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The Role of the Supreme Court as an Umpire in Federalism Cases: A Comparison Between India & the US

SALONI SINGH¹ AND VAIBHAV SINGH CHAUHAN²

ABSTRACT

Federalism has been a point of contention in India for decades. The Indian constitution has been distinguished by both federal and unitary features. Because of the diverse nature of the features of the Indian Constitution, India is referred to as a "federation of its kind." The consolidation of federal policies and the recognition of diversity has contributed to the Indian democracy's uniqueness and dynamism. Judges have attempted to highlight the meaning of federalism and how the nature of federalism has evolved while issuing judgments in various cases.

One of the fundamental characteristics of a federal state is the requirement for an autonomous body, such as the Supreme Court, to maintain the fragile balance of governing forces allocated between the centre and the constituent units and to reject any attempt by either faction to penetrate the territory entrusted to the other. The Indian courts, the Supreme Court, and the High Court play a critical role in establishing and evolving "Indian Federalism."

This research paper thus comparatively analyses the role of the Supreme Court of India and the USA in light of Federalism and also the difference between Federalism in India to that of the USA.

Keywords: *Federalism, USA, India, Supreme Court.*

I. INTRODUCTION

For understanding the role of Supreme Court, as an Umpire of Federalism Cases, we need to first understand the concept of federalism, Federalism, may be said, a philosophy which talks about, a governmental mechanism or a governmental process, through which a country is governed, thus, we can say that, federalism is a form or a system of government, where the power is divided between the Centre and Regional Authorities, both have their individual power and both are independent in their spheres, means, this is a system of government where a

¹ Author is a student at UPES, Dehradun, India.

² Author is a LLM student at Rashtriya Raksha University, Gandhinagar, India.

territory or country is governed by two levels of government.

Federation is derived from the, Latin word, FOEDUS, which means a treaty or agreement, thus federation means a political system which has been made on the basis of agreement between different States/units/provinces.

Federation can be constituted in two ways:

1. By Integration
2. By Disintegration

Integration is where small states which are independent- come up together and form one union, this mode of federation is called COMING TOGETHER, there purpose could be need of strong defence, protection of territory, economic growth, etc. E.g.: USA, Australia.

Disintegration means a big union state, geographically large, distribute its power to its different-different states, thus giving them some autonomy, to manage their area/region, for the purpose of administrative convenience, this model is called HOLDING TOGETHER federation. E.g.: INDIA, CANADA.

The established courts in India (under the Constitution of India, 1950), including the Supreme Court and the High Court, play a vital role in establishing and evolving India's Federalism. They have the explicit authority of Judicial Review based on the citizens liberties under the federally distributed Indian Constitution, and restricted Separation of Powers associated alongside the legislative system of regime for both the central and State governments.

The US Supreme Court rulings on the other hand influence the balance between the federal and the state governments, in basically two ways, firstly, the Court has the choice to limit or sustain the federal power in litigation challenging the legitimacy or requiring the interpretation of the statutes or the presidential actions, secondly, it features the legitimacy of the State laws and gives the court the opportunity to limit or to sustain the state authority.

(A) Literature Review

- **Michael I. Krauss, The Role of the Supreme Court in Preserving Federalism, 1 GEO. J.L. & PUB. POL'y 43 (2002).**

What role does the Supreme Court play in preserving federalism? To be sure, it is the highest court in the land, but it is still a court of law. Its primary function is to declare what pre-existing law is in very close cases, typically when lower courts across the country have offered conflicting resolutions.

- **Loren P. Beth, The Supreme Court and American Federalism, 10 St. Louis U. L.J. 376 (1966).**

The Supreme Court's critical role in ameliorating some of the worst effects of an almost unworkable government system.

- **Mili Gupta, Indian Federalism: The Role of Supreme Court, 4 INT'L J.L. MGMT. & HUMAN. 5623 (2021).**

One of the fundamental characteristics of a federal state is the requirement for an autonomous body, such as the Supreme Court, to maintain the fragile balance of governing forces allocated between the centre and the constituent units and to reject any attempt by either faction to penetrate the territory entrusted to the other.

- **Rishabh Vyas & Nikita Bokil, Federalism in India, 3 INT'L J.L. MGMT. & HUMAN. 2272 (2020).**

Analyze whether our constitution is truly federal, quasi-federal, or unitary in nature, or whether we follow Federalism in India. We will also investigate what federalism is. Why has it evolved as an efficient form of governance? Where did its theories come from? Is there anything federal in our constitution?

II. FEATURES OF FEDERALISM

There are basically five features of a federal government:

- a. **Division of Powers:** It means power division between the center and the state governments. The powers are basically divided on the basis of- matters of national importance and matters of local importance.
- b. **Supremacy of the Constitution:** It basically means that the Constitution is supreme. Constitution talks both about the power of the Centre and State and thus both do not have the power to override the constitution.
- c. **Written Constitution:** To maintain the supremacy of the constitution, the constitution should be reduced into writing and thus by that written mechanism the setup of the division of power between the centre and the state would be maintained. Otherwise, there could be misunderstanding disagreements and confusion, thus, the written constitution is necessary.
- d. **Rigidity:** Wherever, the federal form of government is followed, the constitution is supreme and thus to maintain the supremacy of the constitution, it should be rigid in

nature and the rigidity could be seen through the amendment procedure, whether the process is flexible or rigid, thus in federal structure, it is rigid, means, the centre and state do not have the power to easily amend, also, it does not mean that the constitution is immutable, but the process is made complex.

- e. Authority of the Courts: Here we can see that the Courts have the power to prevent the Centre and the State from encroaching each other's power and the laws which are made if are exceeding, the courts have the power to declare those as unconstitutional or invalid. Court being independent, have the authority and power to interpret the constitution and are not dependent upon the government.

III. FEDERALISM IN INDIA AND USA

English '*Rule of Law*' transformed into the '*Rule of Constitution*' in the US:

As per Dicey, "The English concept of the Rule of Law, inspired the framers of the US Constitution, they transformed the concept into totally different one, i.e., the Supremacy of the higher law that is embodied in the Constitution, instead of the law laid down by the legislatures, and by means of this transformed concept the legislatures under the American Constitution came to be treated as 'non sovereign' and their laws likened by the courts to be 'by laws', so that they could be pronounced void".³

In India, GAJENDRAGADKAR, C.J., in the *Reference case*⁴, explained the, "meaning of the 'supremacy of the constitution' in relation to India to distinguish it from the English System of Parliamentary Sovereignty under an unwritten constitution:

1. The written constitution is higher or superior instrument, from which all the organs of the state draw their respective powers and are limited thereby.
2. It is not possible, for legislature to claim absolute or unlimited power as the British parliament.
3. The supremacy of the constitution is protected by authority of an independent judicial body to act as the interpreter and arbiter of the scheme of distribution of powers made by the constitution.
4. All functionaries under the constitution take oath to uphold the constitution.
5. Whenever any organ of the State is found to transgress the limitations imposed upon its power by the constitution, it would be the duty of the court to invalidate such offending

³ Dicey, *Law of the Constitution* (10th Edn., 1962), pp. 144-58, 165.

⁴ AIR 1965 SC 745 (paras, 39-41).

act, including the law made by the legislature, because the Constitution constitutes the 'higher law' which has to be interpreted and applied by the court of law."⁵

In the *Judges' case*⁶, PATHAK J., pointing out the need for and importance of the Independence of the Judiciary under the Indian Constitution and pointed out that, "'Rule of Law' is the primary principle of our constitution and that an independent and impartial judiciary was of the utmost importance because it was the task of the judiciary to 'maintain the rule of law'".

IV. JUDICIAL REVIEW IN INDIA AND USA

Under the Constitution's where Judicial Review exists, the guardianship of the constitution belongs to the court.

In the case of *Marbury v. Madison*⁷, once it is held that the Constitution is the legal instrument, it would follow that its interpretation and application should be the function of the courts, as MARSHALL, C.J. asserted, "it is emphatically the province and the duty of the judicial department to say what the law is".

"The power of the court to invalidate a law made by the legislature in case it cases it conflicts with the mandate of the Constitution emanates from the other part of the juristic nature of the constitution, that is the, 'supreme law of the land', which is referred as 'higher law concept'."⁸

As a result of the higher law concept, if there is a conflict between the higher law and the ordinary law, the former will prevail, and the latter will be declared unconstitutional. The judiciary has the authority and responsibility to declare unconstitutional laws unconstitutional.

"The result would not have been followed had the constitution been given the status of an ordinary law, because in case of conflict between the two laws made by the same legislative body, a later enactment would, as a rule, would prevail over the earlier one, unless, of course, both may co-exist."⁹

In 1803, in *Marbury's Case*,¹⁰ MARSHALL, C.J., placed the doctrine of Judicial Review, upon a sure footing by saying that, "since the Judges, as directed by the Constitution itself, took oath to support the constitution, which constitutes the paramount law of the nation, it was the duty of the Judges to annul any law made by the legislature which violated the constitution or was repugnant to it."

⁵ Reference under Article 143, AIR 1965 SC 745 (paras. 39-41).

⁶ *Gupta v. Union of India*, AIR 1982 SC 149 (paras. 865-66).

⁷ *Marbury v. Madison*, (1803) 1 Cr. 137.

⁸ *Marbury v. Madison*, (1803) 1 Cr. 137.

⁹ *Kunter v. Philips*, (1891) 2 QB 267 (277-72).

¹⁰ *Marbury v. Madison*, (1803) 1 Cr. 137.

In India the foregoing proposition has been embodied, “in the Article 13 of the Constitution, so far as the provisions guaranteeing the Fundamental Rights are concerned, the clauses of the article lay down that any law made by the legislature in India, whether before or after the commencement of the constitution, shall be void if and in so far as it offends against the Fundamental Rights included in Part III.”¹¹

The guardianship of the judiciary in enforcing the constitution expands where there is a constitutional division of power not only as between the three branches of the government, but the State itself is divided into two units, i.e., National and State, with a consequential distribution of powers as between the two units as laid down in the Constitution, that is to say, where the constitution is federal. In short, a federal constitution imposes an additional duty and foundation for judicial review.

V. FUNCTIONS OF JUDICIARY IN A FEDERATION: INDIA AND USA

The special features of the federal judiciary, includes:

1. Maintaining the Supremacy of the Constitution
2. Determining the controversies between the Parties to the Federation

Securing uniformity in the interpretation and application of the Constitution as amongst the State.

Every federal constitution, regardless of the degree of cohesion it seeks to achieve, involves a division of power between the Centre and the States, and both the Union and the State governments derive their authority from and are constrained by the same Constitution.

Because powers are divided between the national and state governments in a federal constitution, some authority is required to resolve disputes between the Union and the states or the states among themselves and to maintain the distribution/division of powers established by the constitution. If the provisions of the constitution affecting the division of powers between the federation and the units of the federation are to constitute legal limitations on the respective parties to the federation, this authority must necessarily be judicial.

As a result, apart from guarding the constitution against transgression by the organs of the National government, the Judiciary has an additional problem in the federal constitution, namely, to maintain the distribution of the powers prescribed by the constitution as against encroachments by the Union and the State governments inter se. In short, it is the '**Umpire**' or

¹¹ *Mahendra v. State of U.P.*, AIR 1963 SC 1019 (1029-30).

arbiter in the federal system.

This function of acting as the guardian of the constitution is known as ‘Judicial Review’ because it involves the responsibility of determining the constitutional validity of both federal and the state laws and executive actions so that they may not transgress the limitation imposed upon them by the Constitution.

The power of judicial review to maintain the supremacy of the constitution is generally vested in the highest federal court of the land, called as the ‘Supreme Court’, in India and USA.

“In American Constitution, this duty of the federal court is accentuated by the fact that the constitution is in nature of the treaty between component units and that the constitution sets up a double government and double allegiance.”¹²

“However, while the power to declare a statute unconstitutional was originally asserted as incidental to judicial power, since the case of *Marbury v. Madison*,¹³ it has come to be considered a duty of every judge in the United States to treat any enactment that violates the constitution as void. The courts cannot legitimately refuse to exercise this power.”¹⁴

“This means that no act of the government or any official is valid unless it is supported by law, and no law in the United States is valid unless it is recognised as such by the courts. And no act of the executive or legislature is upheld by the courts unless it conforms to the provisions of the Constitution or derives its power from the Constitution.”¹⁵

The Supreme Court's preeminent position in the American Constitution is due to the power of judicial review in its hands. Its subsequent evolution has given the Supreme Court a position regarding the Executive and the Legislature that the Constitution's framers did not intend.

In *McCulloch v. Maryland*,¹⁶ C.J., applied his theory earlier propounded in the case of *Marbury*¹⁷ that the, “constitution was the higher law, ordained by the people themselves, so that it would prevail over laws made by the legislature’s setup by the constitution.” It followed, as held in *McCulloch’s*¹⁸ case, that, “in case of any conflict between the federal constitution and the law made by a State, the constitution would prevail and also that it was the concern and duty of the Supreme Court to decide any such dispute.”

The balance of power between the federation and the units in the United States, at any point of

¹² *Baxter v. Commissioner of Taxation*, (1907) 4 CLR 1087 (1110).

¹³ *Marbury v. Madison*, (1803) 1 Cr. 137.

¹⁴ Cooley, *Constitutional Limitations*, 7th Edn., p. 228; *Cater v. Cater Coal Co.*, (1936) 298 US 238.

¹⁵ Willis, *Constitutional Law*, pp. 72-73.

¹⁶ *McCulloch v. Maryland*, (1819) 4 Wh 316.

¹⁷ *Marbury v. Madison*, (1803) 1 Cr. 137.

¹⁸ *McCulloch v. Maryland*, (1819) 4 Wh 316.

time, thus, depends upon the contemporary interpretation given by the Supreme Court to the Constitution of which it has assumed the role of a guardian.

It is quite natural that the Supreme Court as the guardian of the constitution has wavered between the two provisions of Article VI and the 10th Amendment, i.e., between Federal Power and State Rights. In this controversy, the Supreme Court is more inclined often in favour of federal powers, building a stronger federal government than had been intended by the fathers of the constitution by granting only enumerated powers to the Union.

In India the word 'federal' or 'federation' is nowhere mentioned in the Constitution., the constitution sets up the federal system, with the provisions relating to the union in Part V and the provisions relating to the state in Part VI of the Constitution. The legislative power as between the two units are divided by numerous entries in VII Schedule of the Constitution. The division of Executive power between the union and the state governments, in general, follows the division of the legislative powers (Article 73, 162). Though there are points of difference on matters of details, it may be stated broadly, that the duty of Judiciary in India, as in the United States, is to annul any Union or State action which transgresses the foregoing limitations¹⁹ as well as the general mandatory limitations imposed by other substantive provisions of the Constitution. E.g.: Articles 286, 301, 304, Fundamental Rights under Part III.

The Supreme Court, in short, acts as an Umpire of the federalism in India, as in the United States, by exercising its power under Articles 32, 131-136 of the Constitution of India.

Though our federation is not structured like a treaty or compact between the constituent units, there is a division of legislative and administrative powers between the Union and the States. Article 131 of the United States Constitution grants the Supreme Court original and exclusive jurisdiction to resolve justiciable disputes between the Union and the states or between the states themselves. This provision, however, differs from Article III, Section 2(1) of the United States Constitution in that our Supreme Court has no jurisdiction to hear disputes between residents of different states or between a state and a resident of another state. Such disputes, under our Constitution, would only be heard by our Supreme Court on appeal if the relevant provisions were met.

Of course, in the case of disputes between the Union and the States, the province of our Supreme Court may differ significantly from that of the Supreme Court of the United States, due to the differences in the two countries' federations. The absence of the theories of 'State Rights,' 'Immunity of Instrumentalities,' 'dual government,' and 'divided sovereignty' in our Constitution,

¹⁹ Ref. under Article 143, AIR 1965 SC 745 (762).

on the one hand, and the vesting in the Union of residuary powers and the power of issuing administrative directions and overriding powers in emergencies, on the other, would undoubtedly tend to reduce litigation between the Union and the States in our country.²⁰

“The State of West Bengal filed the first suit²¹ under the Supreme Court's original jurisdiction in 1961, seeking a declaration that the Parliament was not competent to make laws authorising the Union Government to acquire coal-bearing land vested in the State. The conclusion reached by a majority of the Supreme Court in that case,²² in short, is that while the power to acquire property, which belongs concurrently to the Union and the States.”

“If the Supreme Court is to act as the ‘Guardian of the Constitution’ as the final interpreter of the fundamental law embodied in the constitution, it must enforce the division of powers laid down in the constitution against the Union as against the States, instead of applying Courts; own ideology apart from the express provisions of the Constitution providing for Union Supremacy under the specified circumstances.”²³ ***It can never be overlooked that there is no ‘Supremacy Clause in the Indian Constitution like Article VI(2) of the American Constitution***, and that wherever the framers of the Indian Constitution desired that the federal interest or the power should prevail, they have provided so in express terms. E.g.: Articles 3, 246(1)-(3), 258-251, 254. The Judiciary has not been empowered to add these provisions.

Some legal issues are bound to arise between the members of the federation, which are capable of being settled by the application of the judicial machinery as in the case of litigation between two private individuals or between the private individual or the State, such as, question relating to their respective territories, or taxing powers, etc.

If such legal issues are to be decided judicially, the power must naturally be vested in the Federal Court, which stands above the federal government, in the sense of being the ‘guardian of the Constitution’. Hence, arises this category of jurisdiction of the highest federal court, which is known in the USA and India as the ‘Original Jurisdiction’ of the Supreme Court.

The ambit of the U.S. Supreme Court’s role in deciding controversies between the members of the federation has become complicated because the provision in Article III, Section 2(2), which deals with the original jurisdiction of the Supreme Court has been modified by the 11th Amendment and judicial decisions, as a result of which, the ‘Original’ jurisdiction of the Supreme Court is exclusive in some cases, while it is concurrent in some other cases.

²⁰ *State of W.B. v. Union of India*, AIR 1963 SC 1241.

²¹ *State of W.B. v. Union of India*, AIR 1963 SC 1241.

²² *State of W.B. v. Union of India*, AIR 1963 SC 1241 (para. 36).

²³ *Kesvananda Bharti v. State of Kerla*, AIR 1973 SC 1461 (para. 594).

India's independent and supreme judiciary has paved the way for a number of landmark decisions that highlight the meaning of federalism, the nature of federalism in the country, and how federalism has evolved over time. Despite the fact that the courts have discussed federalism on numerous occasions, there is still a great deal of uncertainty about the nature of federalism practiced in the country.

The Supreme Court interpreted the impact of Article 301 of the Constitution in the *Automobile Transport v State of Rajasthan*²⁴ case, observing that:

"The evolution of a federal or quasi-federal structure necessarily involves the distribution of powers in the context of the conditions at the time, and a fundamental part of our constitution relates to that distribution with the three legislative lists in the Seventh Schedule. The constitution itself states in Art. 1 that India is a Union of States, and in interpreting the constitution, one must keep in mind the essential structure of a federal or quasi-federal constitution, namely, that the Union's units have the same powers as the Union itself."

A nine-judge bench in *S.R. Bommai v Union of India*²⁵ stated unequivocally that the Indian Constitution is federal. 10 According to the court:

"The constitution gives the central government more power, but the state is supreme within its spheres... The Indian constitution is described differently, more appropriately as 'quasi-federal' because it is a mixture of federal and unitary elements, leaning more towards the latter, but what is important to remember is the thrust and implications of the various provisions of the Constitution bearing on the controversy regarding the scope and ambit of the Presidential power under Article 356 and related provisions."

In *Kuldip Nayar v Union of India*²⁶, Parliament amended the Representative of People Act, 1951 in 2003, removing the requirement of "domicile" in the State in question for election to the Council of States. In this case, the question was whether the 2003 amendment Act violated the principle of Federalism, which is a fundamental structure of the constitution. The petitioner claimed that the amendment to Section 313 of the Representative of People Act 1951 violated the federalist principle.²⁷ The court dismissed the petitioner's claim, ruling that:

"India is a federal state in its own right, and it is not a federal principle that representatives of a state must be citizens of that state. As a result, if the Indian Parliament, in its wisdom, decided

²⁴ *Automobile Transport v State of Rajasthan*, AIR 1962, SC 1406

²⁵ *S.R. Bommai v Union of India*, AIR 1994 SC 1918

²⁶ *Kuldip Nayar v Union of India*, AIR 2006 SC 3127

²⁷ Representative of People Act, 1951, s 3.

not to require residency, it would not violate basic features of federalism."

The investigation was handed over to the CBI in the case of *State of West Bengal v The Committee for Protection of Democratic Rights, West Bengal*²⁸, a case involving the exercise of power under article 226 of the constitution. The state challenged the high court's jurisdiction, arguing that it is a violation of the federal structure because the CBI is a central agency and cannot investigate without the state's consent. However, the state's argument was rejected, and the court ruled that:

"Any order issued by the Supreme Court or a High Court in the exercise of power under Article 32 or 226 to uphold the constitution and the rule of law cannot be deemed to violate the federal structure. As guardians of citizens' civil liberties, this Court and the High Courts have not only the power and jurisdiction, but also the obligation, to zealously and vigilantly protect the fundamental rights guaranteed by Part III in general and Article 21 of the Constitution in particular."

In USA, to limit congressional power, the Court has invoked the Tenth Amendment and the principles of state sovereignty expressed in that amendment in several twenty-first-century cases. To be sure, the Court has not contributed to the further development of the anticommandeering doctrine, which emerged from several rulings in the 1990s and prevents officials from pressuring state and local officials to serve in the service of federal policymaking. However, in the 2010s, the Court issued two notable decisions, one allowing an individual defendant to bring a Tenth Amendment challenge to federal law and the other invalidating a provision of the Voting Rights Act (VRA) that infringed on state sovereignty.

In the 2010s, the Court issued two decisions in the *U.S. v. Bond case*. Most importantly in terms of doctrinal implications, the Court considered whether an individual could bring a Tenth Amendment challenge to a congressional statute in *Bond I*,²⁹ the federal government contended that such an argument could only be made by a state government, not an individual litigant. In rejecting the federal government's argument, the Court emphasised that the benefits of maintaining a balance of federal and state power accrue not only to state governments, but also to individuals. Individuals should be allowed to raise Tenth Amendment challenges, the Court reasoned, just as they were allowed to raise separation of powers claims during litigation. The Court then addressed the merits of the case in *Bond II*,³⁰ which involved a woman who spread toxic chemicals on various objects with the intent of injuring another woman who had become

²⁸ *State of West Bengal v The Committee for Protection of Democratic Rights*, AIR 2010 SC 1476

²⁹ *U.S. v. Bond*, 564 U.S. 211 (2011)

³⁰ *U.S. v. Bond*, 134 S. Ct. 2077 (2014)

pregnant by the first woman's husband. The Court specifically considered whether the defendant could face prosecution under the Chemical Weapons Convention Implementation Act. However, in resolving this question, the Court declined to address the constitutional question of whether the law was a legitimate exercise of treaty power, despite the fact that three justices indicated that they would prefer to decide the case on that basis. Rather, in his opinion for the Court, Chief Justice Roberts concluded that respect for principles of state sovereignty counselled that a congressional statute should not be interpreted to reach behaviour of a local rather than a national character. According to Roberts, based on Tenth Amendment principles, statutes should be presumed not to displace areas of state and local responsibility unless expressly stated in the statute and in a manner not apparent in the language of the Chemical Weapons Act.

The Court then invalidated the VRA's formula for determining which states and localities must obtain preclearance from the federal Justice Department or the federal district court for the District of Columbia before making any changes to election rules in *Shelby County v. Holder*.³¹ Chief Justice Roberts stated in explaining the Court's decision that the Tenth Amendment and other constitutional provisions recognise the importance of state sovereignty. Roberts also emphasised the importance of respecting the states' equal sovereignty. According to Roberts, these principles were not followed in the current situation because Congress had not updated the VRA's coverage formula in four decades. As Roberts pointed out, all states face private or Justice Department lawsuits for violating the VRA's guarantees. Only states covered by this formula, however, are required to seek prior approval from federal officials for changes to election rules, which the Court described as an "intrusion into sensitive areas of state and local policy-making" and an "extraordinary departure from the traditional course of relations between the States and the Federal Government."

VI. CONCLUSION

The independence of the judiciary is one of the most important features of federalism; if a regime in power exceeds constitutional limits, the Court has the authority to define any term. The Supreme Court has issued several rulings on federalism, but its position has been contradictory. The courts have commonly appreciated a great deal of authenticity in the eyes of governments as well as general society, particularly in the post-inner crisis era. The administrative structure After the 1980s, and particularly the 1990s, the administrative framework has come to be exercised primarily by the judiciary, whereas in the pre-emergency

³¹ *Shelby County v. Holder*, 570 U.S. 2 (2013).

period, it was primarily operated by the leader and the legislative body. The courts have frequently upheld centralist qualities, yet there has recently been a more prominent proclivity to ensure the states, in any event in some significant fields, for example, cases identified with the center's ability to assume control over a provincial field under the Indian Constitution's emergency clause. Concerning the dispute over the 'Amendment power' between the administration and legislature on one side and the judiciary on the other, Granville Austin claims, allegorically, that the Supreme Court has won the "battle for the care of the Constitution." According to Austin, "despite infrequent self-inflicted injury, the Judiciary has been the stronghold of the Indian Constitution." Parliament values its ability to amend constitutional provisions.

Pratap Bhanu Mehta³², on the other hand, adds that the unexpected rise in legal power "There is a significant internal conflict at the heart of Indian constitutionalism: the inquiry into who is the final arbiter of the Constitution yields no simple answer. The Court has declared it to be a final appointed authority, with the authority to override properly ordered established changes. In India, the legislature and judiciary have held and will likely continue to hold positions in deciphering the Constitution ".

United States' concerns about restrictions imposed by Congressional legislation can be better addressed in the political arena, where states have ample power to express and defend their positions, rather than through a federal court decision. The New Federalism tends to add an unnecessary barrier to the already difficult process of enacting national legislation.

³² Pratap Bhanu Mehta, "India's Unlikely Democracy: The Rise of Judicial Sovereignty", 'Journal of Democracy', (2007), PP- 74