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Tools of Constitutional Interpretation in a Federal Setup: With Special Reference to India

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The federal scheme of Constitutional functioning is found in many countries. However, the division of power in all federal systems varies a lot. The Indian Constitution has also divided the powers between the Central Government and the State Governments on the principles of federalism. The division of power in the Indian Constitution is based on the treble division. The framers of the Constitution attempted to provide an exhaustive list of powers upon which the Central and the State governments could work. Yet, the constitutional history has revealed that the questions have arisen in the past between the Central and State governments over the legislative competence. In this paper, an attempt is made to analyse the interpretive tools which have been used by the Apex Court in arriving at the solutions to the issues which arise in the federal context.

Keywords: *federalism, interpretation, division of powers, judicial function*

INTRODUCTION

Federal systems exist throughout the world. Federal systems as exist in the world have a lot of variations. Therefore, the scholars have classified these federal systems into quasi-federal[1] to

[1] K. C. Wheare, *Federal Government*: *United Kingdom* (Oxford University Press 1951)

pure federal systems. It is interesting to note that most federal countries are governed by written constitutions and the institution of constitutional courts is generally found in most of these countries. The constitutional courts of federal countries have the primary responsibility with respect to the meaning of the constitution as they are generally the final arbiter who decide what is the exact meaning of the constitutional provisions and has the final say on the meaning of the principles of the constitutional provision. The constitutional courts when discharge their functions, they may need the help of interpretive tools. There are various tools with the help of which the interpretation, construction, and meaning of the words and phrases in the written constitution are given. The need for interpretation arises due to multiple factors. One of the most important factors is that the constitution-makers cannot be in a position to envisage all the future problems which may arise and therefore, in the future, the courts are required to deal with the issues within the parameters of the constitution. Further, the growth of technology has posed newer challenges that were not found earlier. Thus, to ensure that the same constitution may survive for a long duration, the courts try to fit the situation in the constitutional words and phraseology. In this paper, an attempt is made to analyse the legal tools of interpretation that are used by the Constitutional courts for dealing with the issues which arise in the federal setup of India. Various tools such as the doctrine of pith and substance, territorial nexus, colourable legislation, severability, etc. have been analysed. The discussion starts with the meaning of federalism and federative systems in the second part, where it has been highlighted that federalism and federative systems are two different things. In the third part of the paper, the various occasions have been discussed where the interpretational role of the constitutional courts may arise. The fourth part of the paper discusses various tools of interpretation in the Indian context.

MEANING OF FEDERALISM

Just like any other concept, federalism means different things to different scholars and everybody has tried to define it differently.[2] The foundation of federalism can be found in the USA Constitution of 1787. It is very important to understand the distinction between

[2] D. V. Verney, 'Federalism, Federative Systems, and Federations: The United States, Canada, and India' (1995) 25(2) Publius, 81-97 <https://doi.org/10.2307/3330829> accessed 27 April 2022

federalism and federation. Federalism is an abstract concept whereas federation is a form of government that exists in various countries like the USA, Canada, India, etc. Federalism can be defined as the set of principles that include the distribution of power between national and several state governments, limited governments, checks and balances, the separation of powers, and liberalism and not simply the distribution of power. To understand the meaning of federation, we need to demarcate the distinction between federative systems and federation. Federative system is a broader term(genus) that is used to describe the real systems operating in one or the other country where any degree of federal principle is the operating principle of division of power. It may range from *quasi*-federations, federations confederacies, and any other type of system based on federal principles. Thus, a federation is the specie of federative system where the powers of the provincial government are not subservient to the national government in theory and practice.[3] Ronald Watts[4]provides the characteristics of a federation. He emphasizes that there have to be at least two orders of government, one at national as well as at sub-national level government, which directly with the citizens. It also requires a formal distribution (which is generally by means of written method) of legislative and executive authority. Also, the financial resources and sources of revenue are also allocated between the two levels of government with sufficient autonomy for each order. Federalism is based on the idea of ensuring the representation of regional views in the national policy-making processes. All this is possible when the written Constitution is present, which is not unilaterally amendable. The amendment process requires the consent of all or majority of the constituent units. Lastly, there has to be an umpire (courts or referenda), which can facilitate inter-governmental relations. Watts makes the essential to have an umpire in a federal structure. This role of umpiring is generally given to the judiciary in almost all federal systems. The question that arises is - Why do we need judiciary in federal systems? *K.C. Wheare*[5] argues that division of power is an essential part of any federal government. Powers are divided in language which may be ambiguous and some words may have more than one meaning. So, it is certain that there will be disputes regarding the division of power. The disputes cannot be

[3] K. C. Wheare (n 1)
[4] Thomas J. Courchene & et al., *The Federal Idea: Essays in Honour of Ronald L. Watts. United Kingdom: Institute of Intergovernmental Relations* (Queen's University 2011)
[5] K. C. Wheare (n 1)

finally decided by any of the government because it will be against federal principles. Thus, it follows that the last word in settling disputes about the meaning of division of power must be with some third institution._This third institution is known as the judiciary in almost all federative systems. It has been recognized that in a federation there has to be a written and supreme constitution[6] and one of the fundamental tasks of the judiciary is to interpret the constitution. Technically this function of interpreting the Constitution is known as judicial review.[7]In Canada, till the year 1949 this power was with the judicial committee of the Privy Council and after 1949 with the Supreme Court of Canada. In Australia, the Judicial Committee decides the disputes; in the USA, the Supreme Court of USA, and in India it is the Supreme Court of India.

The distribution of powers between the Union and the States is an essential feature of federalism. This distribution ensures that the respective legislatures and the executive perform their functions without any chaos and conflict. However, there is a lot of diversity in the mechanism of distribution of power. In some countries, the power of the only federal or central legislature is specified and then the rest of the power belongs to the States, in some others, there is express and specific distribution among both legislature and then in some, the powers are divided into three areas where one each belongs to one legislature and then there is a common corpus where both legislatures may exercise powers as per the scheme. Yet, the general pattern of distribution indicates that the matters of national importance generally belong to the Central or Federal legislature, and matters of nature where the local intervention of the State is needed are generally given to the States or provinces.

OCCASIONS OF CONSTITUTIONAL INTERPRETATION IN FEDERATIVE SYSTEM

In the federal system supremacy of the Constitution is a *sine qua non* and it has to be maintained.[8]Situations may arise where an act of one Government (legislative or executive) may directly hit on the federal structures; in that case, whether an act of the Government destroys the supremacy of the Constitution has to be decided only through the interpretation.

[6] *Ibid*
[7] D.D. Basu & Prof. B.M. Gandhi, *Comparative Federalism* (Lexis Nexis 2013)
[8] K. C. Wheare (n 1)

Verney[9] considers fundamental rights as one of the essential characteristics of federalism, so from that point of view, the judiciary is also bound to protect the fundamental rights of the individual. Whenever any legislative or executive act is done then the question may arise whether the act done amounts to encroachment or not? Answers to this question can be found only through the interpretive processes.

In federal systems, it is not only the Central and States that share the powers but the States *inter*-are also interdependent. In such an interdependent situation, the question may arise whether an act of one State amounts to the encroachment of other States' power? Again, this question has to be answered through the process of interpretation. In Federal countries like Canada and India, governors of the States are appointed by the Central Government. These appointments generally have wide ramifications on relations between the State and the Central governments. Thus, the powers and the functions of the governors, their appointments, and tenure are also directly linked with the federal structures as the Governor is considered the link between the State and the Centre. Peter Hoggconsiders the appointment of the Governor by the Centre as a breach of the federal principle.[10] In India, generally, Governor is considered an agent of the Central Government because of the doctrine of pleasure which has actually made the Governor a puppet in the hand of the Centre. This doctrine of pleasure has been interpreted by the Apex Court to monitor the encroachment on federal principles. In *B. P. Singhal*[11] the Apex Court held that it is true that the Governors' appointments are subject to the pleasure of the President yet the removal of the Governor should not be based on considerations that are arbitrary in nature. The Court observed that the "power of removal should be exercised in rare and exceptional circumstances for valid and compelling reasons". Merely because the Governor is not in sync with the policies and ideologies of the Union Government or the party in the power at the Centre is not sufficient reason for the removal.

[9] *Ibid*
[10] P. W. Hogg, *Constitutional Law of Canada* (Thomson/Carswell 2008)
[11] *B. P. Singhal v Union of India* (2010) 6 SCC 33

Further, the Constitutions of the USA, India, and Switzerland contain the provisions to manage the situation of internal emergency. Usage of these provisions may encroach the federal principle as it is abundantly clear from the Indian experience. Another important task of the Indian Judiciary in the field of judicial review can be seen in the interpretation of these provisions. In *Bommai,*[12]Supreme Court held that Art 74(2)[13] cannot be interpreted in a manner that prevents the scrutiny of the material by the court about the grounds on which the President has decided to proclaim an emergency under Art. 356[14]. It is one of the most important features of a federal system that there are two sets of laws constantly operating on the subject (a) the laws of the Central legislature and 2) the laws of the State legislature. Situations may arise where on the same issue there are two sets of conflicting laws of different legislatures, then which law is to operate on the subject is also a problem that has to be solved by the methods of interpretation. This problem is called the problem of Repugnancy, and it has to be decided by the Judiciary. This situation generally arises in the Concurrent List in the Indian Constitution. The Apex Court has also ruled[15] that Repugnancy arises in Concurrent List only but Professor *P.K. Tripathi* disagrees with this Judgment of the Apex Court. Whether a constituent State can secede from the federation is an issue that has also come for consideration by the judiciary in the federal systems of the USA and India. Both the constitutions are silent on this issue so Judiciary has tried to decide this issue through constitutional interpretation.[16] Another important issue before the Courts in the federal system is the determination of the extent of Residuary Powers. Residuary power vests in States in some federal systems and in others, it vests in the Center. Interpretation of this power may be of decisive value in determining the nature of the Constitution. Here also judicial review becomes important and plays a decisive role in determining the nature of the Constitution. The Constitution of India has adopted the federal structure primarily from the 1935 Act[17]This Act made comprehensibly listed the legislative powers and divided them into three lists.[18] Further,

[12] *S. R. Bommai v Union of India* AIR 1994, SC 1918
[13] Constitution of India, 1950, art. 74(2)
[14] Constitution of India, 1950, art. 356
[15] *Hoechst Pharmaceuticals Ltd. v State of Bihar* AIR 1983, SC 1019
[16] B. P. Singhal (n 11)
[17] Government of India Act, 1935
[18] Government of India Act, 1935, s 100

it was also provided in the Act that if a matter was not covered by any of the three lists that would be treated as a residuary power of the Federal domain.[19] Section 107[20] clarified that in case of any inconsistency between the provincial and the federal law the federal powers shall prevail.[21]

The treble enumeration was adopted in the 1935 Act which continued in the Indian Constitution as well. The Constitution has divided the powers with the help of three lists in the Seventh Schedule. The powers enumerated in the first list[22] is the exclusive domain of the Parliament, the second list[23] contains the exclusive powers of the State legislatures and the third list[24] is a concurrent list where both the legislatures can enact laws. The very fact that the Indian Constitution contains three lists is indicative of the fact that the framers of the constitution were attempting to exhaust all all-possible fields of legislation. They also attempted to ensure that the conflict, in any case, should be resolved and the primacy was given to the Parliament in case of conflict.[25]In the matters enumerated in the concurrent list and in case of repugnancy, the Parliament's supremacy was established.[26] The need for constitutional interpretation in the federal system is clear from the above discussion. Judiciary has evolved and applied a few rules regarding the interpretation of Constitutions which are discussed in the next part of the paper.

TOOLS OF CONSTITUTIONAL INTERPRETATION

Interpretation can be defined as a process by which the Court tries to give meaning to the provisions of legislation with the help of various tools which are allowed to be used in that process. It is one of the fundamental rules of interpretation that the intention of the Legislature

[19] Government of India Act, 1935, s 104
[20] Government of India Act, 1935, s 107
[21] *In Re. C.P. Motor Spirit Taxation*, AIR 1939, FC 1(5); *Megh Raj v Ala Rakhia* AIR 1947, PC 72; *Prafulla v Bank of Commerce* (1947) 51 CWN 599 (610) (PC)
[22] The Union List, containing 97 entries
[23] The State List, containing 66 entries
[24] The Concurrent List, containing 47 entries
[25] *K.S.E. Bd. v Indian Aluminium* AIR 1976, SC 1031 (1036-37); *I.T.C. v State of Karnataka* (1985) Supp SCC 476 (para. 19); *Sudhir v W.T.O.,* AIR 1969, SC 59 para. 7(3)
[26] Constitution of India, 1950, art. 254(2)

should be gathered from the words and language used in the statute itself.[27] H.M. Seervai[28] writes that the same rule of interpretation applies while interpreting a Constitution also. Even so, certain other considerations have to be kept in mind while interpreting a Constitution. Such as the Constitution is something that is not made every day. Therefore, a broad and liberal construction and such construction should be given to the constitutional provisions by which the Constitution can adapt to the changing needs of the society and it can survive the longest possible duration.[29]

If we take the Indian context, the judiciary has played a crucial role in interpreting the Constitution, and for the same purposes they have adapted and evolved various rules of interpretation which have helped them to ascertain the true or real meaning of Constitutional provisions. It has to be remembered that there is always a presumption in the mind of the judiciary that impugned actions taken by the respective Government are within the jurisdiction and the onus of proof lies on the person who challenges the action. In other words, there exists a presumption that the exercise of the power is within the ambit of the power conferred.

In the next few paras, various doctrines relating to the interpretation of Constitutional provisions have been discussed.

- ***The doctrine of Territorial Nexus***

The Constitution of India provides that the Union can legislate for the entire territory of India and the States can legislate only for their own respective territory. So, States are not free to legislate on the subject which does not fall within their territory. Various situations have emerged in Indian history where the extra-territoriality of enactment of a State has been questioned by the other States or individuals. To decide the issue of extraterritoriality the Apex Court has evolved the doctrine of territorial nexus. This doctrine was elaborately

[27] Justice G.P. Singh, *Principles of Statutory Interpretation: Also Containing General Clauses Act, 1897 with Notes* (Lexis Nexis 2010)
[28] H.M. Seervai, *Constitutional Law of India: A Critical Commentary. India* (Vol. 1 N.M. Tripathi 1991) para 2.2
[29] M.P. Jain, *Indian Constitutional Law* (Lexis Nexis 2014)

discussed in the case of*Chamarbaugwala.*[30]The factual scenario from which the case arose was that a newspaper that was printed and published in Bangalore contained a prize competition for correctly solving the puzzles. The circulation of the paper was large and therefore, the entries for the prize came from other states as well including the State of Bombay. The paper also collected the fee for participating in the competition through various channels. The Bombay Legislature passed a law,[31]which imposed a tax on prize competitions carrying on business in the State. Under the same law, the appellant was also asked to pay the tax to the Government of Bombay. The appellant challenged the Act under Art. 245[32] on the grounds that there was no nexus between the State's taxing power and the appellant's activities as the appellant's head office was in Bangalore. The standards for applying the territorial nexus theory were established by the court while deciding the issue. The Court enunciated that doctrine of territorial nexus means the object to which the law applies does not have to be physically located within the State's territorial boundaries. Rather, there must be a sufficient nexus between the subject matter of the enactment and the State making the It must be remembered that the nexus must be sufficiently established, the sufficiency depends on two aspects. Firstly, the connection must be a real connection and not a sham, illusory or hollow and secondly, the liability intended to be imposed must be relevant to that connection. It was held that as the tax was to be imposed on the activities being carried out in the State of Bombay, and as there was sufficient nexus between the prize competitions being carried out in Bombay through various depots, thus, there is sufficient nexus between the law and the activity. Thus, the legislation is within the parameters of the territorial nexus.

- ***The doctrine of Pith and Substance***

In cases where two legislatures profess to directly legislate as regards a subject that belongs to the exclusive list of the other legislature then the doctrine of *ultra vires* becomes applicable. Under Indian Constitution, this kind of situation may arise when a State makes a law relating to a subject that is touching upon the power which is included in the Union list. In order to

[30] *State of Bombay v R.M.D.C.,* AIR 1957, SC 699
[31] Bombay Lotteries and Prize Competition Control and Tax Act, 1948
[32] Constitution of India, 1950, art. 245

determine whether the one legislature has invaded the jurisdiction of another or not, we need to find to whom the power belongs in its substance. The doctrine of Pith and Substance is utilized to locate the power between two legislatures. The rule of this doctrine is that if legislation comes within the items on which the legislature has jurisdiction to legislate in truth and substance, it will not be declared illegal just because it touches on a subject outside the legislature's jurisdiction. This doctrine is utilized to judge the pith and substance of the Centre as well as the State. If this doctrine comes into play then the whole statute is held valid despite the incidental encroachment on the domain of the other legislature. Further, this doctrine is applicable not only inter list but intra-list situations as well. While deciding the pith of the legislation, the nomenclature of the Act has no relevance. In order to gather the pith of an Act the purpose, object, and its effect have to be enquired and the Statute must be read as a whole. This doctrine was elaborated by the Court in the case of *P.K. Mukherjee*[33] case. In this case, provincial legislation[34] was challenged on the ground that the same impinged on the Federal powers of the legislation. In this case, the private lenders had lent the money and simultaneously taken the promissory notes from the borrowers. The Bengal law provided that the borrower was liable to pay only a limited amount and the legislation was also made retrospective in nature. Thus, the borrower is partially exempted from repaying the money obtained by the private money lenders.

As per the law prevailing at the relevant time, the power to legislate on the matters relating to banking and promissory notes was vested in the Federal Government exclusively. On the other hand, the Provincial legislation was entitled to legislate on the matters relating to money lending. However, there were few provisions in the Provincial legislation that mentioned the promissory notes, banks, and companies (all being the domain of the federal legislature). Thus, the proper implementation of the said law was touching upon the aspects which were the domain of the by the federal legislation. The Court observed that it is difficult to envisage a situation where one legislation will not touch the aspects of other areas and operates in silos. However, to understand the true nature of the legislation the doctrine of pith and substance

[33] *Prafulla v Bank of Commerce* (1947) 51 CWN 599 (610) (PC)
[34] Bengal Money-lenders Act, 1940

should be used so that the real meaning and the exact domain of the law can be determined. The Court observed that every incidental transgression cannot be a reason to declare the law invalid and every attempt should be made to save the legislation.

- ***The doctrine of ancillary power***

It is possible that the essence of law can be found in one list, but it contains provisions that are not covered directly by that item but are required to be present in order for the law to be effective. In such a case, the Court broadens the scope of a single Entry if the additional provisions can be deemed to be ancillary or incidental to the exercise of the power conferred by the specified Entry. Where this Doctrine is applied, the ambit of the power granted by a particular Entry is enlarged or extended to include other powers which the court draws as "Implied Powers".

- This Doctrine is available to both the orders of the Legislature.
- Before resorting to this rule the Court has to give the widest possible interpretation to the words in each Entry in the Lists, having regard to their natural meaning.
- Before invoking this Doctrine it is first to be seen whether the power claimed as ancillary is necessary for the effective exercise of the power expressly granted by the Entry or not. In other words, the power claimed must be "in aid of" the granted power and capable of being reasonably comprehended within the latter.
- This doctrine cannot be used for rewriting the Constitution or to subvert the Federal principle.
- ***The doctrine of Colorable Legislation***

One legislature may encroach on the powers of the other in various ways. It can be manifest on the face of the legislation or it may be 'covert' or 'indirect'. In the cases of the latter, this doctrine is applicable. This doctrine is based on the maxim that 'what cannot be done directly it cannot be done indirectly'. Once a law is held to be *intra vires,* a particular Entry as

interpreted by the Pith rule and Ancillary rule cannot be invalidated by invoking a ground that the legislature was guided by improper motives. This doctrine does not involve the question of *bonafide* or *malafide* on the part of the legislature. If the legislature is competent to enact a particular law, the motives are irrelevant. On the other hand, if the legislature lacks the competence, even the best motives cannot give the competency. When a legislature having no power to legislate frames legislation so camouflaging the same as to make it appear to fall within its competence, the legislation enacted may be regarded as colourable legislation. The Apex Court has laid down certain tests to ascertain whether an impugned law constitutes colourable law or not, as follows:

- The court must look at the substance and not the nomenclature, nomenclature has no role in gathering the substance.
- Courts must look at the objects as well as the effects of the Law.

This doctrine has not been used much to strike down the laws. This doctrine is based on the substance, therefore generally after gathering the substance, it is the doctrine of Pith and Substance which is made applicable. However, in cases where the same legislature resorts to a scheme and enacts a number of legislations each of which is *intra vires*, their total effect may be to achieve an object which is beyond the jurisdiction of the legislature.

- ***Residuary Power and its Interpretation***

Provision of residuary power is considered necessary because of the changing needs of the society and to avoid the conflict of jurisdiction on the matters of legislation between two competing legislatures. In the USA and Australian Constitutions, the residuary power belongs to the States. Both the constitutions provide only one list enumerating the powers of the Federal Legislature and thereby both the constitutions have left the residuary powers to the States. It is true that judicial interpretation has curtailed the rigour by the doctrines of implied powers, supremacy clause, and occupied field. Through these doctrines, federal legislatures have found more powers than enumerated. So, it can be seen that the interpretation of residuary power in the USA and Australia has been very restricted.

In India, the residuary power is given to Parliament expressly. Art. 248 of the Constitution along with Entry 97 of List one makes it the exclusive domain of the Parliament. However, despite the express mention of the exclusivity of law-making with respect to residuary matters, there has been controversy around this area. This exact nature of this power, the controversy surrounding the issue, and the judicial stand on the same can be understood with the help of the case of *H.S. Dhillon*.[35]The matter arose due to the imposition of wealth tax by the Central government. The said tax legislation was amended and the amended legislation provided that to assess the total wealth of the assessees, the wealth in the form of agricultural land shall be included. Thus, it had the impact of taxing the income from agricultural land indirectly. The laws on agricultural land are the exclusive domain of the State legislature and therefore the Parliament can levy Wealth Tax on the assets of a person including agricultural land. Wealth tax does not fall within the ambit of the State List and but also the Union List Entry 86 provides expressly that taxes can be levied on the capital gain except the agricultural land. "Taxes on Capital Value of assets exclusive of Agricultural Land". The question was whether such tax can be levied under Residuary Powers given to the Parliament? Two major arguments were posed before the court against such power. Firstly, it was argued that when entry 86 of the Union List expressly excludes this power from the Parliament's domain then the same legislation cannot be passed by taking the residuary power route. Secondly, the residuary power of Parliament should be interpreted to mean only those powers which are not found in any of the three lists of the seventh schedule. Since the Wealth Tax is already found in the Union List itself, therefore, the same cannot be allowed to be interpreted in a manner that is colourable exercise, since the subject of Wealth Tax has been included in Entry 86 List One, it could not then fall within the Residuary powers and Parliament must legislate within the scope of Entry 86.

A constitutional bench of the Supreme Court comprising of seven judges decided the matter. The majority did not agree with the arguments advanced. The court was of the view that Art. 248[36] was framed in the widest possible terms. It was opined by the majority of the judges that

[35] *UOI v H.S. Dhillon*, AIR 1972, SC 1061
[36] Constitution of India, 1950, art. 248

the scope of the residuary power is vast. They were of the view that a matter which is not included in List II or III falls within the residuary field and therefore, there is no need to look at the Union list to determine whether the matter is a residuary matter or not. In other words, if the subject does not fall in List II or III Parliament has the power to legislate on it.

Seervai has criticised this stand taken by the majority of the judges. His argument is that not when the framers could envisage a particular power and then they denied such power to the Parliament then the same cannot be located in the residuary power. He further argues that in view of the distribution of powers intended to be exhaustive. The residuary power should mean only those powers which are not found in any of the lists. He further says that reading residuary power in a way as provided in the above-mentioned case makes the specific enumeration redundant.

- ***Doctrine of severability***

It often happens that while enacting a Statute that is in the competence of the legislature few provisions are *ultra vires* by reason of covering matters outside the jurisdiction of the legislature enacting the Statute. In such a situation this doctrine tries to save the legislation as much as possible if certain conditions are fulfilled. The words "*to the extent of*" under Arts.13, 251, 254[37] indicates the use of the doctrine of Severability. The doctrine signifies the duty of the courts to save the law as much as possible which is impugned as *ultra vires*.

This doctrine says that if the offending provision is severable from the rest of the Act, only that offending provision will fail and not the entire legislation. The question that arises when an invalid portion is severable from the rest of the statute? The Apex Court has enunciated and elaborated on this Doctrine in the landmark case *Chamarbaugwala*.[38] In this case constitutionality of the Prize Competition Act, central legislation was in issue. The provisions of the Act were enacted in such a manner that they were creating an embargo on the operations of games of skill as well, along with the games of chance. As per the Art. 19(1)(g)[39]

[37] Constitution of India, 1950, art. 13, art. 251, and art. 254
[38] *R.M.D.C. v UOI,* AIR 1957, SC 628
[39] Constitution of India, 1950, art. 19(1) (g)

Parliament had the power to restrict prize competitions only of gambling nature and not of skill.

The Court held that the Act will be applicable to the cases of gambling competitions and not to competitions that involved the use of skill. The Court applied the severability doctrine and provisions interpreted in a manner to save the legislation. The enunciation of the rules of the doctrine of severability was as follows:

- The legislative intent is of paramount importance in determining whether the severability doctrine can save the legislation or not. In determining the legislative intent on the question of separability, the court may look at the history, mischief, and other internal and external tools of interpretation.
- The relevant question in such a case should be whether the legislature would have enacted the valid portions of the law knowing that the invalid portions cannot be enacted by them?
- Even in such cases where the answer to the previous question is affirmative, then also, the court has to ensure that the valid and the invalid portions are not so inextricably linked that they cannot be severed. If they cannot be severed, then the entire legislation needs to be struck down.
- Further, in cases where such remainder is in itself a complete code independent of the invalid portions, then it will be upheld and it shall remain valid. However, if the residue is so thin and truncated as to be in substance different from what it was intended to be when it emerged out of the legislature then it will result in invalidity of the entire legislation.
- It is to be noted that the separability does not depend on the separations of provisions, sections, or parts, rather, what is to be separated is the valid and invalid schemes that are arising out of the legislation. Thus, the severability of the substance is needed and not of the form.
- Further, even after the severability, if the remaining portion requires modification or alteration, in short, judicial law-making, in such situations, the entire legislation should be declared invalid.

CONCLUSION

The above analysis has highlighted that in a federal structure, there are various instances where the judicial function is no more restricted to the adjudication of the disputes between the State and the citizens. Rather, the instances and opportunities arise where the constitutional courts need to discharge the important function of interpretation of the constitution where the two levels of government may be at opposing ends. Therefore, judicial review of legislation from the federal competence perspective becomes a crucial issue. The doctrines which have been crafted to help the judicial functions have been generally utilized by the judges with exceptional acumen and tenacity. However, the interesting questions may arise while indulging in such processes as the changing time and advancements in science and technology in the recent past has been such that the law is unable to match its speed. However, it has to be remembered that the primary function of the judiciary is restricted to declaring the law and not law-making. This difference has to be kept in mind and then the interpretative processes should be adopted. Another very interesting issue that may arise is what if the various doctrines' application results in different results. In such a case which doctrine should be given precedence? They can take and justify either of the position as we do not find any prescription for the same. In this situation, judges have the opportunity and they may reflect their ideologies on the judgment. He can be a believer in a federal system or a unitary system. He can be leftist or rightist. In a federal system, the burden on the judiciary is much higher and they are expected to strike a correct balance between the national interest and state autonomy. The paramount ideology of judges should be the advancement (economic, moral, social, political) of the nation as a whole and not the economic ideologies alone. However, it does not mean that in the name of the advancements of the economic, moral, or social uplift of the society, they start indulging in the judicial law-making process. The example in the *Dhillon* case can be cited as an example where the judges may have allowed something to be done indirectly when the same is not permissible to be done directly.