

UNIT - II

Legislative Relations [Article (245 - 255)]

SUBJECT - Constitution Law of India - I

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INTRODUCTION

The distribution of powers is an essential feature of federalism. The object for which a federal state is formed involves a division of authority between the Union and the states. The tendency of federalism to limit on every side the action of the government and to split up the strength of the state among co-ordinate and independent authorities is especially noticeable, because it forms the essential distinction between a federal system & a unitary system of Government. "A Federal Constitution establishes the dual polity with the Union at the center and the states at a periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution." "The one is not subordinate to the other in its own field; the authority of one is co-ordinate with that of other". In fact, the basic principle of federation is that the legislative, executive and financial authority is divided between the Union and state not by any law passed by the Union but by the Constitution itself.

The fabric of the Indian federal system stands on three pillars viz., a strong Central Government, flexible federal system and co-operative federalism. This will be apparent as we proceed with the discussion of the Indian federal system ahead.

The strength of the Centre lies in the large legislative and financial powers and in its emergency powers. The flexibility of the Indian Federalism lies in the expedients adopted in

the Constitution to mitigate the rigidity of federal system and to increase temporarily the power of the Central Government if the contemporary situation so demands. The formal method to amend the federal portion of the Constitution is also not as rigid as is to be found in other federations. The concept of co-operative federalism has been worked out in a number of constitutional provisions as well as strengthened through legislation and administrative practices.

The Legislative Relations of the Centre and the State have been mentioned under Article (245 - 255) of the Constitution. The Constitution makes two-fold distribution of legislative power:

1. With respect to territorial &
2. With respect to subject matter

TERRITORIAL JURISDICTION

Article 245(1) empowers the Parliament to make laws for the whole or any part of the territory of India, subject to the provisions of the Constitution. Article 245(2) says that a law made by the Parliament shall not be considered invalid on the ground that it has extra-territorial operation. The legislative powers of the Parliament and the State Legislature are dependent on the scheme of distribution of powers, Fundamental Rights and other provisions of the Constitution.

A.H. Wadia v. Income tax Commissioner, Bombay [AIR 1949 FC 18] the SC Held “In the case of a sovereign Legislature question of extra-territoriality of an enactment can never be raised in the municipal court as a ground for challenging its validity. The legislation may offend the rules of international law, may not be recognized by foreign courts, or there may be practical difficulties in enforcing them but these are questions of policy with which the domestic tribunals are concerned.”

➤ **THEORY OF TERRITORIAL NEXUS**

The Legislature of a state may make laws for the whole or any part of has extra-territorial operation i.e. takes effect outside the state. However, there is one exception to this general

rule. A state law of extra-territorial operation will be valid if there is sufficient nexus between the object and state.

In **Wallace v. Income tax Commissioner, Bombay [AIR 1948 PC 118]** a company which was registered in England was a partner in a firm in India. The Indian Income tax Authorities sought to tax the entire income made by the company. The Privy Council applied the doctrine of territorial nexus and held the levy tax valid. It is said that the derivation from British India of a major part of its income for a year gave to a company for that year sufficient territorial connection to justify its being treated as at home in India for all purposes of tax on its income for that year from whatever source income may be derived.

In **State of Bombay v. R. M. D. C. [AIR 1957 SC 699]** the Bombay state levied a tax on lotteries and prize competitions. The tax was extended to a newspaper printed and published in Bangalore but had wide circulation in Bombay. The respondent conducted the prize competitions through this paper. The court held that there existed a sufficient territorial nexus to enable the Bombay state to tax the newspaper. If there is sufficient nexus between the person sought to be charged and the state seeking to tax him, the taxing statute would be upheld. But illusory and the liability sought to be imposed must be pertinent to that connection. Whether there is sufficient connection is a question of fact and will be determined by courts in each accordingly.

➤ **Limitations to the territorial jurisdiction of Parliament -**

The plenary territorial jurisdiction of Parliament is, however, subject to some special provisions of the constitution. They are,

- a) **Article 240** - As regards some of the Union Territories, such as the Andaman and Lakshadweep group of Islands, regulations may be made by the President to have the same force as Acts of Parliament and such regulations may repeal or amend a law made by Parliament in relation to such territory.
- b) **Schedule V (Para 5)** - The application of Acts of Parliament to any scheduled area may be barred or modified by notifications made by the Governor.

c) **Schedule VI (Para 12)** - says that the Governor of Assam may, by public notification, direct that any other act of Parliament shall not apply to an autonomous district or an autonomous region in the state of Assam or shall apply to such district or region or part thereof subject to such exceptions or modifications as he may specify in the notification.

NOTE: It is obvious that the foregoing special provisions have been inserted in view of the backwardness of the specified areas to which the indiscriminate application of the general laws might cause hardship or other injurious consequences.

SUBJECT-MATTER JURISDICTION

The division of powers between Union and State is notified through three kinds of the list mentioned in the 7th Schedule. Thus Indian Constitution seeks to create three functional areas:

- 1) An exclusive area for the Centre; [Union List – 100 subjects] [Article 246(1)]
- 2) An exclusive area for the States; [State List – 61 subjects] [Article 246(3)] &
- 3) A common area in which both Centre and States may operate simultaneously, subject to the overall supremacy of the Centre. [Concurrent List – 52 subjects] [Article 246(2)]

Union List > Concurrent List > State List

The phraseology of the various clauses of Article 246 is such as to secure the principle of Union supremacy. The legislative power conferred on the Centre under Article 246(1) [Union List] and 246(2) [Concurrent List] predominate over the power conferred on the State Legislature under Art. 246 (3) [State List].

The general idea underlying the Concurrent List is that there may be subjects or which Parliament may not feel it necessary or expedient to initiate legislation in the first instance because these matters may not have assumed much national importance. A State may, therefore, make necessary legislation with respect to any matter in the Concurrent List. But if at any time, any of these matters assumes a national importance, and requires to be dealt with on a uniform all India basis then the Centre can step in and enact necessary legislation.

Certain matters, it was felt, could not be allocated exclusively either to the Centre or the States, and though the States might legislate with respect to them, it was also necessary that the Centre should also have a legislative jurisdiction therein in order to enable it, if necessary, (i) to secure uniformity in the law throughout the country, (ii) to guide and encourage State effort, and (iii) to provide remedies for mischief arising in the State sphere but whose impact may be felt beyond the boundaries of a single state. Instances of the first are provided by the Indian Codes of Civil and Criminal laws. These laws are at the basis of civil and corporate life of the country and have been placed in the Concurrent List so that the necessary uniformity can be preserved therein. Illustrations of the second are provided by such matters as labor legislation, and of the third by legislation for the prevention and control of epidemic disease.

Further, even when the Centre makes a law for the whole country on a matter in the Concurrent List, a State may also make, if necessary, supplementary laws on that matter to provide for special circumstances within the State. On the whole, therefore, the Concurrent List makes the scheme of distribution of the powers somewhat flexible. The Centre can intervene in the area without any need to amend the Constitution. It permits of diversity along with a unity of approach.

PRINCIPLES OF INTERPRETATION OF THE LISTS

The power of Centre and States are divided. They cannot make laws outside their allotted subjects. The entries in the three Lists are not always set out with scientific precision or logical definition. It is practically impossible to define each item in a List in such a way as to make it exclusive of every other item in that List. Therefore questions constantly arise whether a particular subject falls in the sphere of one or the other government. This duty in a federal constitution is vested in the Supreme Court of India. The Supreme Court has evolved the following principles of interpretation in order to determine the respective power of the Union and the States under the three lists.

- 1) **Predominance of the Union List** - The opening words of Article 246(1) “notwithstanding anything in clauses (2) and (3)” and the opening words of clause (3) “subject to clauses (1)

and (2)” expressly secure the predominance of the Union List over the State List and the Concurrent List and that of concurrent List over the State list. Thus in case of overlapping between the Union and the Concurrent List, it is again the Union List Which will prevail. In case of conflict between the concurrent List and state List, it is the Concurrent List that shall prevail.

- 2) **Doctrine of Liberal & Harmonious Construction (each Entry to be interpreted broadly)** - Subject to the overriding predominance of the Union List, entry in the various lists should be interpreted broadly.

In **Calcutta Gas Ltd. v. State of West Bengal [AIR 1962 SC 1044]** the SC HELD that the “widest possible” and ‘most liberal” interpretation should be given to the language of each entry. A general word used in an entry must be construed to the extent to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it. The Court should try, as far as possible, to reconcile entries and to bring harmony between them. When this is not possible only then the overriding power of the Union Legislature - the non obstante clause applies and the federal power prevails.

NOTE: The non-obstante clause is the ultimate rule which is to be invoked only as last resort, in case of inevitable or irreconcilable conflict between the entries in different Lists.

Prem Chand Jain v. R. K. Chabra [(1984) 2 SCC 302] the justification for this approach is that the entries set up machinery of government; they demarcate the area of heads or fields of legislation within which the respective legislature can operate and don’t confer legislative power as such. Legislative power on the Centre and the States is conferred by Article 246 and not by the entries in the three legislative lists.

In **Union of India v H.S. Dhillon [AIR 1972 SC 106]** the question involved was whether parliament had legislative competence to pass Wealth-tax Act imposing wealth tax on the assets of a person in agricultural land. The Court held that in case of a central Legislation the proper test was to inquire the matter fell in List II (State List) or List III (Concurrent List). Once it is found that matter does not fall under List II, Parliament will be competent

to legislate on it under its residuary power in Entry 97 of List I. in such a case it becomes immaterial whether it falls under Entries I-96 of List or not.

International Tourism Corporation v. State of Haryana [AIR 1981 SC 774]

NOTE: “Thus, it is settled principle of interpretation that legislative entries are required to be interpreted broadly & widely so as to give power to the legislature to enact law with respect to matters enumerated in the legislative entries. Substantive power of the legislature to enact law is under Article 246 of the Constitution and legislative Entries in the respective Lists of the 7th Schedule are of enabling character, designed to define and delimit the respective areas of legislative competence of the respective legislature.

- 3) **Doctrine of Pith and Substance** - It is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in different legislative lists, because a law dealing with a subject in one list within the competence of the legislature concerned is also touching on a subject in another list, not within the competence of that legislature. In such a case, what has to be ascertained is the pith and substance of the enactment – the true character and nature of the legislation. If, on examination of the statute, it is found that the legislation is in substance on a matter assigned to the legislature enacting that statute, then it must be held valid in the entirety even though it may incidentally trench upon matters beyond its competence, i.e. on matters included in the list within the competence of the other legislature. Legislative matters in different lists are bound to overlap and therefore incidental encroachments shall take place.

Prafulla Kumar v. Bank of Commerce [AIR 1947 PC 60] In this case the validity of the Bengal Money Lenders’ Act, 1946 which limited the amount and the rate of interest recoverable by a money lender on any loan was challenged on the ground that it was ultra vires of the Bengal Legislature in so far as it related to ‘promissory notes’, a central subject. The Privy Council held that the Bengal Money-Lenders Act was in Pith and substance a law in respect of Money-Lending and Money-lenders a state subject, and was valid even though it trenched incidentally on “Promissory note”- a central subject.

In **State of Bombay v. F.N. Balsara** [AIR 1951 SC 318] the constitutional validity of the Bombay Prohibition Act, 1949 was in issue. The question was whether that Act fell under Entry 31 of List II of the Government of India Act, 1935 (Corresponding to Entry 8 of list II of the Constitution), namely, “intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase, and sale of intoxicating liquors”, or under Entry 19 of List I (corresponding Entry 41 of list I of the Constitution), namely, “import and export of liquors across customs frontier”, which is a Central subject. It was argued that the prohibition on purchase, use, transport and sale of liquor would affect the import. The Court, rejecting the argument, held the Act valid because the pith and substance of the Act fell under Entry 31 of List II, and not under Entry 19 of List I, even though the Act incidentally encroached upon the Central power of legislation.

NOTE: The doctrine of pith and substance introduces a degree of flexibility into the otherwise rigid scheme of distribution of powers. It gives an additional dimension to the powers of the Centre as well as the States. The reason behind the rule is that if legislation were to be declared invalid, howsoever, slight or incidental the encroachment by it of the other field, then the power of each legislature will be drastically circumscribed to deal effectively with subjects entrusted to it for legislation.

- 4) **Doctrine of Colorable Legislation** - In **K.C.G. Narayan Dev v. State of Orissa** [AIR 1953 SC 375] the SC explained the meaning and scope of the doctrine in the following words: *“If the Constitution distributes the legislative power amongst different Legislative bodies, which have to act within their respective spheres marked out by specific legislative Entries, or if there are limitations on the legislative authority in the shape of fundamental rights, question arises as to whether the Legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers. Such transgression may be patent, manifest or direct, but it may also be disguised, covert or indirect, or and it is to this latter class of cases that the expression colorable legislation has been applied in judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a statute purported to act within the limits of its powers, yet in substance and in reality it*

transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise". In other words, it is the substance of the Act that is material and not merely the form or outward appearance, and if the subject matter is substance which is beyond The whole doctrine of colorable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly. In these cases the Court will look in the true nature and character of the legislation and for that its object, purpose or design to make law on a subject is relevant and not its motive. If the legislature has power to make law, motive in making the law is irrelevant.

State of Bihar v. Kameshwar Singh [AIR 1952 SC 252] is the only case where a law has been declared invalid on the ground of colorable legislation. In this case Bihar Land Reforms Act, 1950 was held void on the ground that though apparently it purported to lay down principle for determining compensation yet in reality it did not lay down any such principle and thus indirectly sought to deprive the petitioner of any compensation.

RESIDUARY POWERS [Article 248]

Article 248 assigns residuary powers of legislation exclusively to the Union Parliament List, I, Entry 97, Schedule VII to the constitution read with Article 246(1) also lays down that Parliament has exclusive power to make laws with respect to any matter not enumerated in List II (state list) List III (concurrent list) including any tax not mentioned in either of those lists.

In **International Tourist Corp. v. Haryana [AIR 1981 SC 774]** SC HELD that before exclusive legislative power could be claimed for Parliament by resort to the residuary powers, the legislative incompetence of the State Legislature must be clearly established. A matter could be brought under Entry 97 only if it was not to be found in List (II & III).

But the fact is that State Legislatures have been given independent powers to make laws on matters other than those mentioned in List I and List III and therefore when a Central Law is challenged merely looking at List II is not enough. We have also to check whether the subject is assigned to the State Legislature under any other provision of the constitution. Thus, in

State of Punjab v. Satyapal [AIR 1969 SC 903] The Supreme Court unanimously upheld state's power to make laws under Article 209.

DOCTRINE OF REPUGNANCY

According to Article 254 (1), if any provision of a State law is repugnant to provision in a law made by Parliament which it is competent to enact, or to any existing law with respect to one of the matters in the Concurrent List, then the parliamentary or the existing law prevails over the State law, and it does not matter whether the Parliamentary law has been enacted before or after the State law.

Effect of the Extent of Repugnancy, the State law is void. The most common application of this provision arises when both the Central law and the State law happen to be with respect to the same matter in the Concurrent list and there is repugnancy between them. Repugnancy between two statutes Central and State arises if there's direct conflict, i.e. these laws are fully inconsistent and absolutely irreconcilable provisions and if the laws made by Parliament and the State Legislature occupy the same held.

In **M. Karunanidhi v. Union of India [AIR 1979 SC 898]** Justice Fazal Ali, reviewed all its earlier decisions and summarized the test of repugnancy. According to him a repugnancy would arise between the two statutes in the following situation:

1. It must be shown that there is clear and direct inconsistency between the two enactments (Central Act and State Act) which is irreconcilable, so that they cannot stand together or operate in the same field.
2. There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.
3. Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collusion with each other, no repugnancy results.
4. Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

The above rule of repugnancy is however, subject to the exception provided in clause (2) of this Article. According to clause(2) if a State law with respect to any of the matters enumerated in the Concurrent list contains any provision repugnant to the provision of an earlier laws made by parliament, or an existing law with respect of that matter, then the state law if it has been reserved for the assent of the president and has received his assent, shall prevail notwithstanding such repugnancy. But it t would still be possible for the parliament under the provision of clause (2) to override such a law by subsequently making a law on the same matter. If it makes such a law the State Law would be void to the extent of repugnancy with the Union Law.

In **Zaverbhai v. State of Bombay [AIR 1954 SC 752]** Parliament enacted the Essential Supplies Act, 1946, for regulating production and distribution of essential commodities. A contravention of any provision of the above Act was punishable with imprisonment upto 3 years or fine or both. In 1947, considering the punishment inadequate, the Bombay Legislature passed an Act enhancing the punishment provided under the Central Law. The Bombay Act received the assent of the president and thus prevailed over the Central Law and become operative in Bombay. However, in 1950 parliament amended its Act of 1946 and enhanced the punishment. It was held that as both occupied the same field (enhanced punishment) the state law became void as being repugnant to the Central law.

PARLIAMENT'S POWER TO LEGISLATE ON STATE SUBJECTS

- 1) **Article 249 - Power of Parliament to legislate in the National Interest** - If Rajya Sabha passes a resolution supported by 2/3 of the members present and voting that it is necessary or expedient in the national interest and parliament should make laws with respect any matter enumerated within State Law, then it shall be lawful for the parliament to make laws for the whole or any part of the territory of India with respect to that matter so long as the resolution remains in force. Such a resolution normally lasts for a year; it may be renewed as many times necessary but not exceeding a year at a time. These laws of parliament will, however, cease to have effect on the expiration of the period of six months after resolution has ceased to operate.

- 2) **Article 250 - Power of Parliament to legislate during a Proclamation of Emergency** - While the proclamation of Emergency is in operation the parliament shall have power to make laws for the whole or any part of the territory of India with respect to all matters in the State List. Such a law, however, shall cease to have effect on the expiration of six months after the proclamation of emergency has ceased to operate.
- 3) **Article 252 - Parliament's Power to legislate with the consent of two or more States** - If the legislature of two or more states pass resolution to the effect that it is desirable to have a law passed by parliament on any matters in the State List, it shall be lawful for parliament to make laws regulating that matter. Any other state may adopt such a law by passing a resolution to that effect. Such Law can only be amended or repealed by the Act of Parliament.
- 4) **Article 253 - Parliament's Power to legislate for giving effect to treaties and International agreements** - It empowers the parliament to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions. In other words, the normal distribution of powers will not stand in the way of parliament to pass a law for giving effect to an international obligation even though such law relates to any of the in the State list. It enables the Government of India to implement all international obligations and commitments.
- 5) **Article 256 - Parliament's Power to legislate in case of failure of constitutional machinery in a state** - Under Article 256 parliament is empowered to make laws with respect to all matters in the State List when the parliament declares that the Government of the state cannot be carried on in accordance with the provision of the constitution.

In addition to the Parliament's power to legislate directly on the state subjects under the foregoing Articles, the Constitution also provides for the Centre's consent before a bill passed by a State Legislature can become a law. The following Articles give Centre a control over State Legislation.

- ✓ **Article 31A** – It grants immunity to laws providing for agrarian reforms from Articles 14 & 19. The immunity of Article 31-A will not be available to a State law unless it has

received the assent of the President. The object of these provisions is to ensure uniformity in law providing for agrarian reforms.

- ✓ **Article 304(b)** – It authorizes a State Legislature to impose reasonable restriction on the freedom of trade, commerce and intercourse within the State in the Public Interest. However such law can't be introduced in State Legislature without the previous sanction of the President. This provision is intended to ensure the free flow of trade which may be hampered by unreasonable restriction imposed by a State law.

- ✓ **Article 200** – Governor of a State to reserve a Bill passed by a State Legislature for the consideration of the President if in his opinion, if passed into law would derogate the power of the High Court so as to endanger the position which the Court is designed to fulfill under the Constitution. The object is to preserve the independence & dignity of a High Court which may be effected by State law.