

COOPERATIVE FEDERALISM IN INDIA THE ADJUDICATION OF FEDERAL DISPUTES

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THE ADJUDICATION OF FEDERAL DISPUTES

ABSTRACT

The Indian Supreme Court has the jurisdiction to adjudicate federal disputes, i.e. disputes between states, or between the centre and states. This jurisdiction has been rarely invoked – until recently. A group of new cases will require judges to re-examine doctrines that they have evolved to limit their own ability to adjudicate federal conflict, and consequently, will require the court to re-evaluate its own function within Indian federalism.

INTRODUCTION

On 3 June 1949, the Constituent Assembly of India gathered in New Delhi to continue their discussions on draft provisions for the new Indian Constitution. Draft article 109, which was under consideration that day, would allow the new Supreme Court to adjudicate federal disputes—i.e., cases between the States, or between the Union and States. During the debate, Brajeshwar Prasad, representative for the constituency of Gaya in Bihar, rose to oppose this provision. Mr. Prasad was bitterly against the idea that court-based adjudication was the best way to resolve legal disputes between federal units in a constitution that he felt, was already insufficiently unitary. ‘I fully understand the role of the Supreme Court in federalism,’ he declared, ‘but I am opposed to both federalism and the Supreme Court.’¹

Mr. Prasad’s interjections did not earn a response, much less engender a debate about whether the Supreme Court’s federal jurisdiction was appropriate. For the most part, the assembly was united in agreeing that the best forum in which to decide conflicts between States and the Union was the highest court of the country, a body that they felt would act without favouritism or undue influence from any unit of the new Indian nation. A few moments later, the motion to include this provision was passed without further debate, and draft article 109 became what is currently Article 131 in the Constitution of India.

Article 131 of the Constitution allows the Indian Supreme Court to hear suits instituted between States or between the Union and States.² In order to sue, the State or Union themselves must have a legal right at stake; mere political disagreements do not invoke the Court’s powers, nor does the enforcement of an individual’s rights. Carved out of this jurisdiction are specific exclusions: inter-State disputes about the sharing of river waters have their own tribunals,³ pre-constitutional treaties only invite non-binding advisory opinions,⁴ and financial questions are to be resolved by the Finance Commission or by specially appointed arbitrators.⁵ Two more non-judicial bodies provide avenues for resolving federal disputes through political means: the Inter-State Council is a forum in which States can discuss matters of federal application, and the recently established Goods and Services Tax Council is dedicated to matters concerning the application of a federal tax.⁶

Even with these restraints and exceptions, the power to adjudicate federal suits remains theoretically wide, especially in a national with complex federal arrangements such as India. Yet, in practice, the Court’s federal jurisdiction has been successfully invoked only a handful of times since 1950, when the Constitution was enacted.⁷ This stands in stark contrast to the exercise of judicial powers in other areas of Supreme Court jurisdiction, including the power to hear cases concerning individual fundamental rights, to hear appeals certified by High Courts, or to selectively hear matters of appeal from any other court or tribunal in the country.⁸ Federal suits, in contrast, have rarely been filed, and even more rarely concluded, with the Court demonstrating reluctance to enter into these matters and actively choosing to constrain the jurisdiction granted to it by the Constituent Assembly. Although the Constituent Assembly disagreed, Mr. Prasad appears, at least until recently, to have been correct in assuming that

1 Brajeshwar Prasad: Bihar, Constituent Assembly of India Debates, June 3, 1949.

2 Constitution of India, 1950, Article 131. A proviso to this article specifically excludes disputes arising out of treaties, agreements and covenants that were entered into before the Constitution was enacted.

3 Constitution of India, 1950, Article 262.

4 Constitution of India, 1950, Article 131. Proviso.

5 Constitution of India, 1950, Articles 280, 257 and 290.

6 Constitution of India 1950, Article 279A. See also, a recent Supreme Court judgment concerning the Goods and Service Tax Council’s role as a forum for federal negotiation; *Union of India v Mohit Minerals* 2022.

7 See, Appendix 1, Part A, for successful invocations of jurisdiction, and Part B for pending cases.

8 For an overview, see Raeesa Vakil, “Jurisdiction,” in *The Oxford Handbook of the Indian Constitution*, edited by Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta, online edition (Oxford Academic, 2017), doi:10.1093/law/9780198704898.003.0021 (accessed February 18, 2023).

federal disputes, even those concerning legal questions, were best resolved politically rather than judicially. However, in the last five years, a resurgence in federal suits once again begs the question of how federal disputes can be best resolved, and if, indeed, the Supreme Court is the appropriate forum.

This paper examines the Supreme Court's jurisprudence in Article 131 suits, bearing in mind the quantitative and qualitative change in federal suits in the last five years. Part I provides a brief overview of litigation under Article 131. Part II focuses who may sue at the Supreme Court, particularly examining the Court's efforts to limit federal suits by drawing a line between a 'State' and the 'government' of that State. Part III considers the next restraint on jurisdiction, focusing on what kinds of disputes the Supreme Court is willing to hear and decide in exercise of its federal jurisdiction, and their efforts to exclude political questions. Finally, Part IV considers remedies, i.e., the measures that the Court can take to enforce its adjudication of federal disputes. In a brief concluding section, I argue that the Court has restrained its own ability to use its federal jurisdiction effectively, and consequently fails to conclude these disputes effectively and quickly. This will challenge its ability to decide the new influx of federal cases that has occurred in the last five years.

I. Federal Jurisdiction at the Supreme Court

Issues of federalism may arise at the Supreme Court in a number of ways. The vast majority of the Supreme Court's time is devoted to deciding civil and criminal cases that can be initiated at the Court or arrive there via appeal, and a very small fraction, to constitutional questions.⁹ Within this small fraction, federal cases constitute an even smaller component.¹⁰ Issues of federalism tend to occur more commonly in cases where the Court is interpreting constitutional provisions that govern federal arrangements. For example, a common field of litigation involves interpreting Schedule VIII of the Indian Constitution, which allocates legislative powers between the States and Centre in three lists: State, Central, and Concurrent. Cases concerning such legislative competence can be filed by anyone, including private parties affected by the framing of a Union or State law.¹¹ Federalism can also arise as a question of the Constitution's 'basic structure'—i.e., the unamendable core of the Constitution, as interpreted by the Supreme Court. The vast majority of suits concerning federalism, therefore, are not necessarily instituted by either the Union or States under Article 131.

An evaluation of the total number of Article 131 suits heard by the Court since 1950 suggests that it amounts approximately to fifteen in total. Approximately twenty-six more cases are pending.¹² Estimates like these are inevitable. In analysing and determining the scope of this data, there are multiple limitations and challenges that relate directly to the manner in which Supreme Court cases are adjudicated. The sole source of data are judgments, but cases in which there have been settlements or withdrawals do not always have a judgment or recorded reasons. Consequently, tallying the number of matters, or understanding the nature of the dispute before the Court, may depend on the availability of media reports concerning the case itself. Submissions by parties, including State or Union governments, do not form a part of the publicly accessible records of cases, nor do courtroom arguments. In pending

9 Chandra, Hubbard and Kalantry 2019. Their analysis of 6000 cases between 2010 and 2015 showed that less than 6% of the Supreme Court's cases concern constitutional matters.

10 Chandra, Hubbard and Kalantry 2019. Chandra et al conclude that original jurisdiction matters including federal and advisory opinions constitute 3.2% of all Supreme Court cases.

11 See, for an overview, V. Niranjan, "Legislative Competence: The Union and the States," in *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhury, Madhav Khosla & Pratap Bhanu Mehta, (New Delhi: Oxford University Press 2016) 466.

12 These numbers were compiled through an examination of the Supreme Court Cases database, from 1950 to the present date, cross-verified against the Supreme Court of India's own database of judgments, as far as they are available, on the Supreme Court's website. See Appendix 1.

cases, official records may not always reveal details of the dispute until a judgment is decided. Furthermore, some cases may go unreported, suggesting that the dataset is not entirely complete. Within these limitations, however, it is possible to determine that of the concluded cases, one was withdrawn,¹³ two were settled between parties,¹⁴ and five were ultimately dismissed on grounds of lack of jurisdiction.¹⁵ The cases present a variety of constitutional questions relating to the enforcement of riverine dispute tribunal awards, enforcement of contracts, determination of boundaries or conflicts over land and property, and adjudicating on pre-constitutional conflicts. The data also reveal a sharp increase in pending Article 131 matters since 2017, specifically with respect to cases filed concerning the legality of enacted statutes by the Union, which are, in turn, challenged by the States. Such cases have not been prevalent before and are presented usually as suits by States against the Union. The challenges raised may range from arguing that the Union lacks the constitutional competence to enact a certain law, or that the law enacted is itself unconstitutional.¹⁶ These new cases represent both a qualitative and a quantitative change in the type of federal suits presented before the Supreme Court.

In addition to suits challenging legislation, the changing definition of what constitutes a State has presented new, complicated questions about the capacity to institute federal suits. As the State expands to include hybrid and arm's-length institutions, the Supreme Court's existing jurisprudence will have to evolve to respond to these new issues that recur.

II. Who Can Sue? States, Governments, and Federal Suits

Courts routinely begin the adjudication of suits by first considering the question of who has the right to sue. In federal disputes, the response seems to be fairly unambiguous. There are, in India, only two forms of federal units capable of instituting federal suits: the Union and States.¹⁷ Other units, such as local governments or Union Territories, fall directly under State or Union control.¹⁸ Yet, the Union and the States are composed themselves of multiple persons and bodies, so the question remains—who, amongst various legislatures, governments, and officials, both elected and unelected, can act on behalf of the States and Union in federal disputes?¹⁹ Could, for instance, a public sector corporation set up by a State sue another State if a contract is breached? Could the Speaker of a State assembly sue the Union government if they establish President's Rule in an emergency and take over the State for a period of time?

Anticipating this kind of issue, Article 300 of the Indian Constitution specifies that it is the respective elected government that can file suits.²⁰ While this might appear to have resolved the issue, a curious drafting anomaly in Article 131 has resulted in decades of litigation over what constitutes a 'State' in federal disputes. Article 131 specifically refers to the 'Government of India', but only to the 'States' and not 'State governments'. The Supreme Court's existing jurisprudence interpreted this narrowly, limiting

13 "National Capital Territory of Delhi v. Union of India," (2016) 8 SCC 501.

14 "State of Rajasthan v. Union of India and others," (1977) O.S. 3 of 2014.; "State of Tamil Nadu v. UT Pondicherry," (TBD) O.S. 1 of 2013.

15 Cases dismissed on jurisdictional (and in some cases, substantive as well) grounds: "State of Bihar v. Union of India and another," (1970) 1 SCC 67.; "State of Rajasthan and others v. Union of India," (1977) 3 SCC 592.; "State of Karnataka v. State of Andhra Pradesh," (2000) 9 SCC 572.; "State of Madhya Pradesh v. Union of India and another," (2011) 12 SCC 268.; "State of Rajasthan v. Union of India," (1977), O.S. 1 of 2016.

16 See Part III, *infra*, for a more detailed discussion.

17 Constitution of India, Article 131 (refers exclusively to the 'Government of India' and the 'States').

18 Union Territories have distinct legal identity and have sometimes been named separately from the Union in suits. Union Territories also have sued in non-Article 131 suits on federal questions, such as the suit instituted by the Government of the National Capital Territory of Delhi (a Union Territory) against the Union of India, for adjudication on the scope and extent of Union control over their functioning. *See*, Government of the National Capital Territory of Delhi v. Union of India, Civil Appeal CA 2357/2017 (pending).

19 Constitution of India, Article 12 (defines the 'state' to include the government, the parliament, and all local or other authorities, for the Union and the States).

20 Constitution of India, Article 300.

the kinds of suits that could be raised under Article 131. Today, however, the Court must consider where regulatory bodies, operating at arm's length from government, or public-private corporate arrangements stand in these contexts, and whether the existing jurisprudence is sufficient to respond to these issues. Below, I consider the distinction between 'State' and 'State government' and focus on questions concerning bodies such as regulators and their role in federal disputes.

'STATE' AND 'STATE GOVERNMENT': A DRAFTING ANOMALY?

Article 131 contains a curious drafting anomaly that has given rise to much debate about which entities can successfully ask the Supreme Court to decide federal disputes. At first glance, it may appear obvious that the Union and States, as federal units, are the only parties who can use this provision. But Article 131 specifies that 'States' and the 'Government of India' may use this provision, while omitting any reference to State governments.²¹ Consequently, at the core of this debate is the distinction between the *State*, an enduring entity preserved by the Constitution, and the *government*, a transient elected body that currently holds power in the State. The drafting history of these provisions does not explain why this distinction was applied, although another constitutional provision does clarify that the Government of India can be sued in the name of the Union and the governments of States can be sued in the name of their States.²² Legal scholar H.M. Seervai has described it as an 'inadvertent drafting error' in his commentaries on the Constitution, suggesting that reading the power of governments to sue under Article 131 resolves the conflict.²³ Despite this apparent solution to a minor technical issue, a consideration of how States and the Union have attempted to use this language to their advantage is instructive in understanding the Supreme Court's efforts to constrain the kind of suits that can be filed concerning federal disputes. At the core of this issue is understanding what we mean by the 'State'—does it encompass only an elected government, or is an elected legislature, an unelected civil service, or an appointed regulatory body equally competent to represent a State's interests?

The first attempt at adjudicating this question was in 1977, when parliamentary elections ended in a majority for the Janata Party, which formed the Union government following the Emergency. Meanwhile, the opposing Congress Party continued to control several State governments, and the Union legislature had previously extended their terms for another year by postponing elections in 1976.²⁴ The new Janata-led government took the view that this was undemocratic and issued a letter to Chief Ministers in nine States, calling on them to advise their respective Governors to dissolve the State legislatures and conduct elections immediately.²⁵ In response, six States filed suits under Article 131 at the Supreme Court, challenging this advisory letter.²⁶ The Government of India argued that State governments could not file such a suit because Article 131 specifically allowed the 'State' and not the 'State government' to file cases.²⁷ As one judge paraphrased, the Union's argument was that 'Legislative Assemblies may come and go, but the State lives on forever...'.²⁸ If successful, this argument would have barred the entire suit and required the Court to dismiss it (which the Court eventually did, but for different reasons).

21 Constitution of India, Article 131, cl. (a) provides that the Supreme Court has exclusive jurisdiction to determine any dispute, "between the Government of India and one or more States," and cl. (b) uses similar language, referring to the "Government of India and any State or States on one side and one more States on the other."

22 Constitution of India, Article 300.

23 H.M. Seervai, *Constitutional Law of India*, Vol 4, 4th edition, (New Delhi: Universal Law Publishing, 2017) 2630.

24 For an overview, see, Granville Austin, *Working a Democratic Constitution* (New Delhi: Oxford University Press 1999) 441-449.

25 Granville Austin, *Working a Democratic Constitution* (New Delhi: Oxford University Press 1999) 444.

26 "State of Rajasthan and others v. Union of India," (1977) 3 SCC 592.

27 "State of Rajasthan and others v. Union of India," (1977) 3 SCC 592, 637, 647.

28 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 637. (per Justice Y.V. Chandrachud).

For Chief Justice M.H. Beg, the distinction between a 'State' and a 'State government' was entirely unimportant. He had already decided not to allow the challenge, holding that the Union did have the power to send a letter calling for the dissolution of State assemblies.²⁹ For Justice Y.V. Chandrachud, on the other hand, it was the very heart of the case. He took a pragmatic view, holding that if the State government could not sue, then it stood to reason that the Union government couldn't either—which, he held, would be absurd. The only rational reconciliation would be to ignore the fact that Article 131 used the phrases 'Government of India' and 'State', and to read them both to mean that the present government could sue on behalf of the Union or the State.³⁰ While he also went on to dismiss the case on substantive grounds, his understanding was clear: even if legislative assemblies and governments were transient and could be remade, it was nonetheless 'constitutionally unsound to say that the State, as a political entity, has no legal interest in such cataclysmic events and no legal rights to assert in relation thereto'.³¹ Any other interpretation, he held, would make Article 131 unworkable—a view echoed by Justices P.N. Bhagwati and Alak Chandra Gupta, who held that the powers of a State could not be exercised without the executive government or the State legislature.³²

Despite the categorical holding in this case, a few months later, the Government of India raised the same objection in another suit under Article 131. In November 1977, the Court decided a petition filed by the State of Karnataka against the Union of India.³³ In May of that year, the Government of India had created a Commission of Inquiry to investigate 'charges of corruption, nepotism, favouritism and misuse of Governmental power against the Chief Minister and other Ministers of the State of Karnataka', a claim that the State called 'slandering propaganda' and described as an attempt to undermine federalism by installing a centrally controlled agency in the State.³⁴ The State of Karnataka accordingly filed a suit at the Supreme Court, which was once again countered by the Government of India's argument that they were investigating claims of corruption against the State *government* and specific ministers, rather than the State itself.³⁵ The Union argued that while the Chief Minister could individually object to an investigation of corruption against himself, this was an action against an individual and not the State—therefore, it would not constitute a federal suit.³⁶ Their argument failed again: although the Court held that the Union did have the power to investigate corruption in the State, their claim that the 'State' and 'State government' were distinct under Article 131 was rejected. For Chief Justice Beg, again, this was 'too technical an argument' and it failed to recognise that States acted through their government, legislature, and judiciary.³⁷ Even if there were allegations of corruption against particular Ministers, who themselves did not represent the State, the State could sue to claim their right to deal with the matter themselves, as they had done in this case.³⁸

In the 1977 Karnataka case, Justice Chandrachud built on his defence of Article 131's drafting to extend it even further. He held that, in fact, the omission of the phrase 'State government' was not a mistake but a deliberate effort to distinguish Article 131 cases from normal cases under civil law.³⁹ He argued that

29 "State of Rajasthan and others v. Union of India," (1977) 3 SCC 592, 635. (per Chief Justice Beg)

30 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 638. (per Justice Y.V. Chandrachud)

31 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 639. (per Justice Y.V. Chandrachud)

32 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 649-650. (per Justice Bhagwati and Justice Gupta) But see, "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 671-672. (per Justice Untwalia, dissenting on this point)

33 "State of Karnataka v. Union of India," (1977) 4 SCC 608.

34 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 625-626. (per Chief Justice M.H. Beg) The State had previously constituted its own commission as well.

35 *Ibid.*, at 627-628.

36 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 707. (per Justice P.N. Bhagwati)

37 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 685-686. (per Chief Justice H.M. Beg)

38 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 687. (per Chief Justice H.M. Beg)

39 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 691. (per Justice Y.V. Chandrachud)

the intention was to indicate that federal disputes were unlike any other disputes and were conditional on one thing only—the existence of a legal right. All other considerations, including those concerning which federal unit was qualified to raise a claim, were irrelevant.⁴⁰

While the drafting history of Article 131 does not support this claim, it is worth noting that there was a failed attempt to introduce a provision that would authorise State legislatures specifically (not ‘States’ or ‘State governments’) to raise claims at the Supreme Court concerning the treatment of their residents in other States’ territories.⁴¹ Dr. K.T. Shah, who introduced this provision, argued that such power should be ‘vested in the legislature collectively to move the Supreme Court’ for a constitutional solution to inter-State conflict.⁴² Dr. Shah’s opponents protested that the individual had already been granted powers to sue in cases of discrimination; to grant similar powers to State legislatures would result in ‘increasing provincial jealousy rather than diminishing it’.⁴³ The proposal ultimately failed, in part because of counter-arguments that issues such as communalism or land redistribution were best addressed politically, rather than judicially. According to his strongest opponent, such a right to sue would give States a ‘charter to dishonesty’, and would be used more to protect entrenched caste privileges within States than to protect the rights of the weakest.⁴⁴ Another objection raised issue with how this provision might work in practice, amid doubts that a legislature was enough of a ‘body corporate’ capable of suing in a court of law.⁴⁵ In view of this opposition, Mr. Shah chose to withdraw his proposal and Article 131 remained the sole basis for federal disputes.

The choice of the word ‘State’ and not ‘State legislature’, therefore, might well have been deliberate—and not an error—although perhaps not in the sense that Justice Chandrachud meant. The implication that the State legislature could not be endowed with this distinct power—as opposed to the State government, which is specifically authorised to sue in the name of the State—suggests that the drafters meant Article 131 to be read practically, as the Court had concluded. In both the 1977 Karnataka case and a key case in 1984 involving the State of Rajasthan (to be discussed subsequently), the Court invoked the imagery of a body politic, with the government as a part of the State’s corpus and the agency through which it expressed its will.⁴⁶ This, of course, admits a distinction between the government and the State—a challenge that Justice Bhagwati surmounts by arguing that members of government, acting in their official capacity, are indistinguishable from the State.⁴⁷

If Justice Bhagwati is right, then there remains a loophole that will allow the Union to raise this claim once again: Article 131 could, in theory, only apply to actions taken in official capacity, so judicial inquiries into the domain of individual offices could well form the foundation of the next jurisdictional challenge to such suits. More generally, the dissenting judges in the 1977 Karnataka case worried that reading ‘State’ and ‘State government’ as equivalent would allow the floodgates of litigation to open, resulting in dozens of cases. Justice N.L. Untwalia, countering the claim that Article 131 allowed

40 “State of Karnataka v. Union of India,” (1977) 4 SCC 608, 691 (per Justice Y.V. Chandrachud)

41 Draft Article 170-A, proposed by Dr. K.T. Shah, provided, “It shall be open to the Legislature of any State to move the Supreme Court to restrain any other State from ill-treating or discriminating against or denying the Fundamental Rights of citizens to the individuals originating from the former State but who are settled or carrying on any trade, profession, occupation or business in the latter on the ground only of their not being original inhabitants of that State.” The motion to include this provision was ultimately withdrawn after debate. See, K.T. Shah: Bihar, Shibban Lal Saksena: United Provinces, H.V. Kamath: C.P. and Berar, and P.S. Deshmukh: C.P. and Berar, Constituent Assembly of India Debates, June 3, 1949.

42 Dr. K.T. Shah: Bihar, Constituent Assembly of India Debates, June 3, 1949.

43 Shibban Lal Saksena: United Provinces, Constituent Assembly of India Debates, June 3, 1949.

44 P.S. Deshmukh: C.P. and Berar, Constituent Assembly of India Debates, June 3, 1949.

45 H.V. Kamath: C.P. and Berar, Constituent Assembly of India Debates, June 3, 1949.

46 “State of Rajasthan and others v. Union of India,” (1977) 3 SCC 592., “State of Karnataka v. Union of India,” (1977) 4 SCC 608, 707. (per Justice P.N. Bhagwati). In both cases, judges were invoking writing on the state, including Westel Woodbury Willoughby, *The Fundamental Concepts of Law*, (London: Gale, 2010).

47 “State of Karnataka v. Union of India,” (1977) 4 SCC 608, 708. (per Justice P.N. Bhagwati)

Karnataka to sue the Union over investigations of corruption claims, held that the majority view would allow states to sue against ‘any action taken by the Central Government either under the Act or otherwise, against any citizen residing in, or any officer of the State’.⁴⁸ Evidently, the intention was to restrain the kind of—and thereby limiting the number of—cases that could be filed under Article 131, with the Court reading their own ability to determine federal disputes as a strictly narrow power. Although this effort to limit federal suits has been largely successful, how far Article 131 can extend into individual aspects of government remains a pertinent question.

THE EXPANDING MODERN STATE

When considering Article 131, the question before the Supreme Court today is not only whether a ‘State’ implies ‘State government’ but also whether this encompasses the growing contours of the modern State. As public sector corporations, regulatory bodies, and other forms of delegates exercise state power in the federal republic, the question of whether they too may claim Article 131 jurisdiction has arisen from time to time. If ‘State’ implies ‘government,’ then what, in turn, does ‘government’ imply?

This challenge arose for the first time in 1970, when the State of Bihar petitioned the Supreme Court to decide a contractual dispute about the supply of steel and iron.⁴⁹ The State of Bihar claimed that the Union of India and two of its public sector corporations (Hindustan Steel Limited and the Indian Iron & Steel Company Limited) had been negligent in failing to supply iron and steel that Bihar had ordered, and were therefore liable to pay compensation. The Supreme Court dismissed the case, noting that Article 131 only allowed suits between the Government of India and the States; this, they held, automatically excluded any ‘private citizen, firm or corporation’ from being part of the proceedings, even alongside a State or the Union.⁵⁰ The State of Bihar argued, unsuccessfully, that public sector corporations entirely under the control of the Union government were as much part of the government as any other department, noting that the Supreme Court had previously recognised such wider definitions in other cases.⁵¹ Justice G.K. Mitter conceded that while this was true when enforcing fundamental rights or allowing High Courts powers, Bihar had not given them a convincing reason for why this should be true under Article 131.⁵²

Although the holding appeared categorical, it is not unusual to see repeated petitions filed at the Supreme Court by private parties and individuals seeking to utilize Article 131 jurisdiction as the nature of government evolves. The most significant of these cases occurred in 2005. The States of Sikkim and Meghalaya were engaged in the conduct of online lotteries, both within their territories and in other States. Legislation enacted by these two States allowed tickets to be sold either directly by governments or by individuals and corporations that they appointed as their agents in several places, including the State of Karnataka.⁵³ In 2005, the government of Karnataka banned online lotteries under a law that threatened penal consequences for those who violated it. In response to the burden this placed on Sikkim and Meghalaya’s substantial financial investments, the States and their agents sued the State of Karnataka in the Karnataka High Court, arguing that their agents’ fundamental right to conduct business had been breached.⁵⁴ The Karnataka High Court took the view that this was a federal dispute between two States

48 “State of Karnataka v. Union of India,” (1977) 4 SCC 608, 715. (per Justice Untwalia)

49 “State of Bihar v. Union of India,” (1970) 1 SCC 67.

50 “State of Bihar v. Union of India,” (1970) 1 SCC 67, 70. (per Justice G. K. Mitter, for the Court)

51 “State of Bihar v. Union of India,” (1970) 1 SCC 67, 75. (per Justice G. K. Mitter, for the Court)

52 “State of Bihar v. Union of India,” (1970) 1 SCC 67, 75. (per Justice G. K. Mitter, for the Court)

53 “Tashi Delek Gaming Solutions v. State of Karnataka,” (2006) 1 SCC 442.

54 *Id.*

and dismissed their petition, advising them to approach the Supreme Court. The Supreme Court, on appeal, disagreed.⁵⁵ The High Court's reasoning was that the agents only had a claim through the States that appointed them; the Supreme Court objected, holding that Article 131 did not contemplate any suit to which an individual was a part, even if they were acting for or on behalf of a government.

The Supreme Court's repeated refusal to consider an expanded definition of the State in the context of Article 131 has not yet resulted in the settlement of the question. In 2019, private individuals, trade unions, and the State of Kerala filed writ petitions in the Kerala High Court, challenging the Union government's privatization of an airport and the transfer of its control to a corporation, Adani Enterprises Limited.⁵⁶ The suit was filed against both the Union and Adani Enterprises, which was to be granted a lease for the operation and management of Thiruvananthapuram Airport. The Kerala High Court dismissed this writ petition, holding that it ought to have been filed under Article 131 at the Supreme Court.⁵⁷ It was a curious decision, because all parties to the suit, including the State of Kerala and the Union of India, had opposed the claim that Article 131 jurisdiction was warranted; the Union, in fact, argued that the State of Kerala should have also filed the petition against their central airport regulator, which was distinct from the Union government.⁵⁸ The Kerala High Court took the view that the matter ought to be resolved between Kerala and the Union, and that the airport regulator was only acting on policies established by the Union government. It dismissed the case but, again, the Supreme Court disagreed just weeks later and sent the case back for determination by the High Court.⁵⁹ Although the order was confined to dismissing the appeal filed by the government of Kerala, the Court did not comment on the Article 131 issue, stating only that, 'We are sending it back'.⁶⁰

The Kerala airport conflict evidences the lack of clarity around what constitutes a State for the purpose of adjudicating federal disputes. As it goes on, the High Court—and, in all probability, the Supreme Court—will have to determine whether governmental regulators constitute a part of the government in federal disputes. Unlike departments, which function under the direct control of governments, regulators are often required to maintain independence in their activities.⁶¹ The Court has previously been willing to consider these 'other authorities' as 'States' for the purpose of enforcing fundamental rights, specifically examining this claim in the context of the Airports Authority of India.⁶² Although the Court has firmly maintained that this expanded definition of the State does not apply to federal disputes, it will increasingly encounter difficulties with the position that only departmental authorities fall under government control and, accordingly, can only be sued as part of the government. Regulators like the Airports Authority of India are increasingly expected to function at arm's length from the government, and their independence from government control has itself been the subject of repeated judicial intervention.⁶³

55 "Tashi Delek Gaming Solutions v. State of Karnataka," (2006) 1 SCC 442.

56 "Mahesh G. and others v. Union of India and Others," W.P. (Civil) 2224 of 2019, Kerala High Court.

57 "Mahesh G. and others v. Union of India and Others," (2019) SCCOnline Ker. 6811.

58 "Mahesh G. and others v. Union of India and Others," (2019) SCCOnline Ker. 6811, 17, 50.

59 Unreported order, see, "SC sends back Kerala's plea on Thiruvananthapuram airport to HC," *The Hindu*, Feb. 28, 2020, <https://www.thehindu.com/news-national/sc-sends-back-keralas-plea-on-thiruvananthapuram-airport-to-hc/article30941788.ece>.

60 "SC returns State plea on airport to HC," *The Hindu*, Feb. 28, 2020, <https://www.thehindu.com/news/national/kerala/sc-returns-state-plea-on-airport-to-hc/article30943340.ece>.

61 The question of whether government departments or organizations may be sued as part of the government at the Union or State is not one that is conclusively determined. In 1976, three Supreme Court judges held that states who wanted to sue the railways administration would have to sue the Government of India under Article 131, as it controlled the railways in entirety. ("State of Kerala v. Southern Railway," (1976) 4 SCC 265.). On the other hand, departmental conflicts that took place between the Union and the State level could not be litigated under article 131, and in 2003, the Supreme Court held that a conflict between a Union government official (the Chief Conservator of Forests) and a State Government official (the Commissioner of Land Records in Andhra Pradesh) had to be resolved politically, and not by litigation. ("Chief Conservator of Forests, Andhra Pradesh v. Collector, and Others," (2003) 3 SCC 472.).

62 "Ramana Dayaram Shetty v. Airport Authority of India," (1979) 3 SCC 489.

63 For an overview, see, T. V. Somanathan, "The Administrative and Regulatory State," in *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhury, Madhav Khosla & Pratap Bhanu Mehta (New Delhi: Oxford University Press 2016) 386.

Additionally, a jurisdictional concern continues to apply: if Article 131 cannot be invoked, States will sue at the High Courts as well as the Supreme Court. In drafting Article 131, the underlying assumption was that the Supreme Court could be the only forum capable of adjudicating federal disputes. In 1933, the Joint Committee on Indian Constitutional Reform concluded that ‘a federal court is an essential element in a federal constitution’, both in its capacity as the interpreter of constitutional provisions and as the forum in which federal units decide disputes.⁶⁴ The High Courts of the States were ruled out as appropriate fora, because it was ‘altogether inappropriate if proceedings could be taken by one unit of the federation against another in the courts of either of them’.⁶⁵

This debate, therefore, is likely to reoccur if the Court does not reconsider the possibility that regulators, such as the Airports Authority of India, can be considered a part of the state as far as the enforcement of constitutional rights are concerned but not as far as the enforcement of other legal rights apply. Indeed, the Union government’s argument in one pending Article 131 suit filed by the State of West Bengal is that it cannot be held accountable for the actions of the Central Bureau of Investigation, which is, it argues, an autonomous investigative body.⁶⁶ In such cases, the Court may have to either adapt its more sophisticated understanding of the State to Article 131 or further constrain federal jurisdiction to exclude all but very few substantive questions that directly concern a State government. In either case, the jurisprudence of the Court requires re-examination, if only because repeatedly litigating the same questions has demonstrated that the current framework is difficult to apply and enforce.

III. When Is Article 131 Jurisdiction Used?

The Supreme Court is called upon to determine federal disputes only in certain circumstances. Ordinary political matters will not result in litigation, but any issue of law or facts, on which ‘the existence or extent of a legal right depends’, requires the Court’s intervention.⁶⁷ In their earliest decision on this, the Supreme Court was categorical that it would hear cases ‘in respect of legal rights and not of a political character’,⁶⁸ and later affirmed that ‘mere wrangles between governments have no place’ in the scheme of Article 131.⁶⁹ The position adopted was one that substantially differed from pre-constitutional precedents: the prior Government of India Act in 1935 had permitted the Federal Court an even narrower ambit, only allowing it to address legal questions that involved interpreting the Government of India Act itself.⁷⁰ In contrast, the definition of a ‘legal right’ under the Indian Constitution is entirely unqualified and could encompass any constitutional, statutory, or common law rights that the States or Union claimed.⁷¹ At the same time, the provision specifically uses the word ‘dispute’ and not ‘suit’, which has led the Court to conclude that Article 131 cases are broader than ordinary litigation. Instead, they are a completely unique and distinct form of adjudication for federal conflict, with the only condition being the existence of a legal right at stake.⁷² Certain subjects remain specifically excluded: Article 262, for example, provides a particular dispute resolution method for river water disputes, a federal issue

64 Proceedings of the Joint Committee on Indian Constitutional Reform, Session 1933-1934 vol. 1, part II, 309.

65 *Ibid.*, at 324.

66 “CBI autonomous body, Centre not filing cases in Bengal, SC told,” *Economic Times*, Nov. 17, 2021, <https://economictimes.indiatimes.com/news/india/cbi-autonomous-body-centre-not-filing-cases-in-bengal-sc-told/articleshow/87745106.cms?from=mdr>.

67 Constitution of India, 1950, Article 131.

68 “State of Bihar v. Union of India,” (1970) 1 SCC 67, 69-70.

69 “State of Rajasthan v. Union of India,” (1977) 3 SCC 592, 638. (per Justice Y.V. Chandrachud)

70 Government of India Act 1935, § 204. The Court was also allowed to interpret orders made under the Act, and interpret treaties of accession to the colony of India.

71 This was affirmed in “State of Rajasthan v. Union of India,” (1977) 3 SCC 592, 649. (per Justice Bhagwati and Justice Gupta)

72 “State of Karnataka v. Union of India,” (1977) 4 SCC 608, 690. (per Justice Y.V. Chandrachud)

that attracts a large but distinct body of litigation not covered under Article 131.⁷³ It is not, therefore, always easy to distinguish the kinds of cases that may successfully be raised by the States or the Union at the Supreme Court, and much of the Court's limited jurisprudence on federal jurisdiction has been dedicated to understanding the scope of Article 131 in substantive terms.

In 1977, as previously discussed, the dissolution of several State assemblies using constitutional emergency provisions was challenged at the Supreme Court and a divided court eventually held that this was largely a legal matter rather than a political question. Without entering into the debate over whether legislative assemblies *should* have been dissolved, the Court focused on whether the Union Government had the legal right to do so by adopting the procedure of writing to States and instructing them to dissolve the State assemblies.⁷⁴ At the end of the day, the question of whether the legislative assemblies should continue was 'a matter of political expediency',⁷⁵ but the right of States to enforce the procedure used by the Union government under the Constitution's emergency provisions remained a legal question. As Justice Bhagwati pointed out, if the Constitution specifically said that legislatures should have fixed terms that would continue until validly dissolved, then it was the right of States to require that those Constitutional provisions be followed. 'Is it not', he argued, 'a constitutional right of a State that its laws shall be made by its legislature' unless the procedure to dissolve the assembly was followed?⁷⁶ Having established that this was a legal question, the Court eventually dismissed the case, holding that the Union was acting well within its powers. In this case, the Supreme Court borrowed extensively from U.S. jurisprudence on the idea of a 'political question' that courts were not to touch, despite differences in the U.S. and Indian constitutional frameworks and the fact that several cases they cited had been overruled. Indeed, many U.S. scholars were deeply critical on the issue itself.⁷⁷ As Seervai pointed out, 'The judicial process involves the ascertainment of relevant facts and the application of the law, or the Constitution to the facts so ascertained. In that sense, nothing is outside the judicial process'.⁷⁸ In the limited jurisprudence since 1977, the Supreme Court has not found it any easier to draw a line between the political and the legal.

The Court in 1977 was resting on the assumption that Article 131 was designed as way to resolve federal deadlocks. For that purpose, the Court held that the legal right it was enforcing need not belong to the federal unit which instigated the case—rather, it could pertain to enforcing federalism in general terms. A State might well file an Article 131 suit to question whether the Union has the legal right to undertake a particular action, even if the State itself was not trying to enforce its own legal rights (as in 1977). Article 131, in that sense, allowed adjudication on the scope of federal powers. The Constitution of India lays out several complex arrangements of federal relations between the Union and the States, chief among these being the three lists of legislative powers in Schedule VII. These lists divide legislative power between subjects that are exclusively the domain of the Union government, those that are exclusively the domain of the States, and those that are concurrent.⁷⁹ In the event of conflict, a series of constitutional provisions allowed the Union to take precedence over the States by 'occupying the field'. A rich body of litigation concerns the interpretation of these lists and provisions.⁸⁰ For the most part, these suits did not arise under Article 131. Because High Courts have the power to engage in constitutional

73 See, for an overview, V. Niranjan, "Legislative Competence: The Union and the States," in *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhury, Madhav Khosla & Pratap Bhanu Mehta, (New Delhi: Oxford University Press 2016) 466.

74 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 638. (per Justice Y.V. Chandrachud)

75 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 637. (per Justice Y.V. Chandrachud) 662. (per Justice Bhagwati and Justice Gupta)

76 "State of Rajasthan v. Union of India," (1977) 3 SCC 592, 650. (per Justice Bhagwati and Justice Gupta)

77 For an overview, see Seervai (n 23) 2636-2643.

78 See, Seervai (n 23) 2641.

79 Constitution of India, 1950, Schedule VII, Lists I, II, and III.

80 For an overview, see, V. Niranjan, "Legislative Competence."

interpretation, suits to determine the allocation of federal powers were generally filed at the High Court first and then appealed, if necessary, to the Supreme Court.

An exception to this was the 1977 case in which the State of Karnataka sued the Government of India over the legal right to investigate corruption within the state.⁸¹ As previously discussed, allegations were raised against a number of ministers. In response, on 18 May 1977, the State of Karnataka created a Commission of Inquiry to investigate these claims.⁸² A few days later, on 23 May, the Government of India constituted its own Commission of Inquiry to investigate the issue as well.⁸³ Karnataka argued that under the applicable laws (the Constitution and the Commissions of Inquiry Act 1952), it held the exclusive right to create such a commission; the Government of India argued that it was well within its powers to constitute its own commission. In its interpretation of the relevant laws, the Court sided with the Union.⁸⁴

However, since the 1977 Karnataka case, the Supreme Court has narrowed Article 131's scope further, even with regard to determining which legal rights can be enforced. In 1984, the Court held that a contractual claim for damages filed by the State of Rajasthan against the Union of India could not be raised under Article 131.⁸⁵ Even if a legal right did indisputably exist in this case, the Court felt that Article 131 should be reserved for matters that arose between States and the Union 'in the context of the constitutional relationship that exists between them', not for ordinary legal matters.⁸⁶ It is difficult to see how this view is supported by Article 131, which places no such restraint on the kinds of cases that may be raised. It is also difficult to reconcile with what the Supreme Court had previously said concerning the scope of Article 131. Nonetheless, the Supreme Court's decision resulted in Rajasthan's suit being returned to the High Court for consideration. As a result, previous efforts by High Courts to dismiss suits filed against the Union on the grounds that they should have been Article 131 cases in the Supreme Court have also declined.⁸⁷

As a result of narrowing Article 131's jurisdiction—first by distinguishing, however vaguely, between political and legal acts, and later by limiting 'legal rights' to issues of constitutional conflict—the decade following 1984 saw no judgments in the Court's federal jurisdiction. The next cases arrived following the reorganization of territories in the 2000s, when the larger States of Uttar Pradesh, Madhya Pradesh, and Bihar were sub-divided to create Chhattisgarh, Jharkhand, and Uttarakhand.⁸⁸ Although the Constitution explicitly allowed the Union to redraw territorial borders and create new States, the manner in which the assets of the old and new States were reallocated became the subject of ongoing political and legal conflict.⁸⁹ The Court has also routinely heard cases concerning territorial border disputes, even if it has been explicitly barred from judging matters relating to pre-constitutional agreements on borders.⁹⁰

81 "State of Karnataka v. Union of India," (1977) 4 SCC 608.

82 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 688.

83 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 688.

84 "State of Karnataka v. Union of India," (1977) 4 SCC 608, 688, (per Chief Justice H.M. Beg), 705. (per Justice Y.V. Chandrachud)

85 "Union of India v. State of Rajasthan," (1984) 4 SCC 238. The claim concerned a consignment of tents and related accessories that were shipped to Rajasthan from Madhya Pradesh by train, and arrived in a damaged condition. Rajasthan sued the Railways, and the Government of India, which owned the Railways.

86 "Union of India v. State of Rajasthan," (1984) 4 SCC 238, 244.

87 See, e.g., "State of Punjab v. Union of India," AIR 1971 P&H 155 (FB), in which a suit filed by the State of Punjab in the Punjab and Haryana High Court, asking the Court to interpret constitutional provisions and decide whether the Union Government could impose a wealth tax on agricultural land, was dismissed on the grounds that it was a matter for the Supreme Court under article 131; "State of Karnataka v. Indian Union Owning South Central Railway," ILR (1977) Kar 751 (dismissing a suit by the State of Karnataka against the Union of India for recovery of damages in insufficient deliveries of wheat as it was a matter for article 131, in the Supreme Court).

88 Madhya Pradesh Reorganization Act, 2000; Bihar Reorganization Act 2000, and Uttar Pradesh Reorganization Act, 2000.

89 Constitution of India, 1950, Article 3. See, e.g. "State of Madhya Pradesh v. Union of India," (2011) 12 SCC 268. (concerning the restructuring of electricity regulators after Madhya Pradesh was divided to form Chhattisgarh)

90 See, e.g. "State of Orissa v. State of Andhra Pradesh," (2010) 5 SCC 674. (determining that a pre-constitutional agreement gave rise to a dispute after independence, and so could be heard by the Court)

In the last few years, however, the number of Article 131 petitions has suddenly surged, centring not only around ongoing territorial conflict but also concerning the increasingly centralised functioning of the Union government. In January 2020, the State of Kerala challenged the controversial Citizenship Amendment Act (CAA), using Article 131 to file a suit against the Union government.⁹¹ Their suit, which followed a State legislative resolution objecting to the CAA, joined sixty other petitions filed by individual petitioners seeking to overturn the law on the grounds that it violates individual rights.⁹² The government of Rajasthan filed a similar challenge to the CAA in March 2020.⁹³ Days later, the government of Chhattisgarh filed a suit against the Union government to challenge a law that allowed a central investigative agency to carry out their work in States, arguing that law and order was a legislative power vested in the States, not the Union.⁹⁴ In 2021, the government of Punjab filed a suit in the Supreme Court challenging the Union government's expansion of a national security force in Punjab's territory,⁹⁵ the government of West Bengal challenged a Union agency's investigation into poll-related violence,⁹⁶ and the government of Jharkhand filed a suit against the Union government's decision to auction coal blocks in their territory.⁹⁷

These new challenges suggest that the Supreme Court may be forced to re-examine how it understands a 'legal right' for the purposes of Article 131. The West Bengal case, for instance, tackles a very complex question about the allocation of legislative powers between States and the Union. The Central Bureau of Investigation (CBI) is a Union body, which can only function in States with their consent. West Bengal had previously withdrawn general consent to allow the CBI to function within its territory. The government has now filed a suit after the CBI continued to investigate allegations of crimes in West Bengal regardless of State consent.⁹⁸ Similarly, the state of Jharkhand has argued that the Union government is violating legislation that it has itself enacted by permitting the exploitation of ecologically sensitive zones.⁹⁹ Existing jurisprudence on the distinction between 'legal' and 'political' questions, or on 'constitutional' and 'legal' rights, do not provide answers concerning these new kinds of petitions. The Supreme Court will have to consider whether the framework they have established needs to be revisited.

IV. Remedies: What Can the Court Do?

Article 131 allows the Supreme Court to adjudicate legal rights; ordinarily, it would be read to imply that Court also has the power to provide remedies for the infringement of these rights. If the ability to enforce their interpretation appears to be a logical conclusion of the power to interpret, it is worth noting that this was not always true. In 1935, the Government of India Act established a Federal Court,

91 "Kerala govt moves Supreme Court against Citizenship Amendment Act," *Indian Express*, Jan. 14, 2020, <https://indianexpress.com/article/india/kerala-govt-moves-supreme-court-over-citizenship-amendment-act-6215568/>.

92 "Scrap CAA: Kerala Assembly passes resolution against citizenship law," *Indian Express*, Dec. 31, 2019, <https://indianexpress.com/article/india/kerala-assembly-resolution-scrapping-citizenship-amendment-act-pinarayi-vijayan-6193045/>.

93 "Rajasthan moves Supreme Court against CAA," *The Hindu*, Mar. 16, 2020, <https://www.thehindu.com/news/national/other-states/rajasthan-moves-supreme-court-against-caa/article31085031.ece>.

94 G. Ananthkrishnan, and Gargi Verma, "Chhattisgarh's Congress govt challenges NIA Act, a UPA-era law," *Indian Express*, Jan. 16, 2020, <https://indianexpress.com/article/india/chhattisgarhs-congress-govt-challenges-nia-act-a-upa-era-law-6218863/>.

95 "Punjab govt moves SC against central notification extending BSF jurisdiction," *Indian Express*, Dec. 11, 2021, <https://indianexpress.com/article/india/punjab-moves-sc-against-central-notification-extending-bsf-jurisdiction-7667677/>.

96 Krishnadas Rajgopal, "Bengal can't bar CBI, Centre tells Supreme Court," *Indian Express*, Oct. 22, 2021, <https://www.thehindu.com/news/national/west-bengals-power-to-withhold-consent-to-cbi-is-not-absolute-centre-to-sc/article37121312.ece>.

97 Press Trust of India, "Coal blocks auction for commercial mining: SC to hear Jharkhand's plea," *Business Standard*, Jul. 6, 2020, https://www.business-standard.com/article/current-affairs/coal-blocks-auction-for-commercial-mining-sc-to-hear-jharkhand-s-plea-12007060117_1.html.

98 See, generally, "West Bengal's power to withhold consent to CBI investigation not absolute: Centre to SC," *Indian Express*, Oct. 22, 2021, <https://indianexpress.com/article/india/west-benga-post-poll-violence-supreme-court-cbi-investigation-centre-7585095/>.

99 Mehal Jain, "SC Calls Jharkhand's Plea For Revenue Maximisation 'Abominable', Says Neither State Nor Centre Reliable In Environment Matters In View Of Tendency To 'Exploit Nature For Money'," *LiveLaw*, Sep. 30, 2020, <https://www.livelaw.in/news-updates/sc-calls-jharkhands-plea-for-revenue-maximisation-abominable-environment-matters-in-view-of-tendency-to-exploit-nature-for-money-163773>.

which was in substance the predecessor of the current Supreme Court. The Federal Court also had the power to adjudicate claims between federal units, but it was limited to only declaring its opinion on how the Government of India Act should be interpreted. Section 204 (2) of the act specifically stated, 'The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment'.¹⁰⁰ In the Constitution of India, Article 131 contained no such restriction: the adjudication of federal disputes was permitted with no conditions attached about the manner in which this adjudication could or could not be enforced.¹⁰¹ As commenters noted, the Constitution of India, unlike the Government of India Act, specifically realised the highest court's orders to have the binding force of law.¹⁰² An early Supreme Court decision that suggested the Court, like the Federal Court before it, could only declare the law was later overruled. Rather, the Court held that their jurisdiction extended to granting and enforcing reliefs in federal disputes.¹⁰³

Recognising this ability, the Supreme Court has allowed claims to implement settlements concerning disputes over the sharing of river waters, even though the substantive aspects of these disputes have a separate dispute resolution process under the Constitution.¹⁰⁴ Even as the Court conceded that it would have to defer to such river tribunals to decide how waters might be shared, it still maintained that it had the jurisdiction to enforce water-sharing decrees under Article 131.¹⁰⁵ Much of this argument has rested on a careful distinction between what constitutes a 'water dispute' (and is consequently barred) and what is merely tangential to water disputes (and therefore might be allowed).¹⁰⁶ In 1996, the State of Haryana filed a suit against the Union and the State of Punjab, asking the Court to direct them to complete construction of a canal.¹⁰⁷ The suit rested on an agreement made in 1976; a previous suit filed in 1981 for non-compliance with the agreement had been withdrawn after the parties reached a temporary political resolution to the conflict. In 1996, still facing non-compliance, the State reinstated its suit. The Supreme Court held in 2002 that the Union and the State of Punjab were legally obliged to finish the agreed work, giving them both a deadline to construct the canal within a year. In 2004, the Supreme Court reiterated that its orders were enforceable, holding that Punjab would be liable to contempt proceedings if it did not complete the work.¹⁰⁸ In response, the State of Punjab passed a law terminating the original agreement, which the Supreme Court held to be unconstitutional in an advisory opinion in 2017.¹⁰⁹ The Court has, however, refrained from taking strong coercive action, instead opting to allow parties to negotiate politically even as the litigation continues.

Despite their view that the Court's role is to enforce legal rights, this case demonstrates that judges have allowed the Supreme Court to be used as another site of political negotiation, monitoring conduct instead of enforcing legal interpretations. The result has been extensive litigation, ongoing over decades, as the Court intervenes to authorise, endorse, and supervise the resolution of conflicts—

100 Government of India Act, 1935, § 204, cl.2

101 Constitution of India, 1950, Article 131.

102 Constitution of India, 1950, Article 142. Cl. 1 provides that decrees and orders of the Supreme Court "...shall be made enforceable throughout the territory of India," in contrast to the Government of India Act 1935, which contains no comparable enforcement machinery. See, H.M. Seervai, *Constitutional Law of India*, Vol 4, 4th edition, (New Delhi: Universal Law Publishing, 2017) 2626.

103 In *State of Bihar v. Union of India*, the Court erroneously held that article 131 was limited to declaratory opinions; this was overruled in "*State of Rajasthan v. Union of India*," (1977) 3 SCC 592, 647. (per Justice Bhagwati and Justice Gupta)

104 Constitution of India, 1950, Article 262.

105 See, *In re. Cauvery Water Disputes Tribunal*, (1993) Supp. 1 SCC 96, "*State of Karnataka v. State of Andhra Pradesh*," (2000) 9 SCC 572. The question of how jurisdictions under article 262 (river disputes) and article 131 (federal disputes) has been referred to a constitution bench for a determinative ruling in 2010. See, "*State of Tamil Nadu v. State of Kerala*," (2010) 15 SCC 391.

106 See, "*State of Haryana v. State of Punjab*," (2002) 2 SCC 507.

107 "*State of Haryana v. State of Punjab*," (2002) 2 SCC 507. For background, see, Navjeevan Gopal, "SYL Canal Issue: 34 Years, 3 Supreme Court Orders Later, Link that Can't Be Made," *Indian Express*, Feb. 23, 2017, <https://indianexpress.com/article/explained/punjab-sutlej-yamuna-canal-link-haryana-4368049/>

108 "*State of Haryana v. State of Punjab*," (2004) 12 SCC 673.

109 *In re Punjab Termination of Agreement Act*, (2017) 1 SCC 121.

even as they hold that political conflicts have no place in the judicial system. For instance, a dispute over territorial boundaries between the States of Nagaland, Assam, and Arunachal Pradesh has been the subject of ongoing Article 131 suits since 1998.¹¹⁰ In the 2000s, the Court established a Boundary Commission to settle the facts; it has since monitored the work of this commission, appointing its members, fixing their salaries, and determining States' share of the expenses.¹¹¹ Similarly, in the case of the Mullaperiyar Dam, which has been the subject of much conflict between the States of Tamil Nadu and Kerala, the Supreme Court has directed the Union to appoint a committee to decide all issues 'apart from the legal and constitutional issues',¹¹² even though this is patently outside the scope of their focus on legal rights. In a suit filed by Himachal Pradesh against three other States concerning their legal entitlement to power supplies from the Bhakra Nangal and Beas Dams, the Supreme Court first ordered all parties to take three months to 'arrive at a mutually acceptable solution', showing remarkable reluctance to use their Article 131 jurisdiction at all.¹¹³ When this (unsurprisingly) proved unsuccessful, the Court decided the matter and determined the allocation of rights between the States.¹¹⁴

The most controversial aspect of their enforcement ability has been the Court's power to invalidate legislation in Article 131 suits. The Constitution of India specifically allows the Supreme Court and High Courts to test all laws against fundamental rights and invalidate them if they are found to be contrary.¹¹⁵ Article 131, however, does not concern the enforcement of fundamental rights, which relate only to individuals. Rather, it is for the enforcement of *legal* rights. Consequently, the question of whether the Supreme Court can strike down laws that the Union or States have validly enacted remains unanswered. In 1977, the case concerning allegations of corruption in Karnataka turned, in part, on the validity of a law that allowed the State and Union governments to create Commissions of Inquiry.¹¹⁶ The Commissions of Inquiry Act was held to be constitutionally valid, implying that the Court could—and, indeed, did—engage in reviewing legislation in Article 131 cases. Another prior case involved an unsuccessful challenge to a central statute by the State of West Bengal; in this case, Article 131 was not even raised and the Court ruled in favour of the Government of India without addressing the question at all.¹¹⁷

This remained the case until 2011, when the Supreme Court heard a case filed by the State of Madhya Pradesh. In 2000, the Union divided Madhya Pradesh into two States, forming the new State of Chhattisgarh. The division resulted in a complex detangling of administrative and governmental functions. A suit filed by the State of Madhya Pradesh under Article 131 specifically dealt with how electricity regulators—including their rights and functions—were to be apportioned between Madhya Pradesh and Chhattisgarh.¹¹⁸ While the suit was pending, Madhya Pradesh filed an application to include an additional challenge against the law that divided the two states, arguing that the way in which it reallocated assets violated the fundamental right to equality under the Constitution.¹¹⁹ The Supreme Court noted that, normally, challenges to legislation for the breach of fundamental rights could only be filed as writ petitions, not as federal disputes; in the case of its federal jurisdiction, it

110 "State of Assam v. Union of India and others," O.S. No. 2 of 1988, O.S. No. 1 of 1989.

111 "State of Assam v. Union of India and others," (2010) 9 SCC 272, 274.

112 "State of Tamil Nadu v. State of Kerala," (2010) 12 SCC 399; (2014) 12 SCC 696.

113 "State of Himachal Pradesh v. Union of India and others," (2010) 15 SCC 107.

114 "State of Himachal Pradesh v. Union of India and others," (2011) 13 SCC 344.

115 During the Emergency, the Indira Gandhi-led Union Government's efforts to constrain the courts was implemented through sweeping constitutional amendments that altered jurisdictional provisions. These including a new article 131A, which gave the Supreme Court the exclusive jurisdiction to examine the constitutionality of centrally enacted legislation, even if such legislation violated fundamental rights. Constitution of India (42nd Amendment) Act, article 131A.

116 "State of Karnataka v. Union of India," (1977) 4 SCC 608.

117 "State Of West Bengal v Union of India," AIR (1963) SC 1241 (challenging the Parliament of India's competence to enact the Coal Bearing Areas (Acquisition and Development) Act, 1957).

118 "State of M.P. v. Union of India," (2011) 12 SCC 268, 269.

119 *Id.*

could only decide the rights of the States and the Union, not fundamental rights. Consequently, it held that ‘no recourse can be permitted to challenge the validity of a central law under the exclusive original jurisdiction of this Court provided under article 131’.¹²⁰

It was a puzzling decision, not least because the Court had clearly reviewed legislation for constitutional validity in previous Article 131 cases. Evidently, the conflict needed to be resolved. In 2015, in the context of a similar dispute between Bihar and the newly created State of Jharkhand, the Supreme Court referred this question for determinative holding by a larger bench.¹²¹ That bench is yet to be constituted. In the interim, the issue of whether the Court can review central legislation while deciding federal disputes remains indeterminate—and increasingly urgent. In 2017, the State of West Bengal withdrew an Article 131 petition challenging the validity of the Aadhar Act, which governs the national biometric identity program, after judges orally questioned the petition in court, suggesting that a ‘state government can’t file petition against a law passed by Parliament’.¹²² Since then, a petition filed by the State of Kerala has challenged the validity of the CAA, arguing that the law and related orders are ‘manifestly arbitrary, unreasonable, irrational and violative of fundamental rights’.¹²³ The petition argues that these claims clearly establish that the dispute involves a legal right between the State and the Union. Though the Court has agreed to hear the petition, it has not yet done so. A similar petition from the State of Rajasthan is also pending.¹²⁴

CONCLUSION

The Supreme Court’s jurisprudence on its own powers to adjudicate federal disputes reveal three patterns that remain relevant. First, the Court has interpreted Article 131 to actively constrain its own powers, limiting the nature of parties and the type of disputes to severely restrict the number of cases filed under these provisions. Second, in cases that it does entertain, the court favours remedies that allow for extended dispute resolution, often monitoring political negotiations over decades rather than determining legal rights at stake. Third, the Court’s reluctance to conclusively determine the pending issue of whether States can challenge the validity of central laws represents an increasingly urgent matter, as federal deadlock worsens. These three patterns should indicate a call to action for the Court, which currently faces at least four complex issues of federal conflict—all of which depend on its ability to surmount and reimagine these questions.

In drafting Article 131, the chief opponent to federal jurisdiction, Mr. Prasad, had declared his stark opposition to both federalism and the Supreme Court. He envisioned a form of federalism in which all such disputes would be resolved politically, not by courts but by the Union government. ‘The provincial Governments are subordinate Governments’,¹²⁵ he noted, a position not unlike the Union government’s present views on the use of central legislation, the powers of security agencies, or the exploitation of natural resources. His argument was rejected by an assembly which firmly placed faith in the ability of a constitutional court to resolve federal conflicts. It is increasingly urgent that the Supreme Court fulfil that mandate.

120 “State of M.P.v. Union of India,” (2011) 12 SCC 268, 276.

121 “State of Jharkhand v. State of Bihar,” (2015) 2 SCC 431.

122 “Aadhaar: How Can a State Challenge A Law Passed By Parliament? SC Asks Mamata Govt.,” *LiveLaw*, Oct. 30, 2017, <https://www.livelaw.in/top-stories/supreme-court-weekly-roundup-may-9-to-may-15-2022-199176?infinitiescroll=1>.

123 “State Of Kerala Files Suit In SC Against Union Govt Challenging Citizenship Amendment Act [Read Plaint],” *LiveLaw*, Jan. 14, 2020, <https://www.livelaw.in/top-stories/breaking-state-of-kerala-files-suit-in-sc-against-union-govt-challenging-citizenship-amendment-act-151600>.

124 “State Of Rajasthan Files Suit In SC Challenging Citizenship Amendment Act 2019,” *LiveLaw*, Mar. 16, 2020, <https://www.livelaw.in/top-stories/state-of-rajasthan-files-suit-in-sc-challenging-citizenship-amendment-act-2019-153913?infinitiescroll=1>.

125 Brajeshwar Prasad: Bihar, Constituent Assembly of India Debates, June 3, 1949.

Appendix 1: Invocation of Federal Jurisdiction under article 131 of the Constitution at the Supreme Court of India

A. Completed Matters

1. State Of West Bengal v Union of India, AIR 1963 SC 1241
2. State of Bihar v. Union of India and another, (1970) 1 SCC 67
3. State of Rajasthan and others v. Union of India, (1977) 3 SCC 592
4. State of Karnataka v. Union of India, (1977) 4 SCC 608
5. State of Karnataka v. State of Andhra Pradesh, (2000) 9 SCC 572
6. State of Haryana v. State of Punjab and Another, (2002) 2 SCC 507
7. State of Orissa v. State of Andhra Pradesh, (2010) 5 SCC 674
8. State of Madhya Pradesh v. Union of India and another, (2011) 12 SCC 268
9. State of Himachal Pradesh v. Union of India and others, (2011) 13 SCC 344
10. State of Tamil Nadu v. State of Kerala and another, (2014) 12 SCC 696
11. State of Rajasthan v. Union of India and others, O.S. 3 of 2014
12. State of Rajasthan v. Union of India, O.S. 1 of 2016
13. National Capital Territory of Delhi v. Union of India, O.S. 2 of 2016
14. State of Tamil Nadu v. UT Pondicherry, O.S. 1 of 2013
15. State of Odisha v. State of Chhattisgarh and Others, O.S. 1 of 2017

B. Pending Matters

1. State of Assam v. Union of India, O.S. No. 2 of 1988, O.S. No. 1 of 1989
2. State of Andhra Pradesh v. State of Maharashtra, O.S. No.1 of 2006
3. State of Uttarakhand v. Union of India and State of Uttar Pradesh, O.S.No. 5 of 2012
4. State of Jharkhand v. State of Bihar, O.S. 1 of 2012
5. State of Kerala v. State of Tamil Nadu, O.S. No. 2 of 2013
6. State of Rajasthan v. Union of India, State of Punjab and others, O.S. 1 of 2014
7. State of Uttar Pradesh v. Union of India, National Capital Territory of Delhi, and others, O.S. 2 of 2014
8. State of Tamil Nadu v. State of Kerala, O.S. 4 of 2014
9. State of Punjab v. Union of India, State of Haryana, and others, O.S. 1 of 2015
10. State of Tamil Nadu v. Union of India, and State of Karnataka, O.S. 2 of 2015
11. Union of India v. State of Tripura, O.S. 3 of 2015
12. State of Tamil Nadu v. Union of India, State of Andhra Pradesh, and State of Karnataka, O.S. 3 of 2016
13. State of Tamil Nadu v. Union of India, and State of Karnataka, O.S. No. 1 of 2018

14. State of Telangana v. Union of India, O.S. No. 1 of 2019
15. State of Chhattisgarh v. Union of India, O.S. No. 1 of 2020
16. State of Kerala v. Union of India, O.S. No. 2 of 2020
17. State of Rajasthan v. Union of India, O.S. No. 3 of 2020
18. State of Jharkhand v. Union of India, O.S. No. 4 of 2020
19. State of Rajasthan v. Union of India, O.S. No. 5 of 2020
20. State of Rajasthan v. State of Punjab, O.S. No. 6 of 2020
21. State of Meghalaya v. Union of India and others, O.S. No. 1 of 2021
22. State of Uttar Pradesh v. Union of India, and State of Uttarakhand, O.S. No. 2 of 2021
23. State of Karnataka v. State of Tamil Nadu, and others, O.S. No. 3 of 2021
24. State of West Bengal v. Union of India, O.S. 4 of 2021
25. State of Chhattisgarh v. Union of India, O.S. 5 of 2021
26. State of Punjab v. Union of India, O.S. 6 of 2021

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