

**CENTRAL INTERVENTION MECHANISMS : A COMPARATIVE ANALYSIS OF
INDIA, SPAIN AND SOUTH AFRICA**

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Abstract

In the recent times, the crises in Kashmir and Catalonia have received widespread attention. The actions initiated by the Indian and Spanish governments respectively in these two crises were a form of “*CENTRAL INTERVENTION MECHANISM*”. Central intervention mechanism refers to a mechanism in a federal system under which a federal government intervenes in the administration of regional governments. This is highly unusual since, unlike Unitary systems, federal systems are based on the understanding that the national governments and the regional governments will operate in different spheres with mutual respect for one another’s domain.

This thesis looks at three ‘holding together’ federal systems in India, Spain and South Africa. It seeks to answer three primary questions, viz., the What, the Why and the How. The first endeavour is to answer question what exactly are these central intervention mechanisms. Then this paper attempts to decipher the reason why these provisions are included in these countries. Lastly, the paper examines through real world examples in these countries to discover if these provisions are really being used in the manner that the constitution had envisaged them to be used and analyses the potential for abuse of these provisions.

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Chapter 1: Introduction

Part 1: Origins

At the outset, it is important to set out the origins of the present paper. The focus of the present paper originated with an investigation of the recent constitutional changes affecting the territory of Jammu and Kashmir in India. It was a case where the Central government had unilaterally stepped in and scrapped the limited autonomy that had been granted to the province and had subjected it to the direct rule by the Central government. Investigation into the brazenness of the said action led to the question of why the constitution in a federal system like India would allow a central government to usurp the affairs of a province in such a manner. This led to the discovery of the existence of central intervention mechanisms as a common feature of modern day federal systems. While it emerged that the intervention in Kashmir was rather a ‘special case’ scenario involving a specific provision under Art. 370, the Indian constitution, nevertheless contained multiple provisions dealing with central intervention, and that in fact shortly before the crisis broke out in Kashmir, there had been an intervention in Kashmir itself under Art. 356 of the constitution. The natural progression then was to investigate why this mechanism was prevalent in these systems and whether they are a necessary evil or a serious flaw in constitutional design. The present paper is a result of this line of investigation.

This paper primarily seeks to answer four basic questions, viz., the who, the what, the why and the how. In other words, the paper sets forth who are the comparators that are the focus of the present paper, then seeks to understand what is a central intervention mechanism, and then wonders why it is included in these countries and then examines how these provisions are put to use in the real world and analyses whether their usage is in accordance with the original intent of their inclusion in the constitution.

Part 2: Setting the backdrop

On 19th of June, 2018 the chief Minister of the Indian state of Jammu and Kashmir resigned from the coalition government in the state, thus leading to the dissolution of the government. Since, there was no party with a majority to form government, President's rule was imposed in the state of Jammu and Kashmir in accordance with Art. 356 of the Indian constitution which meant that the President was the executive head of the state. The same was extended for a period of six months on three occasions with the last extension coming into effect for a period of six months starting from July 3rd 2019. During the subsistence of this period of Presidential rule in the state, a Presidential decree came to be issued on the 5th of August, 2019 whereby Art. 370 of the Indian constitution that guaranteed special rights to the state was revoked and it was divided into two union territories directly administered by the Union government. This led to widespread protests and garnered global attention.

Around the same time on 9th of June 2017, the government of the region of Catalunya in Spain announced that it would hold a referendum to determine if it should declare independence from the Spanish nation. The said announcement was met with great resistance from the federal government of Spain which deemed the referendum to be illegal. Despite the opposition, the Catalan Parliament passed a law facilitating holding of the referendum on the 6th September, 2017 and proceeded to hold the referendum on October 1st 2017. Out of the 5.3 million registered voters in the state, 2.26 million people participated in the referendum and 90% of them voted in favor of independence for the region. Following the referendum, the Catalan Parliament voted for independence on October 27th, 2017. On the very same day, the Spanish senate granted the Spanish Prime Minister Mariano Rajoy powers under Art. 155 of the Spanish constitution, which he promptly used to dismiss the regional elected government of Catalunya and subject the region to direct administration of the federal government at

Madrid.¹ There was widespread protests and violence in the region of Catalunya in the ensuing crisis.

Republic of South Africa is divided into nine regional provinces. One of these provinces is the North West province. Supra Mahumapelo was elected was the premier of the North West province in May 2014. His tenure saw growing dissatisfaction among the people over the state of affairs in the province, especially over allegations of corruption. In March 2018, the health care workers in the province went on a strike calling for the resignation of the premier Supra Mahumapelo. This led to a series of violent protests demanding his resignation throughout the region with several instances of looting and destruction of public property leading to loss of life². Faced with a rapidly deteriorating situation, on 9th May, 2018 the President of South Africa Cyril Ramaphosa addressed a letter to the chairperson of the National Council of Provinces informing it of his decision to invoke Art. 100 of the South African constitution that empowers the National Executive to intervene in the affairs of a provision if the province fails to fulfil an executive obligation in terms of the Constitution or legislation.³The provincial departments of finance, economic development, rural and environment, social development, local government and human settlements and tourism were placed an intervention prescribed by Sec. 100(1)(a) of the Constitution which meant that the province retained control over those departments but was subject to the directives issued by the federal government. At the same time, the office of the provincial premier, health, public works, transport and community safety which were the objects of allegations of corruption were placed under an intervention scheme provided by Sec. 100(1)(b) of the constitution which meant that the whole administration was completely put in the hands of the National Executive.

¹ 'Spain Dismisses Catalonia Government After Region Declares Independence - The New York Times' <<https://www.nytimes.com/2017/10/27/world/europe/spain-catalonia-puigdemont.html>> accessed 6 June 2020.

² 'UPDATE: Police on High Alert in Mahikeng' (*eNCA*) <<https://www.enca.com/south-africa/violent-mahikeng-protests-claim-its-first-casualty>> accessed 4 June 2020.

³ 'Direct Rule for South African Province' *BBC News* (13 May 2018) <<https://www.bbc.com/news/world-africa-44101133>> accessed 4 June 2020.

Though on first glance, the above reports may appear to be accounts of different issues within different countries with no apparent connection, on a closer analysis one would discover that they all shared a commonality in the manner in which they were handled and dealt with. In all three instances there was an intervention by the federal government in the administration of a regional or provincial government through a mechanism provided for by the constitution. It is this mechanism of intervention that is the subject matter of the present paper.

Central intervention mechanism is a glaring exception to the supposed smooth relation between the Central and the provincial governments. It is the one provision that in no uncertain terms shows who the master of the house is, so far as governance is concerned. Federalism is supposed to be based on a symbiotic relationship between the central and the provincial governments where there is mutual respect of each other's boundaries. However, most federal systems of government include a 'fail-safe', a provision that is an exception to the mutual respect of both the governments. It is a provision that puts the 'national interest' above and beyond the 'provincial interest'. It is a provision that enables the central government, in exceptional circumstances, to effectively take over the administration of the provinces notwithstanding the multi-level system of government that is central to the federal model. It is what transforms a federal government to a unitary government to a limited extent. The form and structure of these mechanisms may differ from country to country. Some may require a provincial council approval as in the case of Germany⁴, and some may require a prior warning in the form of a complaint to be given to the province asking for a satisfactory reply from the province for the action being complained against as in the case of Spain.⁵ Whatever may be the form and structure of these provisions, the substantive power that it grants is to the central

⁴ Article 37 of the Basic Law of the Federal Republic of Germany

⁵ Article 155 of the Spanish Constitution

government to substantially interfere in the management of the provinces notwithstanding the recognized autonomy granted to the province.

Thus the central intervention mechanisms act as a sort of an extraordinary exception to the federal structure. As such, it forms a highly interesting point of study in the field of constitutional design in modern day federal systems. What follows is an attempt to study and understand this mechanism by looking at its history and design along with the manner in which it has been utilized in the past.

Chapter 2: Choosing the comparators (The WHO)

Part 1: Relevance to the present day and age

The primary motivation behind the decision to consider the central intervention mechanism as the object of the paper was its current relevance. With multiple instances of the deployment of these mechanisms in the world in the recent times, it was an area of great academic and general interest. Thus, while dealing with matters of great current relevance, it was necessary to choose as comparators those countries where these mechanisms had been employed recently and had received great global attention and would thus be greatly relevant to the discussion. As narrated above, the incidents in Kashmir and Catalonia received overwhelming global attention. They have initiated conversations around the world on a variety of issues including the nature and structure of governments. While South Africa arguably did not receive as much global attention, primarily because it was not a ‘political’ intervention as was the case with India and Spain, yet it provides a fascinating perspective to juxtapose the developments in India and Spain with it and gleam at the apparent fine threads woven into the design of the intervention mechanism. Thus, the primary motivation for settling upon India, Spain and South Africa as the comparators was their relevance to the times in which this paper is rooted. However, it was not the only motivation.

Part 2: Similar historical background

The Indian constitution was drafted in 1950 after India achieved independence from British colonization in 1947. When the British left India in the year 1947, India, after the partition, was a mere collective of 565 princely states with over 20 major languages and countless number of dialects and people of different religions and ethnicities. Thus, the biggest challenge of the drafters of the Indian constitution was to create a system where the people in the many regions and provinces did not feel simply that the British rule had been replaced by an indigenous autocratic rule. Thus, it was important to create a substantial degree of provincial

autonomy while at the same time maintaining the cohesive force of a central government at the Federal level. Similarly, in Spain there was a gradual and painful transformation to democracy after the death of Francisco Franco who ruled over the country as a military dictator. Subsequent to his death, Spain as it existed, was a union of several regions with varying degrees of economic and social prosperity. Thus, the federal democratic system granted asymmetric autonomy powers to the regions while retaining the central authority with central government. As with India and Spain, South Africa endured significant challenges to the welfare of its people due to the evil of racial segregation during the Apartheid regime and emerged as a country in the 1990s, filled with different ethnicities and backgrounds. Inspired by the Indian model to some extent, the South African system also adopted a federal system with significant degrees of autonomy granted to the provinces while the Central government retained a stronghold over the national interest.

Thus, all the three countries shared a similar background of having faced great suffering and endured brutal regimes that had resulted in the countries being deprived of development and eventually being liberated, only to be met with the challenges of facing the aftermath of the troubled past. All these countries inherited vastly different ethnic populations and equally felt the need to put in a place a system where there were sufficient safeguards against the misadventures of the past and there was empowerment of people at the regional level while at the same time preserving a sense of national unity and ensuring that the countries remained a cohesive unit. Thus, the fact that these countries shared a common bond of past experiences enables them to be similarly placed and thus make for ideal members of a comparative analysis test group.

Part 3: Holding together

After having shared similar past experiences, the three countries proceeded to further evolve along similar lines in the form of governments they chose to adopt. All the three comparators

chose a federal model of government, with the power devolving from a primary federal government to a secondary regional government, although some Spanish scholars claim that Spain is not federal. This form of government is referred to as the “holding-together” federalism. This is in contrast to the “coming together” model of federalism like in the U.S., where fairly autonomous regions come together to form a larger unit of nation-state. In all the three comparators, the federal government is the primary source of executive power. Thus, the commonality in the form of governments adds another metric to the comparative analysis to ascertain the motivations behind the structure and design of the intervention mechanisms in the constitutions.

Therefore, the present paper attempts to peer behind the curtain of the political developments in the three countries and analyze the constitutional tools that were used in the making of legal contraptions that were used to intervene in the regional governments. It will attempt to understand the design and structure and the utility or otherwise of these provisions.

Chapter 3: Understanding the mechanism of intervention (The WHAT)

Emerging from the shadows of the past

Commencing after the end of World War II, throughout the 20th century, countries all around the world began a slow march towards democratic systems after exorcising the demons of authoritarian regimes. Several nations in Asia and Africa gained independence while several European states commenced the painful process of rebuilding their nations on new ideals. The primary motivation for the infantile democracies was to ensure the survival of their new states and to prevent a return to the dark ages of the past. The responses each of the countries took was based on its own experiences in the past.

Countries emerging from troubled past like India, and South Africa with their vast diversities in ethnicities and religions faced considerable challenges of achieving survival and national development at the same time. It was essential to expound the need for national unity, integrity and overall development of the nation to meet the true ideals of a democracy. A country with crippling poverty, illiteracy and chronic lack of health care could scarcely be seen as being in conformity with the democratic ideals. Among the nations facing these challenges, the nations that chose the federal model of government had the complicated task of ensuring the fine balance between decentralization of power on one hand and national development on the other hand. The effectiveness of a federal system of government thus revolved around the intricate balance between the agenda of a national government aimed at establishing a national identity on the one hand and on the other the agenda of a provincial government seeking protection of the rights and identities of the citizens of the provinces.

In this arrangement of shared sovereignty, in order to achieve all-round development, a sense of coherence and congruence in the efforts of the federal and regional governments was required. While, the regional governments were entrusted with significant degrees of autonomy, the need to ensure coherence and congruence of national effort organically gave

rise to a need for mechanism that would allow the federal government to ensure the functioning of the provinces was in line with the national goals. These national goals could manifest in the form of securing the territorial integrity of the nation, protecting constitutional values or ensuring financial well-being of all the provinces. These led to the formation and inclusion of central intervention mechanisms. These mechanisms were safety valves embedded in these systems to aid the Union government in securing positive development and survival of nations. As we shall see in the succeeding chapters, different countries adopted different systems to tackle with the challenges that were unique to that country.

Chapter 4: Understanding the need for central intervention mechanism (The WHY)

Part 1: In the interest of self-preservation

The most basic and primary motivation among countries to include a central intervention mechanism was self-preservation i.e., ensuring the countries survived in the long run. Having emerged from notoriously difficult pasts, all the three comparators shared a common goal of ensuring their own survival ahead of all other factors, some more so than others.

Self-preservation can take one or more forms depending on the challenges that a country has faced in the past or is likely to face in light of the geopolitical situations. In some cases, self-preservation may take the form of protecting national unity or territorial integrity, especially in countries that are prone to regionalism and fragmentation. In those cases, self-preservation may simply mean ensuring that the country stays as a single entity. In those cases, the challenge is to maintain national unity in the face of centrifugal forces acting within it. In other cases, self-preservation may translate into protection of the founding values or the constitution values of those nations. All emerging nations are based on some ideals around which the national identity is constructed. The survival of that identity is essential to the survival of the nation itself. Thus, self-preservation in such circumstances would mean protecting the values that make up the nation.

Protection of national unity/territorial integrity:

Spain and India are two emblematic examples of constitutional schemes that included constitutional intervention mechanisms to ensure protection of territorial integrity, but for slightly different reasons. While in the Spain, there was a predominant concern over autonomous regions overstepping their limits thereby upsetting the national unity, in India it was the threat of conflict with neighboring states that mandated a mechanism that would allow the Union government to take all measures necessary to protect the territorial integrity.

Spain had a history of several regions enjoying considerable internal autonomy stretching back to the reign of King Ferdinand II in the 15th century. However, the conceptions of nationalism within the regions of Spain such as Catalonia did not gain serious momentum until the early 20th century.⁶ The 1931 constitution that was drafted during Second Spanish Republic declared Spain to be a comprehensive state' that was 'compatible with autonomy of municipalities and regions'⁷ However, following the arrival of Franco in 1939, Spain became a dictatorial regime until his death in 1975. Following the death of Franco, the clamor for restoration of autonomies emerged once again with renewed vigor. Juan Carlos, who was handpicked by Franco as his successor and as the King of Spain, after ascending the throne indicated his willingness to usher in a constitutional monarchy. But the constitution-making process was drowned in the conflicting claims of all the involved parties. While the negotiations over the new constitution were still ongoing, in response to the widespread demands for provincial autonomies in the historically autonomous regions of Spain, a series of royal decrees were issued creating provisional autonomous institutions in Catalonia (Sept, '77), Basque Country (Jan, '78), Galicia (Mar, '78), Aragon, the Canary Islands and the Pais Valencia (Mar, '78), Andalusia (Apr, '78), the Balearic Islands (Jun,'78), Extremadura and Castile-Leon (Jun, '78), Asturias and Murcia (Jun, '78) and Castile – La Mancha (Oct, '78).⁸

Since, the provinces had institutionalized autonomy by way of decrees, the constitution-making process was shaped as a response to the reality of creating a Spanish identity in harmony with the autonomous provinces. The democratic government that came to power after the democratic elections in 1977, headed by the Union of Democratic Center(UDC) agreed to

⁶ Flores Juberías C, "The Autonomy of Catalonia" in Yash Ghai and Sophia Woodman (eds), *Practising Self-Government: A Comparative Study of Autonomous Regions* (Cambridge University Press 2013)

⁷ Hudson MO, "The Spanish Constitution of 1931" (1932) 26 American Journal of International Law 579

⁸ Flores Juberías C, "The Autonomy of Catalonia" in Yash Ghai and Sophia Woodman (eds), *Practising Self-Government: A Comparative Study of Autonomous Regions* (Cambridge University Press 2013)

recognize the self-governing powers of the territories provided it did not bring about any significant changes in the existing system of administration. As a result, a constitutional scheme that was filled with balances and counter-balances came into effect in 1978⁹. While creating units called self-governing units in addition to municipalities and provinces and also recognizing the right to self-government of all these units under Sec. 137, Sec. 2 proclaimed that Spain was indivisible homeland of all Spaniards composed of self-governing nationalities and regions. Thus, having put in place such an intricate system, trying to balance the interests of the national unity while respecting provincial autonomy, keeping in mind the peculiar history of the provinces, Spain, felt the need to include an intervention mechanism under Sec. 155. Sec. 155 states that when a self-governing community does not fulfil the constitutional obligations or acts in a manner that is prejudicial to the general interest of Spain, the federal government after lodging a complaint with the head of the community and not receiving a satisfactory response, can proceed to ‘take all measures’ to compel the community to perform its obligations. Thus, it is evident that given the history of the country, Spain, having had a history of autonomous regions proclaiming their independence and separate entity, put in place a mechanism aimed at that would allow the Union government to intervene as and when necessary to protect territorial unity.

In the Indian context, this motivation of ensuring territorial integrity had been present at the time the Indian constitution was drafted two decades earlier too. India achieved its independence from the British rule in the year 1947. Soon thereafter, India set up a constituent assembly of 299 members, out of which 229 members were elected from 12 Indian provinces and 70 members were nominated from 29 princely states¹⁰ to debate and discuss and eventually arrive at a constitution to guide the newly independent nation towards development. The

⁹ ‘Ispania.Pdf’ <<http://www.parliament.am/library/sahmanadrutyunner/ispania.pdf>> accessed 6 June 2020. – Constitution of Spain, 1978

¹⁰ ‘CADIndia’ <https://www.constitutionofindia.net/constituent_assembly_members> accessed 5 June 2020.

process was much longer than anticipated having commenced in 1947 and eventually taking up almost three years and finally being adopted on 26th November, 1949 and being ratified on 26th January, 1950.¹¹ The constitutional debates of the constituent assembly offer a fascinating insight into the minds of the framers of the constitution and help to decipher their motivations behind the design of the provisions.

As the debates show, the framers of the Indian constitution had pre-empted threats to territorial integrity and seen it fit as a need justifying the existence of an intervention mechanism. Art. 352 of the Indian constitution provided that where the security of India or any part of its territory is threatened by war or external aggression, then the President may issue a proclamation of emergency. Although ‘internal disturbance’ was also a ground included originally, it was changed to armed rebellion following the 44th Amendment¹² to the constitution. When such a proclamation has been issued, Art. 353 provides that the Union government will have the power to direct the state government the manner in which its executive power is to be exercised. In order to understand the motivation behind the inclusion of this provision, we may turn to the constitutional debates. When this particular provision was being debated, the members of the opposition expressed concern that this provision was ripe for abuse in the hands of an authoritarian President. In reply, Mr. Shibban Lal Saksena, a member of the Drafting committee explained the motivation behind including the provisions by saying, *“I think our own experience in the last war has been that the war could not have been prosecuted unless the Centre had the power to make the provinces fall into line with it. There was a big famine in Bengal because the Centre had not enough powers to interfere in food arrangements in the province. I therefore think that, particularly today when our*

¹¹ ‘Coi_part_full.Pdf’ <https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf> accessed 5 June 2020. – Constitution of India, 1950

¹² ‘The Constitution (Forty-Fourth Amendment) Act, 1978 | National Portal of India’ <<https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-forty-fourth-amendment-act-1978>> accessed 7 June 2020.

*democracy is a nascent democracy, we should vest the Centre at least with these limited powers in an emergency.”*¹³

What emerges from both the above examples of Spain and India is that, in democratic systems around the world, territorial integrity represents survival of the nation itself and as such is a considerable motivator for including an intervention mechanism in the constitutional design.

Protection of constitutional values:

In addition to territorial integrity, the other element that makes up the self-preservation bundle is the protection of constitutional values. Constitutional values represent the guidelines around which the constitutionalism in a particular system is constructed. The term constitutional values is often used interchangeably with constitutional principles, although as many scholars point out, they represent different things. Despite the ubiquitous nature of the term, it is important to recognize that constitutional values are more than a statement of abstract moral values, especially in the 21st century. Constitutional values represent a dynamic, positive set of ideals that help nations repair the historic injustices and create a new paradigm for the future. Explaining the importance of constitutional values, Prof. Hiroshi Nishihara states, *“In the 21st century, the century of human rights as is anticipated by many, we cannot use the concept of constitutional values to signify arbitrary value judgment met by the drafter of constitutional documents. .. There exists also a consensus all across the globe about the fairness of democratic process and unfairness of the deprivation of political rights. Therefore, if we speak of constitutional values, we take for granted a certain frame of reference as to what belongs to these values.”* Constitutional values form the core of the identities of nations. In the case of countries like India and South Africa that have had histories of deep discrimination and unjust

¹³ ‘CADIndia’ <https://www.constitutionofindia.net/constitution_assembly_debates/volume/9/1949-08-02?paragraph_number=226%2C234%2C280%2C221%2C243%2C284%2C222%2C281#9.109.226> accessed 6 June 2020.

prejudices, their new constitutions represent a new set of values that represent their new independent identities. Thus, in order to protect these values, the constitutional schemes tend to include intervention mechanisms.

In fact, the above proposition is true in the cases of all the three countries of India, Spain and South Africa. The constitutions of all the three nations have a distinct set of values that have been enshrined in the nation that lay down the roadmap for these nations. The preamble of the Indian constitution proclaims India to be a sovereign, socialist, secular, democratic republic and that it seeks to achieve social economic and political justice, liberty of thought, expression, belief, faith and worship, and equality of status and opportunity to all its citizens while promoting fraternity that assures the dignity of the individual and the unity and integrity of the nation and Art. 1 declares that India shall be a Union of states.¹⁴ The preamble of the Spanish constitution states that the Spanish nation desires to establish justice, liberty and security and *inter alia* guarantee democratic coexistence within the Constitution in accordance with a fair economic and social order, protect all Spaniards and the peoples of Spain in the exercise of human rights and their cultures and traditions, languages and institutions. It also seeks to establish an advanced democratic society. Sec. 2 goes on to state that the constitution is based on the indissoluble unity of the Spanish nation which is the indivisible homeland of all Spaniards.¹⁵ In the case of South Africa, recognizing the journey of South Africa as a nation, the preamble of the South African constitution states that the people of South Africa recognize the injustices of the past and that South Africa belongs to all those who live in it, united in their diversity. Poignantly, the Preamble goes on to state that the people of South Africa adopt the constitution to heal the divisions of the past and to establish a society based on democratic

¹⁴ 'Constitution of India (Full Text) | National Portal of India' <<https://www.india.gov.in/my-government/constitution-india/constitution-india-full-text>> accessed 6 June 2020.

¹⁵ The Constitution of Spain, 1978

values, social justice and fundamental rights, and to build a united and democratic South Africa that is able to take its place as a sovereign state in the family of nations.¹⁶

As we can see, the aforementioned affirmations are not just mere statements describing the structural framework, but are a congregation of morals that the people of a nation through their representatives give unto themselves as a guiding light in their journey as a nation. These values contain reflections of the difficulties each of these countries have faced in the past and thus proclaim their intent to undo the damage and prevent those misfortunes from occurring again. Constitutional values are not restricted to just the preamble, they extend into the constitution as a whole flowing from the collective conscience of the nation. Thus, they form a core component of the national identity and hence call for protection through all means including intervention mechanisms. The constitutions of India, Spain and South Africa espouse this as follows.

Art. 356 of the Indian constitution provides that if the President receives a report from the Governor of a state or receives information otherwise, and is satisfied that there exists a situation in the state in which the Government of the state cannot be carried on in accordance with the constitution, he may assume to himself the functions of the State Government. When this provision was originally inserted in the Constitution, there were severe criticisms that providing for intervention merely on the ground that the state government was not possible in line with the constitution was drastic and without parallels anywhere in the world. Addressing these concerns in the Constituent Assembly, the Chairman of the Drafting Committee, Dr. B.R. Ambedkar stated, *“Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing, which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article*

¹⁶ The Constitution of the Republic of South Africa, 1996

contained in the American Constitution, where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle." This statement was of course a reference to the 'Guarantee clause' of the American constitution enshrined under Section 4¹⁷, which provides that the United States shall guarantee a republican form of government in all the states. A republican form of government is indeed one of the most sacred constitutional values of the United States having been one of the primary reasons for its creation in the first place. Similarly, Indian preamble too enshrined a set of values that are essential to the identity of India including a republican form of government. It was protection of these values that Dr. Ambedkar referred to when he justified the provision for intervention.

Similarly, in Spain, Sec. 155 of the Spanish Constitution provides that if a self-governing community does not fulfil its 'constitutional obligations' or acts contrary to the general interests of Spain, then the Spanish government may intervene in terms of the scheme provided thereunder. The inclusion of this provision for intervention in Sec. 155 is imported from the German model of 'federal execution' (under Art. 37).¹⁸ Although, there is no precise definition of the phrase, in order to understand what constitutes 'constitutional obligations', we must look at the Spanish values discussed above. 'Indissoluble unity of the Spanish nation which is the indivisible homeland of all Spaniards' is definitely one among them. Sec.155 was enacted as Spain was carving its new identity as it emerged from the shadows of Francoist

¹⁷ George W Baltzell, 'The Constitution of the United States - We the People - an Easy to Read and Use Version' <<http://constitutionus.com/>> accessed 6 June 2020.

¹⁸ María Jesús García Morales, 'Federal Execution, Article 155 of the Spanish Constitution and the Crisis in Catalonia' 40.

regime and had to harmonize the reality of the pre-existing autonomous institutions . Thus, it was to be a mechanism to ensure that in the future if any of the autonomous regions misused their autonomy and engaged in actions contrary to the values of the Spanish constitution, the federal government would have the authority to step in and take corrective measure to bring the functioning of the autonomous region in line with the constitutional values.

A similar exercise was undertaken in South Africa too, a couple of decades after the drafting of the Spanish constitution during the formation of the new South African nation. At the time of the drafting of the South African constitution, the framers had a clear vision of the values that the new nation would espouse. At the very beginning of the process, a set of 34 principles were adopted after various rounds of negotiations.¹⁹ These principles were supposed to be the core values which were to be inculcated in the constitution that was going to be drafted. It included fundamental provisions such as prohibition of racial and gender discrimination, promotion of national, racial and gender equality, supremacy of the constitution, protection of diversity of language and culture etc. These protections are accorded by the society *“to vulnerable and disempowered people not for their sakes, not as a favour to them, but for the benefit of society itself, all of its people, and the growth of a defensible system of values”*²⁰ Originally, the belief was that in order to protect these values, the most effective form of Government was a Unitary model. However, not everyone was in favour of a Unitary model.

Thus, the resulting Sec. 100 as it exists today was a result of political compromise as scholars point out.²¹ During the constitutional negotiations, the African National Congress

¹⁹ ‘Schedule 4 - Constitutional Principles - The O’Malley Archives’
<<https://omalley.nelsonmandela.org/omalley/index.php/site/q/03lv02039/04lv02046/05lv02047/06lv02065/07lv02084/08lv02088.htm>> accessed 5 June 2020.

²⁰ ZM Yacoob, ‘Issues and Debates in the South African Constitutional Negotiations in the Context of the Apartheid Evil and the Struggle for Democracy’ (2004) 1 Adalah’s Newsletter.

²¹ Thomas A Koelble and Andrew Siddle, ‘Decentralization in Post-Apartheid South Africa’ (2014) 24 Regional & Federal Studies 607.

(ANC) led by Nelson Mandela was quite strongly in favour of a unitary state arguing that a strong central state was needed to undo the fragmentation wrought by Apartheid. However when the other parties to the negotiation the National Party (NP) and the Inkatha Freedom Party (IFP) expressed their opposition and insisted upon a strong subnational government, a political compromise was reached whereby a federal system was adopted but with a mechanism that would allow the central government to intervene if the need arose. Thus, this compromise was a result of the ANC's insistence that it intended to protect the values of the new South African state. The decision to include an intervention mechanism was further solidified by the economic condition South Africa found itself in in 1996 as we shall see in the next part.

The protection of the values that South Africans considered sacrosanct are reflected in Sec. 100 of the constitution that states that when a province cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the national executive may intervene in terms provided thereunder. Thus, as the preamble and in fact, the whole constitution of South Africa proclaims, there are core values that constitute the identity of the South African nation and the protection of these values is a strong motivator for including a scheme for intervention.

Part 2: Achieving financial stability

In addition to self-preservation, financial stability is an important aspect of overall development of a nation in the modern world. Thus, as we shall see, financial stability was also a primary objective that remained in the minds of the drafters of the constitutions in the fledgling nations and was one of the primary factors dictating the need for an intervention mechanism, to ensure financial struggles in a particular region were quickly addressed before they grew to be threats to the nation as a whole.

India and South Africa are two significant examples in this context. Since Spain had achieved considerable financial development during the later periods of the Franco regime, it

was considerably better placed economically at the time of its liberation in 1975. However, India and South Africa were in deep economic distress as they emerged from their pasts. Thus, these concerns played a major role in the drafting of the constitutions in these countries.

India at the time of its independence was, the “.. ‘brightest jewel in the British Crown’ yet the poorest country in the world in terms of per capita income at the beginning of the 20th century”²². Over a sixth of the population of around 350 million was illiterate and a staggering 70% of the population was under the poverty line.²³ During the process of constitution making, the discussions turned towards emergency provisions in the last phase between August and October, 1949. The draft constitution had envisaged an intervention mechanism in three scenarios viz., threat of external aggression of war²⁴, where governance cannot be carried on in the state in accordance with constitution²⁵, (both of which relate to the element of self-preservation as mentioned previously) and thirdly was in the event of threat to financial stability or credit of India.²⁶

Art. 360 of the Indian constitution dealing with intervention in the event of a there being a threat to the financial stability of India provided that the executive authority of the Union would extend to the giving of directions to any state to observe financial propriety. In response to considerable criticism that was raised against this provision, there were several arguments made extending over multiple days justifying the need for it. The following response by R.K. Sidhva, a member of the Constituent Assembly summed it up as follows: “ *Now, we know from our experience of our two and a half years of independence, that the political freedom that we are enjoying is absolute, but as far as our economic conditions is concerned, we have to depend*

²² Livemint, ‘A Short History of Indian Economy 1947-2019: Tryst with Destiny & Other Stories’ (*Livemint*, 14 August 2019) <<https://www.livemint.com/news/india/a-short-history-of-indian-economy-1947-2019-tryst-with-destiny-other-stories-1565801528109.html>> accessed 5 June 2020.

²³ ‘10 Facts About Poverty in India’ (*The Borgen Project*, 24 November 2017) <<https://borgenproject.org/10-facts-poverty-in-india/>> accessed 5 June 2020.

²⁴ Art. 352 of the Indian Constitution

²⁵ Art. 356 of the Indian Constitution

²⁶ Art. 360 of the Indian Constitution

*upon other countries finances: as, we have not stabilised our finances yet. I do not mean, therefore, that there is an emergency now. I can only say, here is the economic picture before us; and whatever may have been the reasons that have led to it, they are not of our making. But the circumstances under which we were living and were governed, and the world situation, have led to the present economic condition. This is not an emergency. But a real emergency might arise whereby the financial stability may be affected, and we will be perfectly justified if we have an article like this, and I have no doubt at all in my mind that this article then would be very helpful.”*²⁷ Thus, the stark reality of the economic conditions of the general population of India was not lost on the members of the Constituent Assembly, who were thus keen to ensure, that it was in the larger interest of the economic development of the nation to include an intervention mechanism that would permit the Union government to step in and take corrective measures in the territories to ensure financial stability.

Almost 50 years later, a similar process was initiated in the newly democratic regime of South Africa emerging from the dark shadows of the Apartheid regime. As mentioned earlier, the eventual South African constitution was a result of many rounds of negotiation between several political parties, led by the African National Congress (ANC) and Nelson Mandela. During the transition, provisions relating to intervention were conspicuously absent. Despite the same, when the constitution was eventually adopted in December 1996, it had included a scheme of intervention not just into the administration of provincial governments under Sec. 100, but also into the administration of municipal governments under Sec. 139. While as mentioned previously, Sec. 100 was a product of many rounds of negotiations, and was included on the insistence of ANC that there had to be a mechanism that allowed the Central government to take corrective measures. In addition to protection of constitutional

²⁷ ‘CADIndia’ <https://www.constitutionofindia.net/constitution_assembly_debates/volume/10/1949-10-16?paragraph_number=312%2C261%2C311%2C302#10.153.261> accessed 5 June 2020.

values, another concern that was weighing heavily on the South African leaders was the economic health of the nation.

At the time of the first democratic elections in 1994, in South Africa there was widespread poverty, unemployment, and a tattered economy,²⁸ just as it was in India about 50 years prior. The interim constitution provided the provinces with the power to raise loans. Further, during the same period, after discussions, in order to lay down the framework for borrowing powers of the provinces, the Borrowing Powers of Provincial Governments Act. 1996 was passed.²⁹ However, the provinces were not always well equipped with the ability to take sound fiscal decisions considering they were inheriting antiquated and a highly centralized system of administration. In 1994, following the amalgamation of several regions into provinces, the premier of Northern Province Ngoboko Ramatlhodi remarked, “*We inherited three homelands and bits and pieces of a so called ‘white province’, which for all practical purposes could have been situated on four different planets. We have to merge four systems of book keeping, four sets of personal records and four different standard operating procedures, and our critics expect of us to undo five decades of bad administration..*”³⁰ Additionally, the full effects of the rapid growth in government debt incurred by the National Party in the last years of the Apartheid regime where it practiced brazen political opportunism and economic profligacy with the budget deficit standing at 10.8% of the GDP in 1993-94, had started to show its effects as there was a downturn in overall economic activity,³¹ thus driving home the need for a fail-safe in the form of Union government intervention as the nation was embarking

²⁸ SJ Mosala, JCM Venter and EG Bain, ‘South Africa’s Economic Transformation since 1994: What Influence Has the National Democratic Revolution (NDR) Had?’ (2017) 44 The Review of Black Political Economy 327.

²⁹ ‘Borrowing Powers of Provincial Governments Act.Pdf’

<<http://www.kzntreasury.gov.za/ResourceCenter/Legislation%20Acts/borrowing%20powers%20of%20provincial%20governments%20act.pdf>> accessed 5 June 2020.

³⁰ Joachim Wehner, ‘Fiscal Federalism in South Africa’ (2000) 30 Publius 47.

³¹ Vishnu Padayachee, ‘The South African Economy, 1994-2004’ (2005) 72 Social Research 549.

on a journey with significant responsibilities on the shoulders of the provinces, much like India had in 1950.

Thus, it is not impossible to see that while the government was keen on extending fiscal autonomy to the provinces, it was well aware that the ability of the provinces to effectively make use of these provisions was seriously hampered and was in need of a contingent mechanism that would allow the Union government to step in as and when the need arose to ensure the province did not go into an economic free fall.

On the other hand, Spain had better fortunes as far as its economic state was concerned. Spain was engulfed in a brutal civil war between 1936 and 1939. Following the victory of the nationalists, Gen. Francisco Franco emerged as the dictator and Spain entered the Francoist regime that lasted until his death in 1975. Despite facing severe economic struggles in the first decade of the Francoist regime, by 1958 Spanish economy had largely recovered and would go on to scale new heights, thanks initially to the American aid that flowed as part of the ‘Pact of Madrid’ signed between the two nations in 1953.³² After Franco’s death in 1975, Spain made a gradual progression to democracy that was completed with the adoption of a constitution in late 1978. As noted in the introduction, the 1978 constitution did include an intervention mechanism, yet, since at the time of Franco’s death in 1975, there was no serious economic concerns plaguing the nation, one can reasonably surmise that the intervention mechanism in Spain had its motivations from factors other than economic concerns.

It follows from this chapter that there are two or three common goals that motivate constitutional systems to include intervention mechanisms. They are territorial unity, constitutional values and financial stability. It is towards reaching these goals that these

³² ‘Spaincountrystud00sols_0.Pdf’
<https://cdn.loc.gov/master/frd/frdcstdy/sp/spaincountrystud00sols_0/spaincountrystud00sols_0.pdf> accessed 5 June 2020. “Spain : A Country Study”

systems allow for central government to take exceptional measures in contravention to the federal arrangement to allow for coherence and congruence in developmental efforts.

Chapter 5: Analysing the real world applications (the HOW)

The previous chapters have looked at understanding what intervention mechanisms are and the reasons and motivations behind their inclusions in certain systems. In this chapter we examine if these provisions have really been used for the purposes for which they were included and analyse the possible potential for abuse of these provisions.

Starting with India, as stated previously, the Indian constitution provided for intervention in three circumstances. Art. 353 provides for intervention in the case of threat of war, external aggression or armed rebellions. Art. 356 provides for intervention in the event of breakdown of constitutional machinery in a state and Art. 360 in the event of a financial emergency. Although, there are speculations that the Indian government may impose a financial emergency in accordance with Art. 360 to deal with the economic downturn in the aftermath of Covid-19 crisis,³³ there have been no prior instances of it having happened. Thus, the provision for intervention on the grounds of financial stability seem to have no track record of being abused.

As far as intervention in terms of Art. 353 are concerned, it provides for intervention in the event of proclamation of emergency under Art. 352. Art. 352 was invoked during the Indian war with China in 1962 and with Pakistan in 1971. The most famous or rather infamous use of the provision was in 1975, when the then Prime Minister of India, Mrs. Indira Gandhi proclaimed emergency on the grounds of 'internal disturbance' and proceeded to turn India into almost a unitary state with rule by decree becoming the norm for almost two years, until her defeat in elections in 1977. The period of emergency is widely regarded as the darkest

³³ inventiva, 'Narendra Modi Likely To Declare A Emergency In India Under Article 360' (*Inventiva*, 23 March 2020) <<https://www.inventiva.co.in/stories/inventiva/narendra-modi-likely-to-declare-a-emergency-in-india-under-article-360/>> accessed 7 June 2020.

period of democracy in India.³⁴ Thus, this provision as it existed was ripe for abuse by a strong authoritarian leader and posed a serious threat to democracy. The manner in which it was used was clearly not what it was envisaged for by the framers of the Indian constitution. This prompted by the subsequent government led by the Janata Party that came to power in 1977 to introduce the 44th amendment to the Constitution that amended Art. 352 by replacing the ambiguous term ‘internal disturbances’ to ‘armed rebellions’ being a condition precedent for proclaiming emergency in addition to threat of war and external aggression. Thus, consequently, intervention under Art. 353 was also restricted to those conditions and has since not been invoked till date. Thus, it appears that the present avatar of the intervention mechanism under Art. 353 aimed at protecting national unity is relatively stable and has considerably less potential for abuse.

On the other hand, Art. 356 of the Indian constitution has proven to be arguably one of the most misused provisions of the Indian constitution, completely contrary to the intent of the framers of the constitution. One of the original justifications for including Art. 356 of the Indian constitution had been that in the event a crisis arose in a state, instead of empowering the Governor, who is a single individual, it would be better if the President were put in charge since he was bound to act on the advice of the Union government. Mr. Das Bhargava, a member of the Constituent assembly had explained, *“instead of the Governor acting in his own discretion, a single individual deciding the fate of the entire State, we have substituted the whole Cabinet and now there is no danger that emergency powers will be resorted to by way of panic or personal animosity with any Cabinet, etc. On the contrary we are quite sure that the President aided and advised by the whole Cabinet, will decide the most difficult of questions.”* In order to understand, how far the reality has been from this noble ideal, one ought

³⁴ ‘Why Emergency Remains India’s Darkest Period’ <<https://www.dailyo.in/voices/emergency-indira-gandhi-emergency-excesses-george-fernandes-navnirman-andolan-jai-prakash-narayan/story/1/25154.html>> accessed 7 June 2020.

to look at the recent history. After the emergency regime of Mrs. Indira Gandhi, who was the leader of the Congress party, was lifted, a government led by Janata Party came to power in the centre in 1977. However, the Congress party was still in power in many states in the country. Taking advantage of the fact there was a strong anti-congress party sentiment in the country, the Janata government resorted to Art. 356 and unceremoniously dissolved nine democratically elected state governments and called for fresh elections in 1977.³⁵ This was a shocking abuse of power and antithetical to basic democratic principles. Unfortunately, the matters did not end there. The Janata party government was a coalition government and owing to differences among its members, it lost power. This led to Mrs. Indira Gandhi returning to power in 1980. Taking advantage of the undemocratic precedent set by the previous government, as if to return a favour, she proceeded to invoke Art. 356 and dissolve democratically elected state governments in nine states in which the opposition was in power.³⁶ This brazen abuse continued to be a common occurrence throughout the next decade with the Central government casually dismissing elected governments of the States citing failure to abide by the Constitution leading to a serious abuse of the constitution. Things finally came to a halt in 1988 when the Janata party led by its leader S.R. Bommai had formed a coalition government in the state of Karnataka and the Governor, who was appointed by the central government, taking advantage of the fact that there had been defection of some members of the ruling coalition to the opposition, called upon the President to intervene under Art. 356 since the government did not have a legitimate majority and therefore there was government in terms of the constitution in the state. The President who was acting on the advice of the Central government promptly issued a proclamation dissolving the government. Aggrieved by this, the

³⁵ N Jose Chander, *Coalition Politics: The Indian Experience* (Concept Publishing Company 2004).

³⁶ Bipan Chandra, Aditya Mukherjee and Mridula Mukherjee, *India Since Independence* (Penguin Books India 2008).

leader of the government S.R. Bommai approached the Supreme Court questioning the validity of the intervention.

In a historic judgment delivered 4 years later, Supreme Court proceeded to read into the provision several restrictions³⁷. *Inter alia* it held that dismissing governments ought to be the last option to be exercised under Art. 356. The Union government ought to issue a warning to the state government and seek a reply within a period of one week. More importantly, it held that although constitution prohibited judicial review of the advice tendered by the Union government, it did not prohibit the courts from examining if there is any material behind the proclamation and whether the material is relevant and whether there is any malafide use of power. It went on to hold that in the event Art. 356 was misused, the courts can grant appropriate remedy. This put an end to the routine dismissal of elected governments in the state. However, Art. 356 has been continued to be in use till date in other forms. For instance, in all instances where a clear majority does not arise after elections in a state, the Central government have been very keen to intervene and subject those states to their direct control. Since 2000, there have been 15 instances where Art. 356 has been invoked in India.³⁸ Thus, Art. 356 of the Indian constitution continues to be a poor example of intervention mechanism that was originally intended for use in specific exceptional circumstances.

Fortunately, the developments have been much more positive in Spain. Similar to Germany which has never exercised its intervention mechanism, Spain had had no occasion to employ Sec. 155 of its constitution prior to 2018. In October 2017, the Catalan government proceeded to hold a referendum to decide whether it should declare independence despite clear instructions to the contrary by the Spanish government. Subsequently, in terms of Sec. 155, the federal government of Spain requested an explanation from the Catalan government whether

³⁷ AIR 1994 SC 1918; Judgment can also be accessed at

³⁸ 'WHAT IS THE PRESIDENT'S RULE' *Business Standard India* <<https://www.business-standard.com/about/what-is-president-s-rule>> accessed 7 June 2020.

it had declared independence which was not acceded to. Following the referendum, on 27th October, 2017 the Catalan parliament voted to declare independence. On the same day, for the first time in its history, Spain invoked Sec. 155 of the constitution, thereby stripping Catalonia of its autonomy, dissolving its elected government and subjecting it to the direct control of the federal government. Unlike in India, the direct rule was limited and came to end on the 2nd June, 2018 when a new government of Catalonia was sworn in. Despite the complicated legal and historical background, from a neutral perspective, a strong case can be made for the fact the declaration of independence by an autonomous region like Catalonia was in direct contradiction to the ideals of indissolubility and indivisibility of the Spanish nation enshrined under the Constitution. As far as the purpose of the deployment of Sec. 155 was concerned, it was on the lines of what was provided for the Spanish constitution i.e., to ensure compliance of constitutional obligation by sub-national units. Thus, *prima facie*, Spain's use of intervention mechanism would not amount to an abuse of the provision and would be in line with its intended use.

Similarly, in South Africa, central interventions have been few and far in between. More importantly in South Africa, unlike in India and Spain, an intervention does not translate to a dissolution of the provincial government. Potentially, having learnt from the mismanagement of the President's rule under Art. 356 in India, South Africa chose to specify the exact nature of intervention under Art. 100 and such intervention was rather limited in its scope. Interventions in South Africa only extend to executive functions of the province. Thus, unlike in India, there is no probability of the provincial legislature being dissolved. Interventions in South Africa can take one of two forms under Sec. 100(1)(a) or Sec. 100(1)(b). Under Sec. 100(1)(a) the intervention is restricted to issuing necessary directions and stating the steps that need to be taken by the province to meet its obligation. Under Art. 100(1)(b) the

intervention may amount to taking over the responsibility of any department of the province that has failed to meet its obligation.

The first real major intervention in South Africa took place in 2011 when the Union government through the Department of Treasury took over the administration of the Departments of Health, Education, Road and Transport, Public Works and Provincial Treasury under Sec. 100(1)(b) of the South African constitution. The intervention was prompted by the insufficient cash management, and a failure to pay the employees and service providers and the fact that corporate governance was on the verge of collapse. Although, there were allegations that this intervention was to some extent due to political rivalry, it was clear that there was a financial crisis in the province and there was a staggering unauthorized expenditure of 2.4 billion Rand³⁹ by the province. Thus, as far as the legitimacy of the intervention is concerned, it is in line with legitimate use of constitutional authority to ensure the financial stability of the province. Around the same time, the Union government also invoked an intervention in terms of Sec. 100(1)(b) in Eastern Province, thereby taking over the administration of Department of Education. This action was in light of admission by the officials of the province that they had overspent the budget of the department by a staggering 1.8 billion Rand.⁴⁰ Thus once again, the circumstances were of the nature that reasonably justified an intervention to ensure there was corrective action in the larger interest. The latest instance of intervention was the decision of South African government to invoke an intervention in the North West province. The provincial departments of finance, economic development, rural and environment, social development, local government and human settlements and tourism were placed an intervention prescribed by Sec. 100(1)(a) while the office of the provincial premier, health, public works, transport and community safety which

³⁹ 'No More Cash for Provinces' (*The Mail & Guardian*, 9 December 2011) <<https://mg.co.za/article/2011-12-09-no-more-cash-for-provinces/>> accessed 7 June 2020.

⁴⁰ 'EC Education Placed under Administration' (*SAnews*, 3 December 2012) <<https://www.sanews.gov.za/south-africa/ec-education-placed-under-administration>> accessed 7 June 2020.

were the objects of allegations of corruption were placed under an intervention scheme provided by Sec. 100(1)(b) of the constitution. Once again, this intervention was on the heels of long series of complaints about mismanagement in the province⁴¹ including an almost complete breakdown of the healthcare system with healthcare workers going on an indefinite strike after it emerged that the provincial health department had incurred 714 million Rand in irregular expenditure.⁴² Once again, the circumstances in the province had reached a level where barring an intervention by the Union government, there was a serious likelihood of the governance in the province spiraling out of control. Although, there are serious apprehensions of the effectiveness of the interventions, the fact remains that the interventions themselves were reasonably justified in terms of the constitutional scheme.

Thus, all the three countries India, Spain and South Africa have had differing experiences with intervention mechanisms. Thus the answer to the question how the intervention mechanisms are used differs from country to country with some using it as an exceptional measure whereas some have tended to use it as a political tool.

⁴¹ 'Direct Rule for South African Province' (n 3).

⁴² Khulekani Magubane, 'Damage to North West Departments Could Take 18 Months to Fix' (*Fin24*) <<https://www.news24.com/fin24/Economy/damage-to-north-west-departments-could-take-18-months-to-fix-20180807>> accessed 7 June 2020.

Chapter 6 : The Conclusion

India, Spain and South Africa all adopted central intervention mechanisms in different forms depending on various factors. As the research shows, the usage of these mechanisms has been very restrained in Spain and South Africa compared to India. Thus on a brief analysis, it would appear the central intervention mechanism has been used in line with the original constitutional design in Spain and South Africa, whereas in India, the usage has been in a manner that is completely contrary to the purpose envisioned in the constitution.

However, in making an analysis of this provision across jurisdictions, one would have to keep in mind the potential for abuse, even if there has been no instance of abuse. In India, the President does not need any prior authority to proclaim an intervention and only requires that it be placed before the Parliament within two months. However, as the history has shown, this has proven to be insufficient protection especially in the hands of majoritarian governments that are able to conjure Parliamentary approval without any difficulty. Similarly in Spain, the intervention merely requires an approval of the Senate alone. Comparatively speaking South Africa has a reasonably more protective scheme to ensure that intervention is justified. In South Africa, intervention in terms of Sec. 100(1)(a) does not require any prior approval, whereas in the case of more intrusive Sec. 100(1)(b), the National Executive has to give a written notice 14 days in advance to National Council of Provinces, which is made up of representatives of all the provinces, and then if the Council disapproves, the intervention must end. Thus, without securing the approval of the Council, there cannot be intervention by the Union government.

Yet, as this paper has argued, intervention is an extraordinary measure and is an exception to the federal system. With the rise of authoritarian leaders around the world, the intervention mechanisms become all the more relevant. Therefore, it calls for the highest amount of scrutiny and must be resorted only in the most exceptional circumstances. The

lessons from a study of these three nations shows that the potential for abuse is inherent in all intervention schemes and the true protection of abuse of central intervention mechanisms is only possible through an active judiciary and an involved citizenry.