

## INTRODUCTION

As we know, the Constitution of India provides for a quasi-federal structure of Government, which makes India a federal country with a strong Union Government having comparatively more legislative, financial and administrative powers over the State Governments, with the Union also having some discretionary powers over the States. This makes India federal in form but unitary in spirit. We discussed earlier in the previous articles about centre-state relation about how the Centre possess comparatively more powers over the States, and similarly, in this article, we'd also be discussing the discretionary powers of the Centre.

The Administrative Relationship between the Centre and State is governed by Articles 256-263 in Part XI of the Indian Constitution.

### **Executive Powers**

#### **State**

The executive powers of the State extend to the territory of the State, on matters which are enlisted on the State List, i.e. over the matters on which the State Legislature has exclusive authority to legislate.

But however, there are certain exceptions in this regard too. One exception is when a law or a Constitutional provision confers such powers in the hands of the Centre, i.e. when the powers to legislate on matters enlisted in the State List is transferred to the Parliament. This could happen when-

- National Emergency
- President's Rule
- Resolution by Rajya Sabha
- Request by the State
- for implementation of International Agreements

#### **Centre**

The executive powers of the Centre extend to the matters on which the Parliament has exclusive authority to legislate, i.e. the subjects which are mentioned in the Union List.

The Centre's executive powers also extend to the exercise of rights, authority and jurisdiction conferred to it by any treaty or an agreement.

## **Collective Authority**

Both the State and the Centre exercise collective executive authority in respect to matters which are enlisted in the Concurrent List.

Similar to the exception with respect to the State List, the exclusive powers to legislate on certain specific matters enumerated in the Concurrent List can be transferred to the Parliament through a Constitutional Provision or a Parliamentary Law.

In other words, a law on the matters mentioned in the Concurrent List, even though it's enacted by the Parliament, would be executed by the State, except when a Constitutional Provision or law made by the Parliament has directed otherwise.

## **All India Services**

The Centre and States have their own Public Services, called the Central Public Services and State Public Services. In addition to these, there are All-India Services, The All India Services was established during the British era. During that time, there was one All-India Service- the Indian Civil Service (ICS). Moreover, there was another service, called the Indian Police (IP), but it was not recognized as an All-India Service.

However, after the enactment of the Indian Constitution, the Indian Civil Service was replaced by Indian Administrative Service (IAS) and Indian Police was replaced by the Indian Police Service (IPS). The Indian Police Service was recognized as an All-India Service by the Constitution. And in 1966, the third All-India Service, the Indian Forest Service (IFS) was created. So, the three All-India Services are-

- IAS – Indian Administrative Service
- IPS – Indian Police Service
- IFS – Indian Forest Service

The members of these services are recruited and trained by the Centre. The members selected in the All India Services occupy top positions under both the Centre and States and serve both in turns. Ultimate control and authority over the All India Services vests in the hands of the Centre, while the immediate control over them vests in the hands of the State.

The Indian Parliament has the power to create All-India Services. This power is vested in the hands of the Parliament by the virtue of Article 312 of the Indian Constitution. In order to create an All-India Service, the Rajya Sabha must also pass a resolution to that effect. The State Legislature has no such rights. So, the Central Government has more powers in this regard.

## **The importance of All-India Services**

The first and foremost importance of All-India Services is that they help in maintaining the administration and also brings efficiency in the administration of the Centre and States.

The All-India Services helps in bringing uniformity in the administration of the Centre and States. They also ensure coordination, cooperation and joint action on the issues of common interest between the Centre and States.

The importance of All-India Services in the words of Dr Bhim Rao Ambedkar-

*“The dual polity which is inherent in a federal system is followed in all federations by a dual service. In all federations, there is a Federal Civil Service and a State Civil Service. The Indian Federation, though a dual polity, will have a dual service, but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. There can be no doubt that the standard of administration depends upon the calibre of the civil servants who are appointed to strategic posts. The Constitution provides that without depriving the states of their rights to form their own civil services, there shall be an All-India Service, recruited on an All-India basis with common qualifications, with uniform scale of pay and members of which alone could be appointed to those strategic posts throughout the Union.”*

## **Public Service Commission**

The States have their own Public Service Commission, but however, the Centre also has some powers over the matters of State Public Service Commissions, which is a major determinant of the administrative relationship between Centre and State. The provisions are-

- The Chairman and members of a State Public Service Commission are appointed by the Governor of the State, who in turn is appointed by the President. Moreover, the members appointed by the Governor can be removed only by the President.
- The Parliament has the power to establish a Joint Public Service Commission (JPSC) for two or more States when the Legislatures of two or more states makes such a proposal or request. The members and chairman of such a JPSC created shall be appointed by the President.
- The Union Public Service Commission (UPSC) can perform the functions of a State Public Service Commission on the request made by the Governor of the concerned State and after the approval of the President.
- The Union Public Service Commission could assist the States when a request is made by two or more States in framing the operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

## **Integrated Judiciary**

Even though India follows a system of dual polity, there is no provision for a separate Judicial System for Centre and States. India has an integrated Judicial System with the Supreme Court of India being the apex and supreme Judicial authority, and all the High Courts of the States and all the other courts in entire India being subordinate to it. This integrated Judicial system enforces the laws made by both Centre and States.

The judges of State High Courts are appointed by the President of India in consultation with the Chief Justice of India and the Governors of the State. The powers to remove and transfer the judges of State High Courts vests in the hands of the President.

Moreover, the Parliament of India has the power to establish a common High Court for two or more States. For example, Haryana and Punjab; and Goa and Maharashtra have a common High Court.

## **Restriction on the executive powers of the States**

There are some restrictions on the executive powers of the States. These restrictions are-

- The executive powers of the State should be exercised in such a way that it ensures compliance with the laws made by the Parliament of India and any existing law which apply in the State.
- The executive powers of the State should be exercised in such a manner as not to impede or prejudice the exercise of executive power of the Centre in the State.

These are an obligation on the State to not hamper the executive power of the Centre. So, the Centre has the power to give such directions to the State as are necessary. And the Centre has absolute and coercive powers to give such directions to the States. This is because Article 365 of the Indian Constitution states that if any State fails to comply with the directions given to it by the Centre, the President could hold that the situation has arisen in which the Government of the State could not function in accordance with the Constitutional provisions. Hence, President's Rule can be imposed in the State if such a situation arises, under Article 356 of the Constitution.

## **Directions to the States**

In addition to imposing restrictions on the executive powers of the States, the Centre also has the power to give directions to the States with respect to their executive functions. These powers include-

- The Centre can direct the States for the construction and maintenance of means of communication, which is declared to be of national or military importance.
- The centre can direct the States for the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes of that particular State.
- The Centre can direct the State to take the required measures for the protection of railways within the State.

- The Centre can direct the States to make provisions for the facilities for instructions in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the State.

As stated earlier, the Centre has absolute and coercive authority to give such directions to the State and the States are obliged by the law to follow and respect such directions, by virtue of Article 356 of the Constitution.

## **Administrative relationship between Centre and State during emergency**

### **National Emergency (Article 352)**

During the National Emergency, imposed under Article 352, the Centre is empowered to give executive directions to the State on any matter, irrespective of the list on which the matter is enumerated.

### **President's Rule (Article 356)**

In case of President's Rule imposed in any State(s) through Article 356, the President assumes the powers and functions of the State Government and the Governor of the State.

### **Financial Emergency (Article 360)**

In case of a financial emergency imposed under Article 360, the Centre can direct the States to observe canons of financial propriety and other directions, such as reducing the salaries of officials serving the State Government.

## **Centre's Control over the State Administration**

There are various other provisions in the Constitution that facilitate the Centre's control over the administration of the State. They are-

### **Article 355: Duties of the Centre**

The duties of the Centre towards the States are enumerated in Article 355, they are-

- To protect every State against external aggression and internal disturbance.
- To ensure that the Government of every State is carried on according to the Constitution.

### **Governor of the State**

The Governor of the State is the Constitutional Head of the State. The Governor of the State is appointed by the President, and he remains in office during the pleasure of the President. So, the Governor acts as the agent of the Centre, who is entitled to submit periodic reports to the Centre regarding the administrative affairs of the State.

### **State Election Commissioner**

The State Election Commissioner is appointed by the Governor of the State (who works as the agent of the Centre in that State). Moreover, the State Election Commissioner can be removed from his office only by the President.