

Centre State Relations in India

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**Week 05: Legislative Relations: Interpretation of Lists, Pith and Substance, Territorial
Nexus and Related Areas**

Lecture 21: Legislative Relations of State with special status

Greetings to all of you. We have been discussing legislative relations, there we have discussed that how the power and function between the Centre and the State has been divided and what are the responsibilities entrusted to the Centre and the states or what are the shared responsibility between the State and the Centre. We have also discussed that what is the formula suggested under the Constitution to resolve the conflict if it arises between the Central Law and the State Law. Along with that we have also discussed that under what circumstances Parliament can make a law on a State subject either with the consent of the State or through a resolution passed by the Council of States in the national interest. Moving ahead we thought of making the study on legislative relation very comprehensive and therefore decided to also discuss with you that how legislative relations in India has been governed in relation to some of the States which have been granted a special status, a special arrangements have been done for some of the States and for those arrangements it has been truly said to be a case of asymmetrical federalism where the relationship between the Centre and the States they are not on equal terms it is not that there is a parity between the relationship between the Centre and the States or amongst the States in asymmetrical relation what we look at is that how the local conditions how the requirements of the people are being accommodated under the Indian Constitution and because of that special provision has been given. So we will be studying this in this module that what are the special provisions under the Constitution how Part XXI of the Constitution deals with some of these States and what is the legislative relations vis-a-vis those special provisions.

We have already dealt an aspect of this asymmetrical federalism earlier while discussing the administrative relation where we have discussed that how the Executive deals with the States on certain subject matters where a kind of discretionary power is entrusted upon the Governor to deal on the issues of law and order or on the issues of development of the backward regions of certain States. So when you look at the nature of asymmetric Constitution it is based on the idea of a distinct culture, distinct demography. It is based on the territorially concentrated ethnic and cultural groups requirement where it has been suggested that there is a requirement to acknowledge and guarantee a differential rights to the inhabitants of those States and also it is been suggested that those States may be for the protecting the local people, protecting the indigenous people, it is suggested to grant more autonomy to those people and certain privileges are to be assigned which is not available with other people of rest of the country. That's how you see the arrangement done under the Indian Constitution which is otherwise known for its centralized tendency in fact because of the centralized tendency only what we find is that the Constitution of India has been termed as a quasi-federal. So there is a flexibility ingrained under the Indian Constitution which accommodates these complexities which are prevalent in the society and those complexities are either because of historical reasons or because of very local conditions which are there in that regions and which requires a special constitutional attention.

So this asymmetrical arrangement is primarily related to the administration of the region which suggests that let that region be either governed directly by the President or by the Governor or there can be a specialized bodies which can be made responsible for taking care of upliftment of the region and also addressing the issues of the people of that region. In that regard when a matter has come before the Supreme Court on challenging the arrangement done for composition of the Assembly in The State of Sikkim that whether the arrangement is unconstitutional and valid basic structure doctrine. This is an interesting case of *RC Poudyal v. Union of India*, where it has been observed that when Sikkim became an integral part of India there has been arrangement done with regard to Sikkim where it has been suggested that in this Assembly of the State of Sikkim there shall be a seat reserved for Sangha community which is a religious community and it is the members of that community alone would be voting to elect their representative.

So this very provision was challenged that it violates the general electoral scheme of the Indian

Constitution. Now in *RC Poudyal v. Union of India*, the court gave a very phenomenal judgment where the court has said that the conditions of asymmetry must be compatible with basic features of the constitution but it need not be same for all the States. So in this case the court has acknowledged that yes there has been a kind of deviation done but at the end of the day there has been a case of representation and that representation is through an electoral process and therefore it is not a case of violation of basic structure.

So *RC Poudyal v. Union of India* is a judgment one may bring on the table to justify the constitutional sanction of asymmetrical federalism in India. What I find is that this asymmetrical design is more of an outcome of learning from practice because of the very reason that these arrangements which are being provided to some of the States under Part XXI of the Constitution they are not there from the beginning they have come into existence after the Constitution has been commenced after Constitution has come into effect meaning thereby that the specific requirements have been understood and accordingly the Parliament has amended the Constitution in order to incorporate those changes which are required for maintaining special status of those States. In that regard it has been seen that the political institutions and the judiciary plays a critical role in strengthening that asymmetrical structuring, in strengthening the local values and at the same time it also suggests that those local values where it has got a special references and special arrangement that in a larger scale does not violate the broader principles laid down under the Constitution.

So basically what you find is that that this asymmetrical arrangement which has been done it is based on an idea of self-rule within the framework of shared rule where what it follows is the principle of weighted and differentiated equality where certain reasons are been allowed to rule by the same time they are also subjected to the larger obligation under the Constitution and one region is differentiated from another region depending upon either the local requirement, depending upon the cultural values, depending upon the requirements of ethnic group residing in that area. So when you look at the Indian Constitution and special arrangement which is done for different States you would find that broadly these arrangements are done under these three headings. One is where it has been observed that some of the regions within a State requires special focus on developmental front and therefore on the matter of inter State discrimination, it has been suggested that let there be the responsibility imposed upon the Governor to come up

with the necessary planning on the matter of designing a strategy to develop that region. For example Article 371D talks about the special need of Telugu speaking region of Andhra initially and later for Telangana we will be also briefly discussing about what this individual provisions refer to in terms of a special arrangement. Then we find that another factor which has been taken into account for providing a special arrangement is land and natural resources. Articles 371A and 371G which says that there shall be control over land and natural resources by the State it has been stated in the State of Nagaland where it says that resolution declaring non application of petroleum and natural gas laws made by the Union in the State of Nagaland. So you can very well see that because it is more of to be seen that lands are integral part of the identity of the people staying in that region and therefore there is some kind of restriction on the applicability of the Central law. The third category is the category of ethnic conflict resolution where there are different groups residing in a State and those groups are divided on ethnic identity in such a situation it has been stated that the responsibility shall lie with the Governor to maintain law and order in those States. So these are the broad categories on which you find that arrangements are being done.

So, there are two principle which you find which is there under the Indian Constitution one where it is suggested that there is a need of higher degree of autonomy and self-governance. For example we have discussed that how Schedule V and Schedule VI deal with the administration of tribal regions and give autonomy to the elected representative or the local council in those regions in terms of strengthening their customs and their values. Another principle is where it says that States to resolve intra-State inequalities with positive discrimination approach. Positive discrimination approach here needs to be understood in a term that where Constitution suggest that what measures are to be taken for uplifting that area for improving the quality of life of the people of that area, for example providing reservation for people residing in that area in educational institutions in public employment or different kind of developmental schemes are to be adopted for that region, different separate budgetary allocations are to be done for those regions, so that overall developmental priority is to be fulfilled.

So this is the provision under the constitution where you find that Part XXI separately deals with Temporary Transitional and Special Provisions where Article 369 to Article 392 these Articles deal with this asymmetrical arrangements under the Indian Constitution you as I said that this is

something which is not a creation right at the commencement of the Constitution there has been a kind of demand coming up there has been a kind of realization that yes there is a need to acknowledge separate arrangement and thus necessary amendments have been done under the Indian Constitution.

One important change has been done in the year 1962 through 13th constitutional amendment where the word “Special” was added after the expression “Transitional” in order to give and in order to accept that certain regions of this country that require constitutional protection so that the electoral process and ordinary political process should not disturb those aspirations of the people. In that sense these are the provisions which deal with different arrangements under the Indian Constitution. Article 370 is no more now as a part of the Constitution. It has been abolished and the Supreme Court has approved the abolition of Article 370. Article 371 deals with special arrangements for certain regions of Maharashtra and Gujarat. Article 371A which deals with Nagaland, Article 371B which deals with Manipur then Article 371D deals with Andhra and Telangana, Article 371F deals with Sikkim, Article 371G deals with Mizoram, Article 371H deals with Arunachal Pradesh, Article 371I deals with Goa and Article 371J deals with Karnataka.

We will be briefly discussing about some of these States in this slides. For example Article 371 deals with special provisions for Maharashtra and Gujarat where it says that the Governors of these two States they have got a power to establish independent development boards for the regions of Vidarbha, Marathwada, Saurashtra, Kutch and for the rest of Maharashtra and Gujarat. The responsibility of this independent development board is to look into the specific requirements of these regions and make a plan for bringing in developmental schemes so that these regions can also progress and people of these regions can also enjoy the benefits of the development.

So you can very well find that this Article 371 is a provision to safeguard the interest and aspirations of the backward regions of these two States. Then you have a provision under Article 371A with regard to Nagaland where it categorically says that no Act of Parliament in respect of the subject matters of religious or social practices of the Nagas, Naga customary law and procedure, administration of civil and criminal justice involving decisions according to Naga

customary law or ownership and transfer of land and its resources, shall not be applicable in the State of Nagaland unless and until Legislative Assembly of Nagaland passes a resolution and decides to give effect to those parliamentary legislations and that is the reason why you find that the issues like women reservation issues, UCC may have challenges in getting implemented in the State of Nagaland or for example even the arrangements of Municipal Corporations the local bodies all these are getting governed under the customary practices which are developed in that State over centuries. Then you have got a provision under Article 371B which talks about the Assam Legislative Assembly which says that there shall be Committee of Legislators which shall comprises of elected tribal representatives and they shall be responsible for addressing the issues of tribal areas, hilly areas of the State of Assam. So, that special provision is there even with regard to Manipur where you find that Article 371C provides for Committee of Legislators which shall be responsible for the hilly regions development of hilly regions. It further says that certain seats in the Assembly are reserved for the hilly areas in the State and it says that there is a provision for hilly areas Committee in the Legislative Assembly of Manipur.

This Committee is responsible for reviewing and making of recommendations on matters of allocation of funds for the development of hill areas. So, what you find is that though it is generally accepted that the State Assembly shall be taking care of the entire State for every individual of the State, but then looking at the specific requirement of people of certain regions this provisions are been made and made and given a constitutional status so, that no diversions and deviations shall be allowed. Article 371D deals with Andhra Pradesh and Telangana where it says that it is a responsibility of the President to guarantee equal equitable opportunities and facilities in public employment and education to folks from different areas of the State. Then you have Article 371F which deals with Sikkim as I have already discussed that one unique feature of Sikkim while discussing the facts of the RC Poudyal case. Sikkim became an integral part of India in 1975. Article 371A says that the Legislative Assembly's strength shall not be less than thirty. Further, the idea under Article 371A is to safeguard the rights and interest of several sections of the population residing within the State of Sikkim and seats in the Assembly are provided to the folks of those different section. In 1979 certain changes are being done in the Assembly arrangements. The reserved seats for the Nepalese of Sikkimese origin were abolished by the Representation of the People (Amendment) Act, 1979 and provided seats in the Assembly as

under: 12 reserved seats for Bhutia-Lepcha, 2 seats for Scheduled Castes, 1 seat for Sangha which I discussed with you in RC Poudyal case where there is a reservation for a religious community and the election of representative is also done by the members of that religious community. The rest of the 17 seats are general seats. Again moving further you find that for Manipur also there is a similar arrangement like Nagaland where it categorically says that parliamentary legislations shall not extend to Manipur unless and until there is a kind of approval from the Legislative Assembly of Manipur on the issues of religious and social practices, customary law and procedure, administration of civil and criminal justice involving decision according to Mizo customary law and then ownership and transfer of land in the State. So that's what you find and in a special arrangement done for the State of Manipur where you find that hilly areas and valley areas they have been given different status and on that basis they are being accorded the planning and the government comes up with the plan for development of that regions. Also their own ethnic identity is been protected through the provision of Article 371G. Article 371H talks about special responsibility of the Governor with respect to law and order and it says that he shall consult the Council of Ministers, but then as far as law and order is concerned his individual judgment shall be considered and shall be taken on priority. Primarily it seems that Article 371H is there because of the sensitive region because that Arunachal Pradesh borders with other countries and therefore considering that kind of sensitive nature this provision has been included in the Constitution.

Let us look at some of the judicial pronouncement which have approved this special arrangement for example in the State of Nagaland v. Ratan Singh, where the Supreme Court has categorically said *“Article 371A itself contemplates a different treatment of these tracts and the differences are justified by the vast differences between the needs of social conditions in Nagaland and the various stages of development of different parts. We do not, therefore, consider that a comparison of these Rules leads to any conclusion that there is likelihood of discrimination which would offend the Constitution.”* Then you have a Gauhati High Court judgment in Inavi Village v. State of Nagaland, with regard to Forest Dweller Act which deals with ownership and transfer of land and its resources and any Central Act dealing with the subjects can have no legal application in Nagaland because of Article 371A unless and until such resolution is passed by the Assembly of Nagaland. So the court approves in this case the arrangement of giving priority,

giving prominence to the legislative assembly of Nagaland. Then you have a case of R. Lalthanzuava v. Union of India related to Mizoram where there was a question with regard to applicability of Mizoram Land Acquisition, Resettlement and Rehabilitation Act 2016 vis-à-vis Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It says that it is applicable by in the State by virtue of Article 371G it says that Article 371G relates to transfer of land and not of acquisition and therefore 2013 Act shall be applicable because it deals with Entry 42 of the List I of the 7th Schedule of the Constitution and therefore there is a no such embargo Article 371G has been inserted mainly to protect the rights of the natives of the State of Mizoram. So the ownership and transfer of land which is protected by Article 371G is not relatable to acquisition of land for public purpose. So that is what the court in a way tries to reconcile the provisions of 2016 laws and 2013 laws.

Let me briefly touch upon the history of Article 370 also though it has been abolished now but I will touch upon this very briefly in order to make the discussion very comprehensive. So Jammu and Kashmir did not execute any Instrument of Accession when Britishers left the country. But later on due to the law and order situations prevalent in Jammu and Kashmir, the Ruler of that State was compelled to sign Instrument of Accession. Then Maharaja Hari Singh issued a proclamation that there shall be a Constitution for the state of Jammu and Kashmir for the governance of the State and then what we find is that when the Indian Constitution was being drafted it has been stated that India shall be the Union of States and for that Part I, Part II and Part III States are considered to be the constituent units of India and in that Jammu and Kashmir was placed in Part III of the Constitution.

So what we find is that Article 370 made special exemptions it said that Article 238 shall not be applicable for the State of Jammu and Kashmir though it was said that Article 1 and Article 370 itself shall apply to Jammu and Kashmir. So there are limitations which are laid down on the Parliament to enact laws for the State on matters which fall in the Union List and the Concurrent List of the Seventh Schedule. The requirement of consultation for one set of matters which are there are in the Instrument of Accession and for other matter it was said that let there be a concurrence of the State government for making the law applicable. The presidential power to apply other provisions of the Constitution to the State subject to exceptions and modifications with the condition of consultation for matters falling in the ambit of Article 370(1)(b)(i). So this

is the procedure which has been laid down that let there is consultation happening on the matter of applying the laws in the region of Jammu and Kashmir.

So this temporary provision has been done away with has been dispensed with through parliamentary process by the current government and this has come under the judicial scrutiny in In re: Article 370 of the Constitution. The Supreme Court in the year 2023 decided on the validity of the constitutional orders passed for abolishing Article 370. The constitutional orders are Orders 272 and 273 where and it has been categorically said that there is no requirement of any consultation and there is nothing called internal sovereignty of the State of Jammu and Kashmir. Now court in this case has categorically said that as far as the political status of Jammu and Kashmir is concerned they do not have any internal sovereignty and therefore there is no question of acknowledging the significance of the Constitution of Jammu and Kashmir. Jammu and Kashmir is considered to be an integral part and therefore it was well within the power of the parliament to abolish Article 370 and to integrate the Jammu and Kashmir within India in a true sense and all the provisions of the Constitution was made applicable in the in the Union Territory of Jammu and Kashmir and Ladakh. The State now has been divided into Union Territories and court has approved it. Now because of the abolition of Article 370 questions are being raised that should Article 371 also made the same fate in due course of time or in future. Now in that regard there are few observations which are being made. As far as the distinction between Article 370 and Article 371 is concerned it is clearly stated that Article 370 right from the beginning was considered to be a temporary provision whereas Article 371 is a special provision which is in a way manifestation of asymmetrical arrangement and there the focus is on the people instead of territory which was the focus of Article 370.

So when you look at Article 370 what you find that it was more of negative and limiting connotations, where it was reducing the power of Parliament, limiting the power of Parliament which is not the case with Article 371 and all those Article 371A to Article 371J. So Article 371 is not about granting a special status to eleven States. It is all about granting a special category State so that the local requirements can be taken into account, ethnic identity should be protected and preserved, plurality of the society can be preserved and the diversified values can be accommodated, that's what Article 371 in nutshell promises. Therefore there is a no reason to contemplate that in future Article 371 is going to get abolished because those factors will

continue to be a relevant one and it would continue to require special governance structuring which has been promised under Article 371 different clauses. So this is major difference between Article 370 and Article 371.

So these are the references for this module. Thank you.