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**"What is Article 131, under which Kerala has moved SC against the CAA? How does this challenge differ from the other petitions filed against the law? What aspects of India's federal structure does the case throw up?"**

On Tuesday, Kerala became the first state to challenge the Citizenship (Amendment) Act (CAA) before the Supreme Court. However, the legal route adopted by the state is different from the 60 petitions already pending before the court. The Kerala government has moved the apex court under Article 131 of the Constitution, the provision under which the Supreme Court has original jurisdiction to deal with any dispute between the Centre and a state; the Centre and a state on the one side and another state on the other side; and two or more states.

On Wednesday, the Chhattisgarh government filed a suit in the Supreme Court under Article 131, challenging the National Investigation Agency (NIA) Act on the ground that it encroaches upon the state's powers to maintain law and order.

### What is Article 131?

The Supreme Court has three kinds of jurisdictions: original, appellate and advisory.

Under its advisory jurisdiction, the President has the power to seek an opinion from the apex court under Article 143 of the Constitution.

Under its appellate jurisdiction, the Supreme Court hears appeals from lower courts.

In its extraordinary original jurisdiction, the Supreme Court has exclusive power to adjudicate upon disputes involving elections of the President and the Vice President, those that involve states and the Centre, and cases involving the violation of fundamental rights.

Kerala Chief Minister Pinarayi Vijayan with Jawaharlal Nehru University students union President Aishe Ghosh during a meeting at Kerala House in New Delhi, Saturday, Jan. 11, 2020. (PTI Photo)

For a dispute to qualify as a dispute under Article 131, it has to necessarily be between states and the Centre, and must involve a question of law or fact on which the existence of a legal right of the state or the Centre depends. In a 1978 judgment, *State of Karnataka v Union of India*, Justice P N Bhagwati had said that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but only that the dispute involves a legal question.

Article 131 cannot be used to settle political differences between state and central governments headed by different parties.

## **So how is a suit under Article 131 different from the other petitions challenging the CAA?**

The other petitions challenging the CAA have been filed under Article 32 of the Constitution, which gives the court the power to issue writs when fundamental rights are violated. A state government cannot move the court under this provision because only people and citizens can claim fundamental rights.

Under Article 131, the challenge is made when the rights and power of a state or the Centre are in question. However, the relief that the state (under Article 131) and petitioners under Article 32 have sought in the challenge to the CAA is the same — declaration of the law as being unconstitutional.

## **But can the Supreme Court declare legislation unconstitutional under Article 131?**

A 2012 dispute between Bihar and Jharkhand that is currently pending for consideration by a larger Bench of the court will answer this question. The case deals with the issue of liability of Bihar to pay pension to employees of Jharkhand for the period of their employment in the former, undivided Bihar state.

Although earlier judgments had held that the constitutionality of a law can be examined under Article 131, a 2011 judgment in the case of *State of Madhya Pradesh v. Union of India* ruled otherwise.

Since the 2011 case was also by a two-judge Bench and was later in time, the court could not overrule the case. However, the judges did not agree with the ruling.

“We regret our inability to agree with the conclusion recorded in the case of *State of Madhya Pradesh v. Union of India and Anr.* (supra), that in an original suit under Article 131, the constitutionality of an enactment cannot be examined. Since the above decision is rendered by a coordinate Bench of two judges, judicial discipline demands that we should not only refer the matter for examination of the said question by a larger Bench of this Court, but are also obliged to record broadly the reasons which compel us to disagree with the above-mentioned decision,” the court ruled in 2015, referring the case to a larger Bench.

Incidentally, the two judges who made the 2015 reference were Justice J Chelameswar (ret'd) and the current Chief Justice of India S A Bobde. The case is set to be heard in two weeks by a three-judge Bench comprising Justices N V Ramana, Sanjiv Khanna and Krishna Murari.

The decision of the larger Bench in *State of Bihar v. Jharkhand* would have a bearing on Kerala's challenge to the CAA.

## **Can the Centre too sue a state under Article 131?**

The Centre has other powers to ensure that its laws are implemented. The Centre can issue directions to a state to implement the laws made by Parliament. If states do not comply with the directions, the Centre can move the court seeking a permanent injunction against the states to force them to comply with the law. Non-compliance of court orders can result in contempt of court, and the court usually hauls up the chief secretaries of the states responsible for implementing laws.

## **Is it unusual for states to challenge laws made by Parliament?**

Under the Constitution, laws made by Parliament are presumed to be constitutional until a court holds otherwise. However, in India's quasi-federal constitutional structure, inter-governmental disputes are not uncommon.

The framers of the Constitution expected such differences, and added the exclusive original jurisdiction of the Supreme Court for their resolution. The quasi-federal structure envisaged in 1950 has consolidated into defined powers of the states.

Under a powerful Centre with a clear majority in Parliament, faultlines in India's federal structure are frequently exposed. Since 2014, when the Narendra Modi government came to power, debates around the 15th Finance Commission, the Goods and Services Tax, the linguistic divide on the National Education Policy, land acquisition, and the proposed All India Judicial Services have all emerged as flashpoints between the strong Centre and states ruled by the Opposition.

### Expected Questions (Prelims Exams)

**1. Consider the following statements:**

1. West Bengal has become the first state to challenge the Citizenship (Amendment) Act in the Supreme Court.
2. Under Article-131 the Supreme Court is empowered to adjudicate any dispute between State vs. State or State vs. Center.
3. Article-143 empowers the President to seek opinion from the apex court.

Which of the above statements is/are correct?

- (a) 1 and 2                      (b) 2 and 3  
(c) 1 and 3                      (d) 1, 2 and 3

**Note:** Answer of Prelims Expected Question given on 15 Jan., is 1 (a)

### Expected Questions (Mains Exams)

- Q.** Recently, the Government of Kerala, under Article 131 has challenged CAA in the Supreme Court. In this context explaining the provisions of Article -131, elucidate the role of the Supreme Court in the adjudication of the center-state disputes. (250 words)

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.

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