

Distinction Between “India” and “Territory of India”: A Constitutional and Jurisprudential Analysis

Abstract

The Indian Constitution, in defining the State and its territorial extent, employs the expressions “India” and “territory of India” with deliberate precision. Though superficially similar, these terms have distinct constitutional meanings, influencing federal structure, sovereignty, and the exercise of governmental power. This article explores the historical evolution, textual placement, and judicial interpretation of these expressions, demonstrating why the distinction is foundational to India’s constitutional architecture.

Introduction

The opening words of the Constitution establish India, or *Bharat*, as a Sovereign Socialist Secular Democratic Republic.¹ Yet, in its very first Article, the Constitution distinguishes between “India” and the “territory of India.”² This dual terminology is neither redundant nor stylistic; it reflects the distinction between the constitutional identity of the State (the Union) and the physical extent of territory under its sovereignty.

Understanding this distinction clarifies several constitutional powers: the ability to admit new territories, reorganize States, extend laws, and define citizenship. The debate on this point spans constitutional text, Assembly debates, landmark judgments, and scholarly analysis.

Textual Analysis of Article 1

Article 1 of the Indian Constitution provides:

1. *India, that is Bharat, shall be a Union of States;*
2. *The States and the territories thereof shall be as specified in the First Schedule;*
3. *The territory of India shall comprise—*
 - a. *the territories of the States;*

¹ INDIA CONST. pmbl

² INDIA CONST. art. 1.

- b. the Union territories specified in the First Schedule; and*
- c. such other territories as may be acquired.*

This provision makes clear distinctions:

- **“India” / “Bharat”**: The constitutional name of the Republic; the sovereign entity that represents the State internationally and domestically.
- **“Union of States”**: The federal structure comprising the States listed in the First Schedule.
- **“Territory of India”**: A comprehensive term including all areas over which India exercises sovereignty: States, Union territories, and acquired territories not yet organized as States.

This structure avoids ambiguity about the constitutional identity of “India” versus the territorial extent of its sovereignty.

Historical Background and Constitutional Framing

During the Constituent Assembly Debates, Dr. B.R. Ambedkar explained that the term “Union of States” was chosen over “Federation of States” to emphasize that the Indian Union is indestructible: States cannot secede from the Union.³

Simultaneously, the expression “territory of India” was included to clarify that sovereignty can extend over territories not forming part of the Union of States (such as Union territories or newly acquired territories). This was necessary because India, at independence, comprised provinces, princely States, and areas under varied administrative arrangements.

The distinction thus reflected both historical necessity and constitutional design.

Judicial Clarification

Indian courts have recognized and elaborated on this distinction:

³ Constituent Assembly Debates, Vol. IX, 15 Sept. 1949.

- In *Maganbhai Ishwarbhai Patel v. Union of India*, the Supreme Court held that “territory of India” includes not only the Union of States but also territories acquired and administered by India, even if not fully integrated.⁴
- Similarly, in *State of Sikkim v. Suren Prasad Sharma*, the Court reiterated that “India” in Article 1(1) refers to the Republic itself—the sovereign State—while “territory of India” refers to the geographical area over which the State exercises sovereignty.⁵

These interpretations show the practical constitutional consequences of the distinction.

Functional and Doctrinal Importance

1. Expansion of Territory

The Constitution grants Parliament power under Article 2 to admit or establish new States, and under Article 3 to alter boundaries, areas, or names of existing States. The phrase “territory of India” under Article 1(3)(c) anticipates territorial expansion through acquisition or cession, even before formal integration into the Union of States.⁶

For example, when Goa, Daman and Diu were liberated in December 1961, they became part of the “territory of India” under Article 1(3)(c). Later, the Goa, Daman and Diu (Administration) Act, 1962, formally established them as Union territories.⁷

2. Union Territories and Federal Asymmetry

Union territories are included in the “territory of India” but are not States in the “Union of States.” This allows Parliament to legislate directly for Union territories under Article 246(4).⁸

This constitutional design facilitates asymmetric federalism, enabling differentiated governance structures for sensitive or strategically important regions.

3. Citizenship and Fundamental Rights

⁴ *Maganbhai Ishwarbhai Patel v. Union of India*, (1969) 3 S.C.C. 400.

⁵ *State of Sikkim v. Suren Prasad Sharma*, 1994 Supp (3) S.C.C. 615.

⁶ INDIA CONST. arts. 2, 3.

⁷ Goa, Daman and Diu (Administration) Act, No. 1 of 1962.

⁸ INDIA CONST. art. 246(4).

The Constitution uses “territory of India” in Article 5 to define the scope of original citizenship. Any person domiciled in the “territory of India” at the commencement of the Constitution could claim Indian citizenship, irrespective of whether the area was a State or Union territory.⁹

Had the Constitution used “India” in this context, ambiguities might have arisen about areas under direct central administration.

4. Legislative Power

Article 245 empowers Parliament to make laws for the “whole or any part of the territory of India,” ensuring that laws can be extended to Union territories or newly acquired territories that may not yet be part of the Union of States.¹⁰

State legislatures, by contrast, legislate only for their respective States.

Special Cases: Jammu & Kashmir and Sikkim

1. Jammu & Kashmir

Before August 2019, Jammu & Kashmir was part of “India” as a State under Article 1(1), but with special constitutional status under Article 370. After the abrogation of Article 370 and the enactment of the Jammu and Kashmir Reorganisation Act, 2019, Jammu and Kashmir became a Union territory, and Ladakh became a separate Union territory.¹¹

These territories remained within the “territory of India” but ceased to be part of the “Union of States.”

2. Sikkim

Sikkim became associated with India under the 1974 agreement. The Thirty-sixth Constitutional Amendment Act, 1975, added Sikkim as a full State to the First Schedule, making it part of the “Union of States.”¹²

⁹ INDIA CONST. art. 5.

¹⁰ INDIA CONST. art. 245.

¹¹ The Jammu and Kashmir Reorganisation Act, No. 34 of 2019.

¹² The Constitution (Thirty-sixth Amendment) Act, 1975.

Before this amendment, Sikkim was under India's suzerainty and part of its territorial sovereignty but not formally integrated.

Comparative Perspective

The distinction between the State and its territory is recognized in other federal systems:

- In the United States, “United States” refers to the federal union of States, while “territories” like Puerto Rico or Guam belong to the U.S. but lack full statehood.¹³
- Similarly, the Canadian Constitution distinguishes between provinces (with full federal participation) and territories directly administered by Parliament.

India's use of “territory of India” mirrors this flexible constitutional approach, allowing Parliament to manage areas not fully integrated as States.

Scholarly Analysis

H.M. Seervai

Seervai emphasizes that “India” is the constitutional identity of the Republic, while the “territory of India” is the area over which this Republic exercises sovereignty.¹⁴

M.P. Jain

Jain observes that this distinction ensures the Constitution can accommodate territorial changes—new acquisitions, cessions, or reorganizations—without requiring constitutional amendment.¹⁵

Conclusion

The difference between “India” and the “territory of India” is more than linguistic nuance; it is a constitutional device ensuring flexibility, continuity, and clarity in defining the State and its territorial jurisdiction. This distinction:

¹³ U.S. CONST. art. IV, § 3.

¹⁴ H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA 249 (4th ed. 2015).

- Anchors the federal structure while allowing asymmetric arrangements.
- Enables territorial expansion and integration without constitutional disruption.
- Clarifies the application of laws and citizenship.
- Reflects the balance between sovereign power and federal structure.

In a dynamic nation like India—where borders, territories, and governance needs have evolved since independence—this distinction remains central to the living character of the Constitution.

As judicial decisions, legislative actions, and geopolitical realities continue to shape India, understanding this distinction helps us appreciate the foresight of the Constitution’s framers and the resilience of the constitutional framework.

The distinction between "India" and "territory of India" is a testament to the framers' constitutional foresight. It reflects the difference between the State as a legal-constitutional entity and the territories over which it exercises sovereignty. This nuanced differentiation underpins India’s federal flexibility, territorial integrity, and sovereign authority.

Far from being academic, this distinction continues to shape legal interpretation, citizenship questions, legislative competence, and India's response to territorial changes. As India’s constitutional journey unfolds, understanding this distinction remains central to grasping the architecture of the Republic.

The distinction between “India” and the “territory of India,” though subtle, is of foundational importance in constitutional law. It is not merely a question of semantics but a deliberate constitutional strategy crafted by the framers to address the diverse realities of a post-colonial, multi-ethnic, and geographically expansive nation.

At its core, “India” refers to the Republic as a sovereign, juristic entity—an abstract legal personality formed by the Union of States. This notion embodies the identity, continuity, and permanence of the State itself, irrespective of changes to its internal composition. By contrast, the “territory of India” refers to the totality of geographical areas over which the Indian State exercises sovereignty, including:

- A) The territories of the constituent States forming the Union;
- B) The Union territories under direct central administration; and
- C) Any territories that may be acquired through conquest, cession, or other means.

This dual structure serves several critical constitutional purposes. First, it provides the flexibility to admit, reorganise, or separate territories without altering the identity of the Indian State. Parliament can change the “Union of States” under Articles 2 and 3 without affecting the larger territorial sovereignty captured by Article 1(3). Second, it ensures comprehensive legislative competence. By empowering Parliament to legislate for the entire “territory of India” under Article 245, the Constitution guarantees uniform application of laws to all territories under India’s sovereignty, whether or not those territories are States within the Union.

Judicial interpretations have confirmed and clarified this distinction. In *Maganbhai Ishwarbhai Patel v. Union of India*, the Supreme Court observed that the “territory of India” encompasses all areas subject to Indian sovereignty, even if they are not yet integrated into the federal structure as States. Similarly, in *State of Sikkim v. Suren Prasad Sharma*, the Court reinforced that “India” is the Republic—an entity defined by constitutional identity—while the “territory of India” includes every piece of land under that Republic’s sovereign authority

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