

## **Relations between Union and the states [Part IX, articles 245- 293]**

- Distribution of power between the Union and State is an essential feature of **federalism**. The Constitution has provided exhaustive provisions for distribution of power between Union and the state.
- The centre-state relations are divided into three parts, which are mentioned below:

**A. Legislative Relations (Article 245-255)**

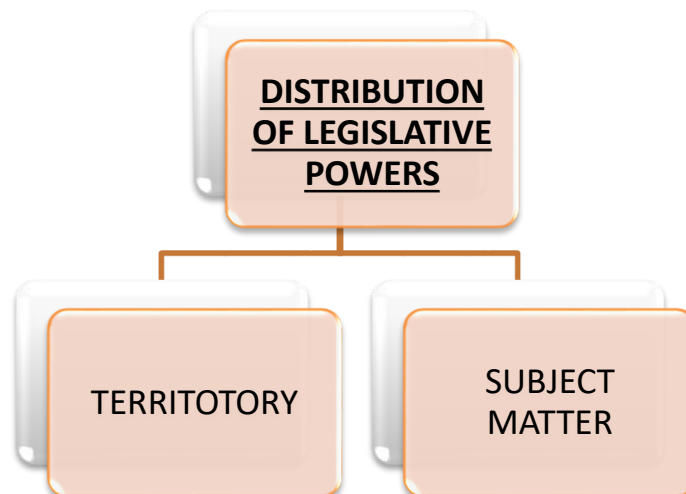
**B. Administrative Relations (Article 256-263)**

**C. Financial Relations (Article 268-293)**

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### **Legislative Relations [Article 245- 255]**

#### **Distribution of Legislative Powers**



#### **Territorial relations**

- **Article 245[ 1]** provides that subject to the provisions of the constitution,
  - ✓ **Parliament** may Make laws for the whole or any part of the country and the
  - ✓ **Legislature** of the state may make law for the whole or any part of the state.
- **Article 245[2]** Provides that no law made by Parliament shall be Deemed to be invalid on the ground that it would have an **extra territorial operation**.

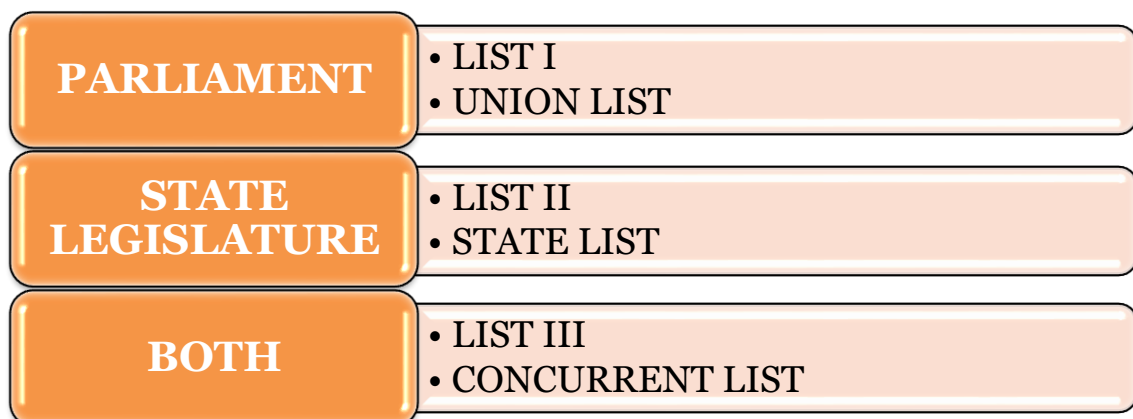
## ✚ Theory of Territorial Nexus

- The state legislature cannot make extraterritorial laws except when there is sufficient connection between state and subject matter of the legislation. [**A.H. Wadia vs Commissioner of Income Tax**]
- The Supreme Court in **State of Bombay vs. RMDC 1957** held that extra territorial legislature can be upheld only when there is the sufficient Nexus between the object sought to be achieved and the state seeking to achieve them. The connection must be real and not illusionary.
- **Wallace Bros. And Co. Ltd. vs. The Commissioner Of Income**  
A company which was registered and incorporated in India and which also carried out its business in India through a sleeping partner. The firm made a staggering profit in that accounting year. The income tax authorities sought to levy a tax upon the company of the respondent. The income tax authority was challenged by the respondent, it was held by the Privy Council that there existed the doctrine of territorial nexus and held the tax valid. It is said that the major part of that income was extracted from British India was the sufficient ground to establish a territorial nexus.

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## ✚ Subject matter

- **Article 246** is related to subject matter of law making power of the Parliament and state legislature.



- **Parliament** has exclusive power to make laws with respect to matters enumerated in the **union list [ list I]**
- **State legislature** in **state list[ list II]**

- **Parliament and state legislature both** have powers to make laws with respect to the matters enumerated in the **concurrent list[ list III]**
- **Javed vs State of Haryana 2003** Supreme Court held that the constitution gives autonomy to the centre and the states within their respective fields. The legislation of one state cannot be held to be discriminatory against its citizens simply because Parliament or the state legislatures of the other states have not chosen to enact similar laws.

- **Article 248** provide for **residuary powers** of the legislation. It Lays down that subject to **article 246A Parliament has exclusive power** to make laws with respect to **any matter not enumerated in the concurrent list or state list**.

- **Article 246 A** provides for special provisions with respect to goods and service tax. This provision has been inserted by **101 Constitutional Amendment 2016**
- Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

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### **✚ Principles of interpretation of lists**

- Subject matters enumerated in the list are not scientifically perfect and there cannot be a watertight compartmentalization. There has to be certain overlapping. Therefore there are certain principles for interpretation of list which are to be followed by the court while adjudicating upon the matter:-

#### **1. Plenary powers of the Legislature**

- It is the absolute power to enact laws and it is only subject to legislative competence and other constitutional limits.
- The power of the Legislature to enact laws with reference to the matters interested to it is unqualified and it is only subject to the limitations imposed by the constitution. **[JK Jute mills vs. State of UP 1961]**

- Entries should not be interpreted in restrictive sense. Each general word in an entry should be construed to include all ancillary powers or subsidiary matter.

### **[State of West Bengal versus Union of India]**

- The power to make laws include the power to give effect to it effectively as well as retrospectively.

## **2. Ancillary or incidental powers**

- The power to legislate on a topic includes the power to legislate on ancillary or incidental matters which can be said to be reasonable included in the power
- According to this doctrine, the entries enumerated in the three legislative lists are not to be read in a narrow or restricted sense and each general word in an entry should be held to extend to all incidental or ancillary matters which can fairly and reasonably be comprehended in it. Hence, the power to levy tax would include the power to make provisions for checking tax evasion. Similarly, the power to legislate with respect to the collection of rent includes the power to legislate to remission of rent. However, the above logic of wider interpretation does not mean that the scope of the incidental or ancillary power can be extended to any unreasonable extent. Hence, the power to levy tax cannot be held to include the power to confiscate goods. Further, this doctrine cannot be used as a cloak for extending the power of a legislature to comprehend a subject which is explicitly mentioned in a list.
- **R.D Joshi versus Ajit Mills 1977** Supreme Court held that entries in the list must be given wide meaning in performing all ancillary and incidental powers. The court held that punitive measures for enforcing social legislation are ancillary measures.

## **3. Doctrine of pith and substance**

- Doctrine of Pith and Substance is also known as the Doctrine of Predominant Purpose of true nature and character of law
- If the law passed by one legislature encroaches upon the field assigned to other, then the court will apply the doctrine of pith and substance to determine whether the legislature was competent to make the law or not.
- Pith and substance of Legislature means **true object and scope of legislation**

- If substance of law relates to matters within the competence of Legislature then the enactment will be held to be *intra virus(valid)*
- **Prafulla Kumar vs. Bank of Commerce Khulna 1947** In this case, the validity of the Bengal Money Lenders Act,1946 was challenged on the ground that it was ultra-vires the Bengal Legislature in so far as it related to " promissory notes " which was a central subject. The Privy Council held that the Act was, in pith and substance, a law in respect of "money lending" and "money lenders" – a state subject and hence, was valid even though it incidentally encroached on "promissory notes".
- The court held that clear cut distinction is not possible between the legislation if Power of Union and State legislatures because they are bound to overlap. In ascertaining the pith and substance of the court must consider:-
  - a) The object of the
  - b) The scope of the act and
  - c) The effect as the whole
- In the **State Of Bombay Vs Fn Balsara 1951** the court held that Bombay prohibition act as valid because the pith and substance of the act fell in the state list even though it incidentally encroaches upon the union list.

#### **4. Doctrine of colorable legislation**

- It is based upon the doctrine of power separation. Separation of power mandates to strike power of balance between different state components.
- It means that though apparently the legislature passing the statute purported to act within the limits of the power. The transgression is covert or indirect.
- This doctrine of colorable legislation is applied when a Legislature does not have the right to make law upon a particular subject but indirectly makes one.
- It is based on the Maxim ‘ **what cannot be done directly, cannot be also done indirectly**’
- Colourability is bound up in competency and not with bad fate or Evil motive.
- **K.C. Gajapati Narayana Deo and Other v. The State Of Orissa**-"If the Constitution of a State distributes the legislative powers amongst different

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, questions do arise 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”

- **State of Bihar vs. Kameshwar Singh 1952** is the only case where the law has been declared invalid on the ground of colorable legislation. The Bihar Land Reforms Act, 1950 was held unconstitutional on the ground that although it ostensibly purported to lay down the principle of compensation, it did not lay down any such principle and therefore implicitly attempted to deprive the petitioner of any compensation.

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### **Parliament's Power to Legislate On State Subject**

- In the following circumstances the Parliament gets the authority to legislate on matters enumerated in the state list
1. **National interest[ article 249]**
    - **Article 249** provides that if **Rajya Sabha** passes a resolution supported by two third of the member present and voting that it is necessary and expedient in the **national interest** that the Parliament should make laws with respect to the goods and services tax or any other entry in state list then it shall be lawful for Parliament to make laws for whole or any part of the country so long as the resolution remains in force.
    - Such resolution passed by the Rajya Sabha remains valid for 1 year but it can be renewed multiple times but not exceeding one year is time.
    - The law made by the Parliament shall cease to have effect after expiration of **six months** after the resolution ceases to operate.
  2. **During proclamation of emergency [article 250]**

- **Article 250** provides that while proclamation of emergency is an operation the Parliament shall have the power to make laws for the whole or any part of the country with respect to goods and service tax and other matters specified in state list.
- Such law will cease to have effect after expiry of **six months** from the date when emergency cease to operate.

### **3. Consent of States [article 252]**

- **Article 252** provides that if a legislature of two or more States passes a resolution to effect that it is desirable to have a law passed by Parliament on any matter in state list then it shall be lawful for Parliament to make laws on that subject matter.

### **4. To give effect to treaties and international agreements [article 253]**

- **Article 253** empowers the Parliament to make law for the whole or any part of India for implementing treaties and international agreements and conventions.

### **5. Failure of constitutional machinery in state article 356**

- **Article 356** provides that Parliament is empowered to make laws with respect to all matters in the state list in case of state emergency.

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### **+ Repugnancy between centre and state laws [article 254]**

- Repugnancy means a contradiction between two laws which when applied to the same set of facts produce different results. It is used to describe inconsistency and incompatibility between the Central laws and State laws when applied in the **concurrent field**.
- **Article 254[1]** provides that if any provision of law made by the Legislature of the state is repugnant to any provisions of law made by Parliament with respect to one of the matters of the **concurrent list** then the law made by the Parliament shall prevail. This provision is subject to **article 254[2]**.

- **Article 254[1]** is applied when there is inconsistency between State Law and union law with respect to the concurrent list.
- **Article 254[2]** envisages a situation where the State Law will prevail over Union law.
- It provides that if the state law is repugnant to any law made by Parliament on the concurrent list but the **state law has been reserved for ascent of the president and has received the assent of the President** then the law will prevail over the law made by the parliament.
- However Parliament can still **override** such laws by subsequently making a law on the same matter
- **Hoechst Pharmaceuticals Limited versus state of Bihar 1983-** This case discusses the effect of Clause (2) of Article 254. It was observed that the assent of the President for a state law which is repugnant to a Central law for a matter related to a concurrent subject is important as it results in the prevailing of the State law in that particular State, thereby, overriding the application of the Central law in that state only.

- **Important cases on repugnancy**

- **M Karunanidhi versus Union of India 1979-** In this case, a constitutional bench of the Apex court considered the question of repugnancy between a law made by the Parliament and a law made by the State legislature. It was observed that the following conditions should be satisfied for the application of the doctrine of repugnancy:
  1. A direct inconsistency between the Central Act and the State Act.
  2. The inconsistency must be irreconcilable.
  3. The inconsistency between the provisions of the two Acts should be of such nature as to bring the two Acts into direct collision with each other and a situation should be reached where it is impossible to obey the one without disobeying the other.
- **Deep Chand versus state of UP 1959 -** observed that repugnancy between two enactments can be identified with the help of the following three tests:



- Whether there is a direct conflict between the two conflicting provisions;
  - Whether the Parliament intended to lay down an exhaustive enactment on the subject-matter and to replace the law made by the State legislature; and
  - Whether the law made by the Parliament and that made by the State legislature occupies the same field.
- **Government of Andhra Pradesh v. J.B. Educational Society**- the Court observed that the judiciary must interpret legislation made by the Parliament and the State Legislature in such a way that the question of conflict does not arise or can be circumvented. However, if such a conflict between laws is unavoidable, then the Parliamentary law shall prevail.
- **Zhaveri bhai vs State of Bombay 1954** - a convict pleaded that he was convicted by a Court having no jurisdiction. According to the state law, the offence committed by him, that is, transporting food grains without permit attracted imprisonment for a term of 7 years. On the other hand, the Central law [essential supplies act] prescribed punishment of imprisonment for a term of 3 years for the offence committed by him. An additional provision in the Central law was that the punishment could be increased to 7 years if the person was found possessing double the permitted quantity of food grains [i.e. several category of level]. The convict argued that he should have been governed by the provisions of the Bombay Act and not the Central Act which would render the decision of the court a faulty one, and without jurisdiction as the Magistrate who punished him could sentence him for the imprisonment of only up to 3 years. The occupation of the field of both the laws was observed as seen whether they occupy the same field or not. The Supreme Court held that both the laws occupied the same field and cannot be split up. Hence, the State laws were held to be void and the Central law prevailed as per the doctrine of repugnancy.

### **Administrative relations [article 256- 263]**

- Administrative relations are basically executive relations.
- The executive power is co-extensive with legislative power.

#### **Basic principles of union state executive relations**

- ✓ **Article 256** provides that **executive power of every state shall be so exercise as to ensure compliance with the law made by the Parliament and any existing laws which apply in that state**
- ✓ **257. Control of the Union over States in certain cases.**—**The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, [art 257[1]]**

#### **The executive power of the Union shall extend to the giving of directions to a State [ in normal circumstances]**

- ✓ As to the construction and maintenance of means of communication declared in the direction to be of national or military importance. **[art 257[2]]**
- ✓ As to the measures to be taken for the protection of the railways within the State. **[art 257[3]]**

#### **The executive power of the Union shall extend to the giving of directions to a State [in the case of emergency]**

- ✓ Article 353- during the proclamation of national emergency center can give direction on all matters
- ✓ Article 356- during president's rule imposed, the state executive comes under the union

- **258A. Power of the States to entrust functions to the Union.**—the **Governor of a State** may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends.
- **Article 261** provides that full faith and credit shall be given throughout the territory of India public the acts, records and judicial proceedings of the Union and of every state.
- Final judgment or order delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within the territory according to the law.

### **Adjudication of water disputes**

- **Article 262[1]** provides that Parliament May by law provide for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or, in any interstate river or river valley.
- Parliament may by law provide that neither Supreme Court nor any other courts shall exercise jurisdiction in respect to any interstate water dispute or complaint.  
**[Article 262[2]].**
- Parliament has enacted **Interstate Water Dispute Act 1956** under **article 262.**

### **Interstate Council**

- **Article 263** provides for establishment of interstate Council to effect coordination between the states and between the centre and States.
- The **President** can establish such a Council is at any time it appears to him that **Public Interest** would be served by its establishment.
- He can define the nature of duties to be performed by such a Council and its organization and procedure
- **Article 263** specifies the duty that can be assigned to it in the following manner:
  - a) Inquiring into the advice upon dispute which may arise between States;

- b) Investigating and discuss in subjects in which the states of the centre and the states have a common interest; and
  - c) Making recommendations upon in such subject and particularly for the better coordination of policy and action on it.
- Recommendations of interstate council are advisory in nature and not binding.
  - The **Sarkaria Commission** on centre state relations [1983- 87] made a strong case for establishment of permanent interstate council under **article 263** of the constitution.
  - In pursuance of the above recommendation of the Sarkaria Commission. Government established the interstate council in 1990.

### **Composition**

- It consists of following members:
  - a) Prime Minister as chairman
  - b) Chief Minister of all the states
  - c) Chief minister of union territories having Legislative Assembly
  - d) Administrators of union territories not having Legislative Assembly
  - e) Governors of state under president rule
  - f) 6 central cabinet ministers, including the Home Minister, to be nominated by Prime Minister.
- Five ministers of cabinet rank / minister of state [independent charge] nominated by the chairman of Council [i.e. Prime Minister] are permanent invitees to the Council.

## Financial Relations [Article 264- 291]

- **Article 265** provides that no tax shall be levied [imposed] or collected except by the authority of law.
  
- **Consolidated fund of India and of the states**
  - **Article 266** provides for a consolidated fund of India and States of public account of India and of the state.
  - This provision shall be subject to **article 267**[contingency fund] and to provisions relating to the assignment of whole or any part of the net proceeds.
  - Consolidated fund of India: following shall be the consolidated fund of India:-
    - a) All revenues received by government of India;
    - b) All loans raised by government of India by issue of treasury bills;
    - c) Loan for ways and means advances;
    - d) All money received by government in repayment of loans
  
- **Consolidated fund of the state**
  - a) All revenue received by government of the state
  - b) All loans raised by government of States by issue of treasury bills
  - c) Loans or ways and means advances
  - d) All money received by government in repayment of loans.
  - e) All other public money received by or on behalf of Government of India or government of the state shall be credited to the public account of India for the public account of the state.
  
- **Contingency fund of India and of the states**
  - **Article 267[1]** provides for the contingency fund of India and **article 267[2]** provide for the contingency fund of state

- **Article 267[1]** provides that Parliament may by law establish contingency fund of India and such sums shall be paid into it as may be determined by such law.
- Such fund shall be placed at the disposal of the President to enable advances to be made by him out of such funds for purpose of meeting unforeseen expenditure pending authorization of such expenditure by Parliament by law under **article 115 or 116.**

### **Goods and service tax**

- Provision related to goods and service tax has been introduced by the **101st constitutional amendment act 2016**
- **Article 269A** provides that goods and service tax on supplies in the course of interstate trade or commerce shall be levied and collected by the government of India.
- Such tax shall be appropriated between the Union and the state in the manner as may be provided by Parliament by law on the Recommendation of goods and service tax council.
- **Goods and service tax Council**
  - **Article 279A** (inserted by the 101st constitutional amendment, 2016) provide for establishment of goods and service tax Council
  - It provides that GST Council shall be constituted by president within 60 days from the commencement of 101st constitutional amendment, 2016

**Composition article 279[2]** provide that goods and service tax council shall consist of the following members:-

- a) Union Finance Minister[ chairperson]
- b) The Union Minister of state in charge of revenue of finance[ member]
- c) The Minister in charge of finance and taxation or any other Minister nominated by each state government[ members]

- The members of The goods and service tax Council referred to in sub clause [c ] of the clause [2] shall as soon as may be choose one among themselves to be the vice chairperson of the Council for such a period as they may decide
- **Quorum:** one half of the total number of members of goods and service tax Council shall constitute the quorum at its meeting.

**275. Grants from the Union to certain States.**—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of such States as **Parliament may determine** to be in **need of assistance**, and different sums may be fixed for different States:

Provided that there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas therein to that of the administration of the rest of the areas of that State

- Therefore Statutory grants are such grants given by the **Parliament** out of the **consolidated fund of India** to such States which are **in need of assistance**.
- Different states may be granted different sums
- Specific grants are also given to promote Welfare of scheduled tribes in a state or to raise the level of of administration of Scheduled Areas there in

### **Finance commission [article 280]**

- **Article 280** provides for the constitution of finance commission.
- Finance commission shall be constituted by the order **of president**
- It shall be constituted within two years from commencement of the constitution and there after the expiration of every fifth year for such earlier time as president may considered necessary

- **Parliament** may by law determine the qualifications of members of finance commission [**article 280[2]**] Parliament has enacted **finance commission Act 1951**, there in the qualifications of Chairman and members are given. following are the qualifications:-
  - Chairperson must be a person having experience in public affairs
    1. a judge of high court or one qualified to be appointed as judge of HC
    2. a person who has special knowledge of finance and accounts of the government
    3. a person who has wide experience in financial matters and in administration
    4. a person who has special knowledge of Economics
  - **composition**: it shall consist of a Chairman and four other members to be appointed by president

#### **Duties of finance commission**

- **article 280[3]** provides that it shall be the duty of commission to make **recommendations** to the president in the following matters:-
  1. Distribution of net proceeds of tax to be shared between centre and state, and the allocation between states of respective shares of such proceeds
  2. The principles that should be governed the grant in aid to the state by centre[ that is out of the consolidated fund of India]
  3. The measures needed to augment the consolidated fund of state to supplement the resources of the panchayats and municipalities in the state on the basis of recommendations made by the eighth finance commission.
  4. any other matters referred to it by president