Aspect of Federalism in the Legislative Branch of the Government

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ABSTRACT:

The type of federalism followed in India is one of its kind and can be said to be quasi-federal in nature. This means that the government is not completely federal or unitary but more of a blend of the two.

The government follows the principle of “Separation of power”. In a federal government, two tiers are governing the country, and they would be, central and state, however, the feature of federal India states that the constitution would be supreme as the constitution cannot be amended by any of the tiers of the government.

This article discusses the quasi-federal features in the legislative branch of the government and whether the actual power lies within the state government or the centre.
Introduction

There are two main types of governments, a Unitary government and a Federal Government. In a federal form of government, the powers are divided between both, the central government and the state government. The government of India has a federal form of government, however, during the time of an emergency, our country follows the Unitary form of government, wherein, the maximum powers rest with the center and the state is left with little more than none of their powers.

The federal government follows the principle of “Separation of power”. In a federal government, two tiers are governing the country, and they would be, central and state, however, the feature of federal India states that the constitution would be supreme as the constitution cannot be amended by any of the tiers of the government.

The type of federalism used in the USA is not the same as the federal nature of the Indian government, nor the center or the state has absolute supremacy, however, the federation of India has a strong center or union.

Federal aspects in the Legislature

The main aspect of federalism in India is the separation of power between the states and the union, this can also be called decentralization. Like many countries with federal laws, India also implements bicameral legislation. The Indian Parliament has two houses, namely the Upper House (Rajya Sabha) and the Lower House (Lok Sabha)\(^1\). For any amendments to the Constitution or laws, both houses must pass the bill.

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\(^1\) INDIA CONST. art. 79.
As we know that the Legislature creates laws in India, the power vested in the parliament and the state legislatures have been mentioned under articles 245-255 of the Indian Constitution. This can also be called as the dual government feature of federalism.

**Distribution of Power**

Distribution of power\(^2\) is one of the most essential features of federalism, this aspect is displayed in the legislation of India, though the articles mentioned below,

**Territorial Jurisdiction:**

The articles 245-255 talks about the territorial jurisdiction of the legislature and subject matter jurisdiction.

Territorial jurisdiction means, who can create laws applicable to a certain territory or location.

Whereas, subject matter jurisdiction refers to who can create laws for which subject matter, as mentioned above this has been stated in the 3 Lists that come under the seventh schedule of the constitution. Territorial jurisdiction under article 245 of the constitution states the following:

1) The Parliament has the power to make laws for the entire territory of India or some part of it.

2) The state legislature has the power to create laws for the territory of that particular state or any part of the state.

\(^2\) INDIA CONST. art. 245, cl. 2.
3) The Parliament also has the power to make Extra territorial laws.

Even though the parliament has more powers vested in them than the state legislature, the parliament does not hold an absolute power which is one of the most important aspects of federalism.

In the case of *A.H. Wadia v. Income-tax Commissioner* as explained by Chief Justice Kania that:

“In the case of Sovereign legislature, the question of extra-territoriality of any enactment can never be raised in the municipal courts as a ground for challenging its validity.

The legislation may offend the rules of International law, may not be recognized by foreign courts, or there may be practical difficulties in enforcing them but these are questions of policy with which the domestic tribunals are not concerned.”

The Exceptions to the law-making powers of the parliament which proves that the power vested in the parliament is not absolute are as follows:

- Article 240 of the constitution which states that the power to govern the Union territories, Lakshadweep Islands, Andaman & Nicobar Islands, Dadar & Nagar Haveli, Daman & Diu, has been given to the president. Any laws made by the parliament for the union territories can be amended, repealed, or modified by the president.

- The 5th schedule states that, the governors of any respective states have the power to rule that any laws made by the parliament cannot be applied for any of the scheduled or tribal areas.

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3 AIR 1949 FC 18,25.

4 INDIA CONST. art. 240.
- The 3rd exception is given under the 6th schedule. The governors of the states of Meghalaya, Assam, Mizoram and Tripura can state that any laws made by the parliament for the tribal areas of the state cannot be applied or, the governors can amend and modify the laws.

**Subject Matter Jurisdiction:**

The seventh schedule of the constitution under article 246, states the three lists which mention the powers of the state and the center to make laws in which subject matter. The three lists are as follows:

*List I – The Union List*

This states the list of subject matters for which the center can create laws.

*List II – The State List*

Under this list, the matters for which the state government can create laws have been listed

*List III – The Concurrent List*

In this list, the subject matter where both the center and the state can create laws have been mentioned.

The Union List is greater than the concurrent list, which is greater than the state list. Thus, if there is a dispute or a conflict between the state list and the union list, the Union list will prevail. If there is a conflict between the state list and the concurrent list, the concurrent list will prevail\(^5\).

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\(^5\) K.S.E.Bd. v. Indian Aluminium, AIR 1976 SC 1031.
This portrays the strong center feature of federal India. However, there are a few exceptions to the subject matter jurisdiction in some extraordinary circumstances and they are as follows:

• National emergency or presidents’ rule, during this time the parliament gets the power to make laws on any subject matter from the state list

• When the Rajya Sabha feels that there is a subject matter in the state list which is of a national importance, and the same should be amended by the parliament, then the Rajya Sabha has the power to pass a resolution on which the parliament can make a law

• When the state legislatures of 2 or more states request the parliament that the parliament should enact a law on some particular subject matter\(^6\), then, the parliament can do so.

• In order to implement any International agreements or to fulfill them, the parliament can create laws on any of the subject matters of the state list.

**Doctrine of Pith and Substance**

The center and the state have their own subject matters to create laws on, however, in many situations where their law-making powers on some subject matters can be interchanged. In such cases, how will the validity of the law be determined?

\(^6\) Union of India v. Basavaiah, AIR 1972 SC 1415.
In such a situation, the courts apply the Doctrine of Pith and Substance. In the case of *State of Bombay v. FN Balsara* AIR 1951 SC 318, there was a law made regarding the sale, import and export and possession of liquor, the Bombay prohibition Act and this state legislation was incidentally governing import and export as well which was a central subject.

To determine the validity of this act, the court had used the doctrine of pith and substance. The act was held to be valid.

In relation to the same mentioned above, the article 254 talks about repugnancy, this means that if the parliament and the state legislature create laws on the same subject matter, this article says that the law made by the parliament would be held as valid and the law made by the state will be void⁷.

**Conclusion**

India faces problems such as terrorism, belligerence, and crime. In order to solve this problem, there is an urgent need to unite the entire country, and the state government needs to help the center so that We can save the country. The union government and state governments must cooperate with one another in order to maintain balance and the federal nature of the government of India.

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