

Article 131- Special Powers of Supreme Court: RSTV – Big Picture

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What's in the news?

- The Pinarayi Vijayan-led LDF Government has moved the Supreme Court against the implementation of the **Citizenship Amendment Act (CAA)**.
- The government has sought that the act should be declared as a violation of the basic structure as it is against the principle of equality, freedom, and secularism.
- The Kerala Assembly has also passed a resolution against the Act.
- The government has said in its suit that there is no rationale in grouping together the three countries for the purpose of the CAA and has approached the Supreme Court under Article 131 of the Constitution.

Larger Background:

- The **Citizenship Amendment Bill** was introduced by Home Minister Amit Shah in the 17th Lok Sabha. The bill received presidential assent on 12th December 2019 and thus assumed the status of an Act. The Act came into effect on 10th January 2020.
- The Citizenship Amendment Act 2019 aims to make changes in the **Citizenship Act**, the **Passport Act**, and the **Foreigners Act** for granting citizenship to illegal migrants belonging to religious minority communities from the three neighbouring countries of Bangladesh, Pakistan, and Afghanistan.
- It will basically grant illegal non-Muslim migrants, the status of legal migrants despite them having come to India without valid documents and permission.
- However, the country has been witnessing widespread protests questioning the constitutionality of the Act and Kerala became the first State to join the citizens across the country's spectrum to challenge the CAA.
- The Kerala government has filed an original suit under **Article 131 of the Constitution**, which gives the Supreme Court the exclusive original jurisdiction to resolve the dispute.

Article 131: The original jurisdiction of the Supreme court

- As a federal court, the Supreme Court has the right to settle the disputes between the different units of the Indian Federation such as:
 - Between the Centre and one or more states and,
 - Between the states
- The jurisdiction of the Supreme Court can be classified as:
 - Writ Jurisdiction
 - Original Jurisdiction
 - Appellate Jurisdiction
 - Advisory Jurisdiction
 - A Court of Records
 - A Power of Judicial Review among other powers.
- The Supreme Court has exclusive original jurisdiction in the matters of federal disputes.
- However, two conditions have to be met for the exclusive original jurisdiction to be applicable:

- The dispute must involve a question which is based on the existence and extent of a legal right. This effectively excludes questions which are political in nature.
- A suit brought by a private citizen against the Centre/state before the Supreme Court would not be entertained under the same.
- Also, the provisions mentioned in this Article are subject to other provisions of the Constitution, i.e. if a solution to any issue is present under any other Article of the Constitution, then this Article would not be applicable.

Rights of States and the Centre:

India has a federal form of government wherein the powers are divided between the States and the Centre.

- **Part XI of the Indian Constitution (Articles 245-263)** deals with the relations between the States and the Union. It describes the financial, administrative and legislative relations between the Centre and the states.
- **Article 246:** defines the legislative subject matters on which the Parliament and the State Legislatures can make laws. These matters are enumerated in three lists (Union List, State List, and the Concurrent List) of the Seventh Schedule.
- **The Seventh Schedule:** there are three lists under the Seventh Schedule of the Indian Constitution, which provide for a division of powers between the Central and the State Governments. The three lists under the Seventh Schedule are:
 - **Union List:** The Parliament has exclusive rights to make decisions and laws on the subjects given in the Union List. These include issues such as citizenship, defense, and foreign affairs among others.
 - **State List:** The State has the right to make laws for matters on the State List. This list includes issues such as public order, police, health, and sanitation among others.
 - **Concurrent List:** Both the Centre and the States can make laws on matters enlisted in the Concurrent List. However, in case of a conflict, the law of the Centre prevails. The issues on the Concurrent list include education, family planning amongst others.

However, the Parliament can make laws on subjects listed under the State List when a resolution is passed to that effect by the Rajya Sabha under Article 249.

Can States oppose the implementation of a Central Law under Article 131?

- According to the federal framework of the Indian Constitution, the States are supposed to comply with the Central Laws. Failure to do so represents the breakdown of the constitutional machinery.
- The States are obligated to comply with the Central laws under **Article 256** of the Indian Constitution, which specifies that **“the executive power of each state must ensure compliance with the laws passed by the Parliament.”**

- The Kerala government has said in its suit that it would be compelled under Article 256 to comply with the CAA, which was “manifestly arbitrary, unreasonable, irrational and violative of fundamental rights”.
- If the States do not follow or if there is a failure to comply with a central law, then according to **Article 365**, the President is empowered to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution.

Can the states file an original suit under Article 131? - Related cases

- The West Bengal Government had filed a case with regard to ‘**Rights in Mines in Coal-bearing areas**’ against the **Central law (Coal Bearing Areas (Acquisition and Development) Act, 1957)** under Article 131.
 - This was the first suit under the original jurisdiction of the Supreme Court.
 - The Supreme Court, however, dismissed the suit by upholding the validity of the Central Act.
- There have been two conflicting judgments from the Supreme Court on whether a State can file an original suit under Article 131 to challenge the constitutionality of central law.
 - The first judgment was reported in 2012 in the **State of Madhya Pradesh vs Union of India case** which held that the States cannot challenge a central law under Article 131.
 - The second judgment in the **State of Jharkhand Vs State of Bihar** case took an opposite turn in 2015 and was referred to a larger bench of the Supreme Court for final determination. This case is still awaiting the final judgment.
- The Chhattisgarh government has challenged the implementation of the National Investigation Act, 2008 under Article 131, stating it as a violation of the Constitution.

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

A central law can be challenged under Article 131 under the following cases:

- - **Legislative Competence:** the law can be challenged if it is not in compliance with the law making powers of the framing authority and has an excessive delegation of essential functions of the legislature.
 - **Violation of Rights:** a law can be challenged if it violates **Part III** of the constitution which deals with **Fundamental Rights**.
 - Kerala’s petition is based on the premise that CAA is a violation of fundamental rights and not about the legislative competence of the Parliament.
 - **Violation of the Constitution:** The law can also be challenged on the basis that it is a violation of the constitution. The following doctrines have been formulated by the Supreme Court over time in this regard:
- **The Doctrine of Basic Structure-** signifies the basic structure of the Constitution, which forms the foundation of the Constitution and thus cannot be amended.
- **The Doctrine of Pith & Substance-** the court looks at the matter (i.e. the essential feature) of the issue when the question raised is regarding the relatability of a particular law to a specific subject. Eg. incidental encroachment of the State on a subject included in the Union List.

- The Doctrine of Colorable Legislation- this doctrine is involved when the legislature does not possess the power to make laws upon a particular subject but it indirectly makes a law on it. Eg. A State legislature making a law which could influence the defense of the country.

Way Forward:

- The Supreme Court must reject politically influenced suits and focus should be given to cases which raise crucial questions of law and constitutional validity.
- The representatives of the State must be responsive and outspoken of their views when the laws are being made, instead of creating a predicament later on.
- Both the Centre and the State must realize that federalism is a two-way street. They must respect the constitution and each other.
- The states must refrain from defying the central laws as it could result in a breakdown of the constitutional machinery.