additional courts for the upliftment of the Judiciary, better implementation of the laws passed by the Parliament. Adding to this Article 248 of the Constitution gives the Residuary powers to the Parliament, that is basically to pass legislation in any matters that is not listed in the state or Concurrent list, also it has the power to impose certain Taxes, that are not listed in the state or Concurrent list. So granting special powers under Article 247 or Article 248 of the Constitution, makes the Centre a more powerful body, than State, which may leads to conflict of Interests. Article 249 of the Constitution on the hand deals with the matter of the upper house of Parliament, if there is 2/3 of majority in the Rajya Sabha relating to a matter that is of National Importance, Such a legislation than has to

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<sup>3</sup> (1949) 51 BOMLR 287

be implemented by the Parliament, even if it is a matter of state list, however it cannot be extended for more than a year, the period for extension is maximum of 1 year. Article 250 deals in case of Emergency, when there is a national emergency going on than the Parliament has the power to enact laws or legislation for the whole country, even matters that are related to the state list, but all these resolutions are valid only till 1 year, after the Emergency gets over. Again here we can see that Centre is clearly interfering in the matters of the state, although keeping in mind these are tough times. Article 251, pretty much explains the State point of view that, it says that no Provisions under Article 249 and 250, should prevent the state to exercise its right to legislation, when it concerns the matter that are related to the state list. However if there is a resolution that is passed by the parliament, before or after the legislation is made, then it is the Provision made by the Parliament that has the upper hand as compared to the state. However this should not stop the state from functioning and making legislations in matter related to the state list. Article 252, on the other hand deals with the Parliamentary legislative power, when it concerns the matter that is related to two or more states, basically when any Parliamentary legislation is passed, and two or more states believe that there are matters that the Parliament still does not have the power or authority to pass or make a legislation, than the Parliament by the method of consent and adoption, is given such power so as to make the legislation. Article 253 of the Constitution again gives special powers to the Centre or Parliament to pass or make Legislations for the whole country, when it comes to the matter of International Agreements, that is make or amend laws relating to any general discussion that has taken an International conference, Pass legislations relating to Treaties between India and other nations. Article 254 of the Constitution lays down some important provisions finally that favor the state at least in some instance. When it comes to the matter of Concurrent list, in which both the Centre and state have an important say, but still if a legislation is passed by the state, that is in then contradictory to a resolution that is passed by the Parliament either before or after the law passed by the state, the Parliamentary provision will have an upper hand. Second if any legislation or amendment is made by the state, that is then either violative or contradictory to a resolution that is passed by the parliament or Centre before or after the resolution passed by the state, then if the resolution passed by the state has the consideration of the President, than this resolution of the state can be implemented in the state over the resolution passed by the Parliament. Thirdly this should not prevent the Parliament from enacting, amending or passing legislations related to the particular matter, just because the state has the upper hand in their own respective states. Article 255, lays down guidelines as to the legislations passed by the State or the Parliament

cannot be held as unconstitutional or invalid by any body just because they do not prescribe to some earlier provision or recommendation given by the, first it being given by the governor or president for that matter, Second it being by the President or Rajpramukh, thirdly that the recommendation was that given by the President, also for the President. If we look closely at all the Articles in question, we can clearly say that the Union, Centre or as we can say Parliament has always the upper hand, when it comes to the matters of Conflict, this is a major Problem, for the state to function as an independent body and exercise its right over the matters of the State list, it has to go as far as requiring the Assent of the president of the country, otherwise the same would be easily overpowered by the Parliament. So when we argue that India is a federal nation, it can be said that it is federal only on papers, but in reality its Quasi-Federal, which is problematic for the state, as the Parliament always has a upper hand, this is a major loophole which needs to be rectified so as to make India a complete Federal nation. So if we need to make an all together new provision or article, or for instance change an existing provision it would be removal of the residuary powers granted to the Parliament which provides them with all the special benefits while dealing with the matters of Concurrent list, so that will be Article 248 of the constitution. And if we are to draft a completely new Provision or Article, that would help the state have some control in its territory, would be 'Whether it's a case of national emergency or some other calamity, the Parliament or the Centre can exercise its right to make legislations, but when the matter comes to the state list, the state would have its importance, the parliament cannot simply interfere with the matters of state, this way the whole division of powers makes sense, as the structure now puts its trust in the state, to handle the emergency situations well in their territory'. There can be a two step collective process on the part of all the independent states, such as forming a agreement of all the independent states, second being forming a group of independent states and converting them into a group of federal union, for the federalism in India to flourish. It is without a doubt, that a strong Centre is needed so as to make the structure more flexible in nature, also for the purpose of industrial, economic progress of the nation, because having a strong Centre acts as the backbone of the nation, where all the important calls can be taken without going through all the red tapping, as the decision can be taken quickly, more effectively. That said it needs to be taken care of the fact, that the Centre is not given all the power in the world and states are always at their mercy, when it comes to taking important call and decisions, as this is completely against the idea of India being a federal structure as far as distribution of power is concerned.

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