

Subject: LAW

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Paper : ADVANCED CONSTITUTIONAL LAW

Module :
LEGISLATIVE RELATIONS BETWEEN UNION AND STATES



ज्ञान-विज्ञान विमुक्तये

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Component - I (B) Description of Module

Subject Name	Law
Paper Name	Advanced Constitutional Law
Module/ Name/Title	Legislative Relations between Union and States
Module Id	27
Pre-requisites	Basic understanding of Indian Constitution relating to legislative powers
Objectives	1) To understand the Union and State Legislatures under Indian Constitution 2) To understand the nature, scope and importance of legislative functions 2) To study various provisions regarding legislative powers of Union and States envisaged under the Indian Constitution
Keywords	Government, separation of powers, Parliament, state legislatures, delegated legislation



Component - II

Module 27 : Legislative Relations between Union and States

Structure:

1. Introduction

Learn

1. Introduction

In the Indian Constitution, the division of power or authority between the Central Government and the State Governments has been envisaged on the method adopted by Government of India Act, 1935. The Government of India Act, 1935 introduced a three- fold scheme, enumerated as federal, provincial and concurrent. Indian Constitution transforms slightly and adopts this scheme as the Union List, State List and Concurrent List. Before explaining these Lists in detail, we will discuss distribution of legislative powers which is based on –



1. Territorial legislative jurisdiction –

Article 245 opens with the words --“extent of laws...” Word ‘extent’ here indicates limit to make laws. Here clause (1) divides the territorial power to make laws between-

- 1) Parliament



2) State legislatures

Article 245, clause 1

Subject to the provision of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a state may make laws for the whole or any part of the state

No law made by Parliament shall be deemed to be invalid on the ground that it would have extra- territorial operation.

Interpretation of these clauses gives one limitation on the Indian legislative power –

Limitation Rule - A State Legislature cannot legislate extra – territorially, though Parliament does not suffer from this limitation.

1.1 Indian legislation system in comparison to other countries legislation

1.1.1 Indian legislation system

- a) Indian federal system has two levels of governance, which are operating simultaneously firstly at national level and secondly at state level government along with separate legislative powers between Centre and States allocated by the Constitution.
- b) Indian constitution provides for a more concentration of powers on the Central government.
- c) There is multi-party system in India. This system has various impacts on Centre-State relations and has resulted in unstable, weak government at the Centre.

1.1.2 Northern Ireland legislation system

The Northern Ireland Act 1998¹

Section 5 Provides for the making of Acts of the assembly, but reserves for the United Kingdom Parliament the right to make laws for Northern Ireland, subject to the rights of ...the assembly to modify provisions made by Act of Parliament in so far as it is part of the law of Northern Ireland.

The Scottish parliament has the power to make Acts of parliament within the sphere of competence laid down in the Act. Any Act which is outside the legislative competence of the parliament is not law.

Section 6 (1) states that a provision of an Act is not law if it is outside legislative

Section 29 stipulates that an Act is not law if it is outside the Parliament's legislative competence and states that a provision is outside its competence if²–

¹Hilaire Barnett, *Constitutional & Administrative law* (4thedn, Cavendish publishing 2003) 369.

² *Ibid.*, p. 377.



Section 28(7) makes clear that the legislative competence of the Scottish parliament does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

1. It relates to the law of a country or territory other than Scotland.
2. It relates to the reserved matters
3. It is in breach of the restrictions given in schedule 4.

1.2 Effect of Indian legislation

Article 245 also envisages the power to make laws with Parliament and State Legislature and also includes the power to give effect to enacted laws prospectively as well as retrospectively. The legislature has also power to alter the existing law retrospectively. In case of *Yadlapati v State of Andhra Pradesh*³, Supreme Court observed that the legislature may validate an unlawful executive Act, including an unauthorized assessment of tax, and with retrospective effect, subject to Constitutional limitation.

1.3 Delegated legislation in India

Delegated Legislation has been defined as follow –

“That which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority

- BY Salmond

Delegated or subordinate legislation can be said as another branch of rule of law made under the authority of an Act of Parliament. Although laws are to be made by legislature, but the legislature may by statute delegate its power to other authority or bodies. In fact Delegated legislation exists in many forms such as rules, regulations, orders and bye-laws. Supreme Court in a case, namely, *Municipal Corporation of Delhi v Birla Cotton, Spinning and Weaving Mills*⁴ has laid down the principle that the Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act concerned.

In the case of *Agricultural Market Committee v Shalimar Chemical Works Ltd*⁵, Supreme Court explained the meaning and scope of delegated legislation. The power of delegation is a constituent element of the legislative power as a whole under Article 245 of the Constitution and under other related Articles and when the

³ AIR 1991 SC 704

⁴ AIR 1968 SC 1232

⁵ AIR 1997 SC 2502



Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by the Acts as part of the Administrative Law.

Legislature before delegating should enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. The benefit of this principle is that the delegate which has been authorized to make subsidiary Rules and Regulations has to work within the scope of its authority and therefore, delegated legislation, thus created cannot be *ultra-vires*

1.3.1 Scope of delegated legislation

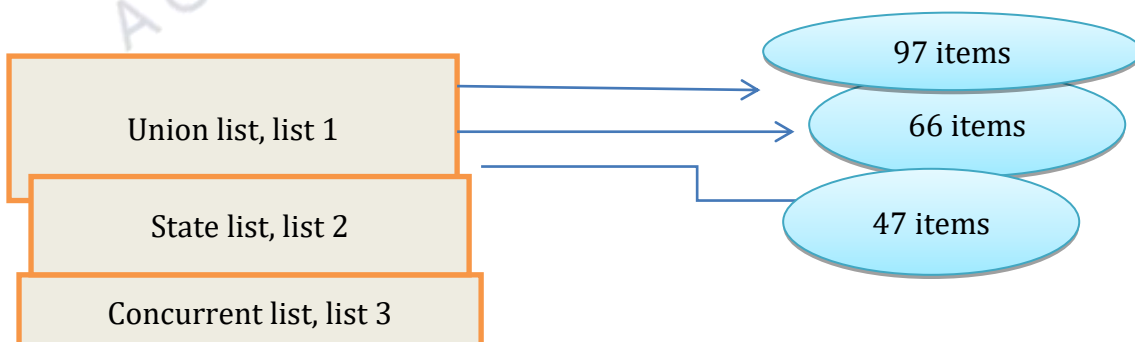
Indian Parliament and State legislatures can delegate both administrative as well as legislative functions to any subordinate body or individual. There are some limitations to delegation of power

- 1) Legislature cannot delegate its essential legislative functions.
- 2) There should be standard laid down by the legislative authority.
- 3) What can be delegated is task of subordinate legislation, it should be ancillary to the statute which delegate the power to make it effective.
- 4) The judiciary cannot interfere in the discretion power vested in the legislature to determine the extent of delegated power in specific or particular case.

2 Legislative Subject matter

2.1 Subject matter of laws made by Parliament and by the legislature of states under article 246

The Union Parliament and every State legislature have power to make laws with respect to any of the matters which fall within their field of legislation as under Article 246 read with Seventh Schedule of the Constitution, there is a well-defined distribution of legislative powers contained in Part XI of the Constitution. The rules relating to distribution of powers are to be collected from the various provisions contained in this Part and the legislative heads mentioned in the three lists named as:



2.2 Residuary Power (Article 248)

Situation: In a federal set – up, where there is a distribution of power coupled with power of judicial review may raise such situation that a subject of legislation may not squarely fall in any specific entry in the three lists.

Solution - In such a situation Parliament would have power to legislate on the subject in the exercise of residuary powers under Article 248 and Article 246(1) r/w entry 97 of list 1.

Point to remember – If above mentioned subject is not fall in any of the entries mentioned in three lists, and then on that basis the power of parliament (mentioned in solution) cannot be curtailed.



Article 248 thus, confers residuary power of legislation exclusively on the union parliament. The three lists, however, do not exhaust all the legislative subjects.

In India	In U.S.A.	In Switzerland
Residuary Powers have been allotted to the Central Government by the Constitution ⁶ .	Here the residuary powers have been given to the States.	Here , also the residuary powers have been given to the States.

Indian Parliament is empowered to pass laws on the State subjects mentioned for the states, in case emergency has been proclaimed because of the failure of Constitutional machinery under Article 356. The Parliament has also the authority to pass laws on any subjects of the State List during the emergency proclaimed because of war and external aggression etc. It may delegate its legislative powers concerning the States to the President of India if it deems fit.

2.3 What if there is conflict between the any of three lists⁷ –

Parliament has power to enact a law which is not covered by an entry in list II and list III, is absolute. Article 246 contains *the non- obstante clause*. There is every attempt would be made to reconcile the conflict but if it is irreconcilable, then the central legislation shall prevail.

Overlapping or conflict	Prevail by
1. Between union , state and concurrent list	Union list
2. Between union and state list	Union list
3. Between union and concurrent list	Union list
4. Between state and concurrent list	Concurrent list

⁶ It shows that the framers of the Indian constitution have followed the Canadian examples with a view to keep the Centre in every strong position.

⁷ This table is based on interpretation of Article 246(1) who starts with “notwithstanding anything in clause (2) and (3)” and clause (3) starts with words “ subject to clause (1) and (2) “.



2.3.1 *What if there is inconsistency between laws made by parliament and laws made by the legislature of states.*

Situation 1 if law made by State legislature is repugnant to law made by Parliament (Parliament should be competent to enact)

Solution,

According to Article 254 Clause 1, Here the law passed by Parliament, whether before or after the law passed by state legislature, the existing law shall prevail and the law made by state legislature SHALL be void to the extent of repugnancy

Point to consider –

Conditional applicability of Article 254, clause 1 is only in respect to any matters enumerated in concurrent list.

In other words, we can say that –

The repugnancy between subsequent and existing law must be there for the applicability of above mentioned solution given under Article 254 clause 1

Situation 2 - If the law made by state legislature is repugnant to the provision of parliament, either earlier enacted or existing law, then state legislature enacted laws may be effective only if there is assent of president has obtained.

According to

From situation 2 a question arises –

Question - What is role of parliament in such situation?

Answer is provided in proviso to clause (2), Where Parliament may supersede state legislation which assented by president

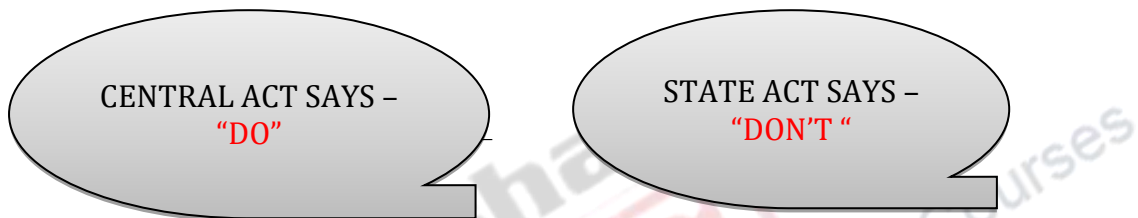


2.3.2 Test to check Repugnancy -

Repugnancy here means such portion of state legislature inconsistent to a central law, in concurrent list become invalid.



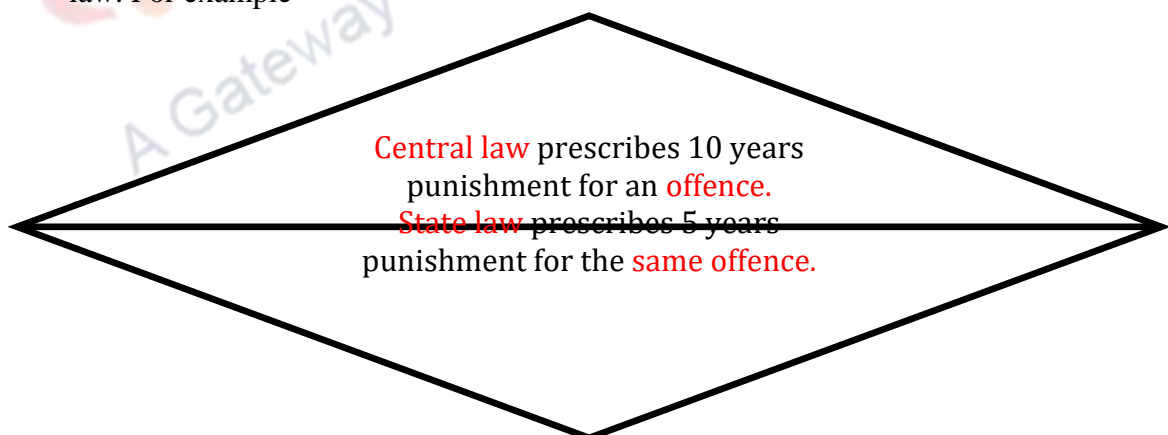
Situation of conflict in such kind of **inconsistency** is direct. For Example:-



There may not be –

- a) Direct inconsistency or;
- b) Clear inconsistency or;
- c) Apparent inconsistency.

In this test, situation will be like – When both the legislation covers the same subject matter, again it's area of inconsistency between both central law and state law. For example –



The situation in this test arises with the intention of the legislature who, directly or indirectly covering the whole field.

If parliament lay down an exhaustive code in respect of the subject matter replacing the Act of the state legislation, with an intention to do this.....



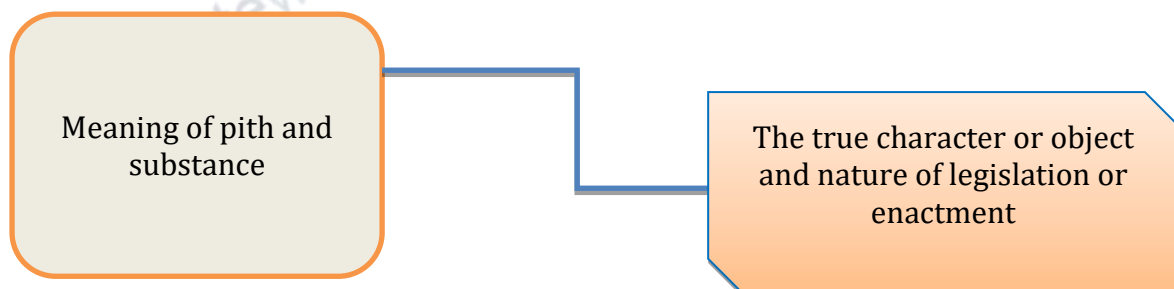
2.3.3 Effect of Repugnancy –

- a) The repugnancy may relate to the pith and substance of the subject matter.
- b) When both laws, coincide, the repugnancy may be confirm and the whole of the state law become void.
- c) The operation of union law is prospective.
- d) If there is any existing law of parliament and state law legislate on same subject matter than such law is void.

2.4 Doctrine of Interpretation of subject matter under Article 246



2.4.1 Doctrine of Pith and substance



If Situation arises –

If a legislature enact a legislative enactment, within its competence and such particular enactment encroaches upon another subject matter, which is outside legislative competence.

Solution of problem

Step 1

Where there is a case of encroachment, law should be read as whole and not as collection of clauses or sections, for determine the True nature of law.

STEP 2

After determine nature of law, if it is clear that true nature and character of law falls within competence of legislature, who makes law.

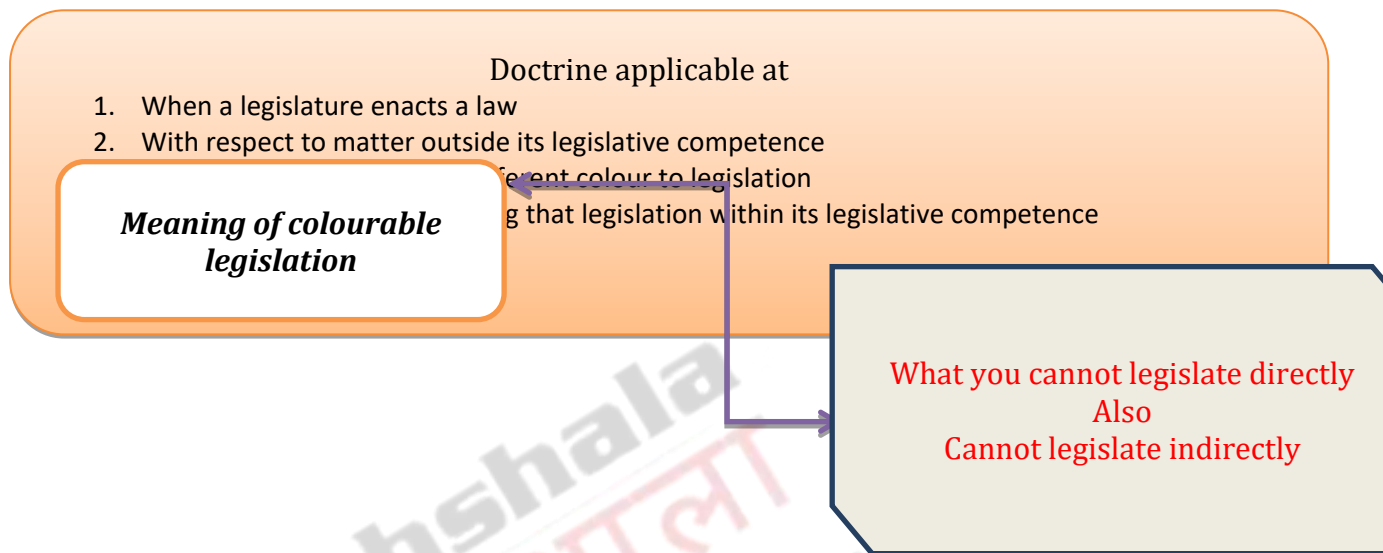
Step 3

Then such law would be declared as constitutional.

Point to remember



2.4.2 Doctrine of colourable legislation



If situation arises –

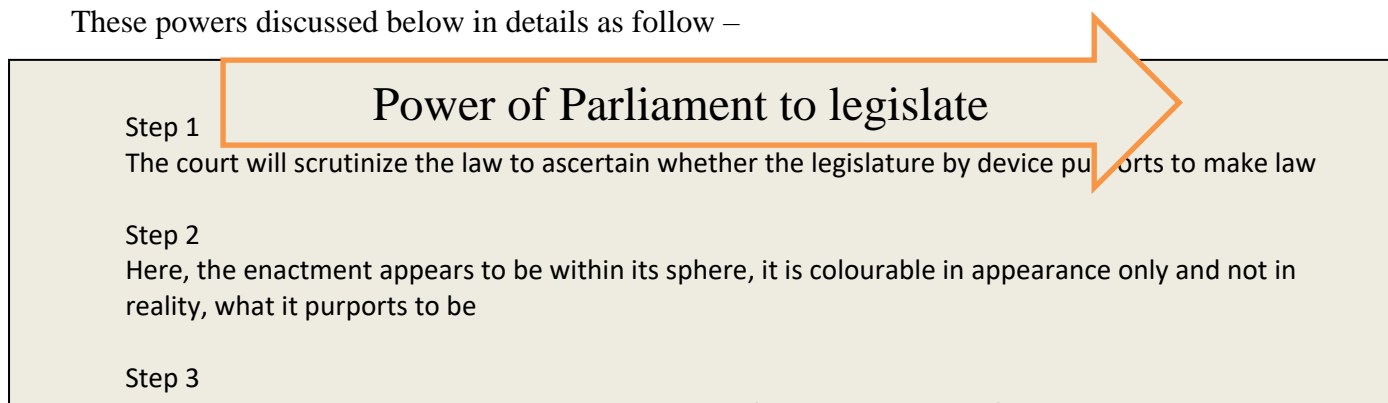
If the question of legislative competence arises and the subject matter in enactment is something which is beyond the power of legislation then Doctrine of colourable legislation will apply.

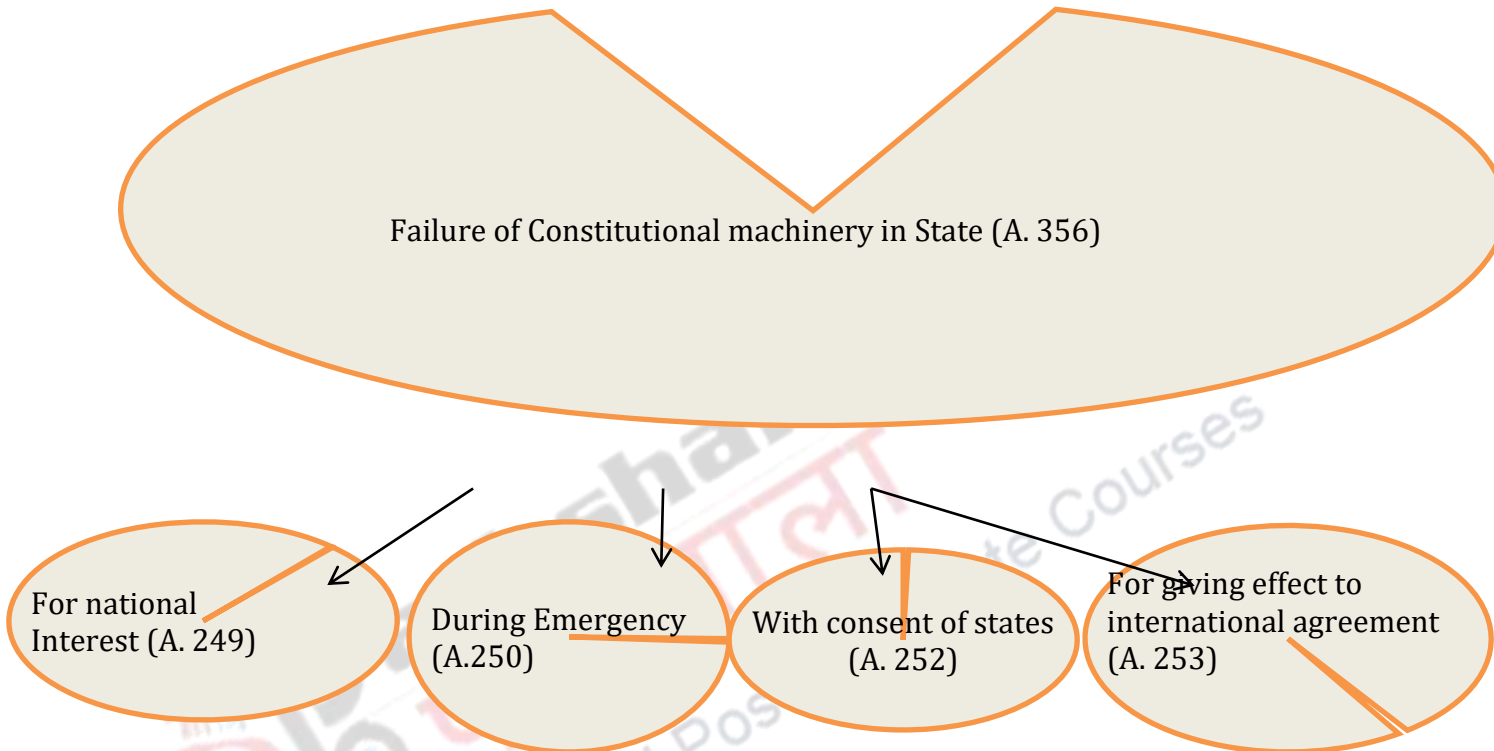
2.5 Legislation for Union Territories (Article 246 (4))

It confers unqualified power of legislation on the Union Parliament. In relation to union territories, there is no distribution of legislative power. Article 246(4) read with Article 240 which confers power on the president in relation to certain Union Territories.

3 Parliament power to legislate on State subject

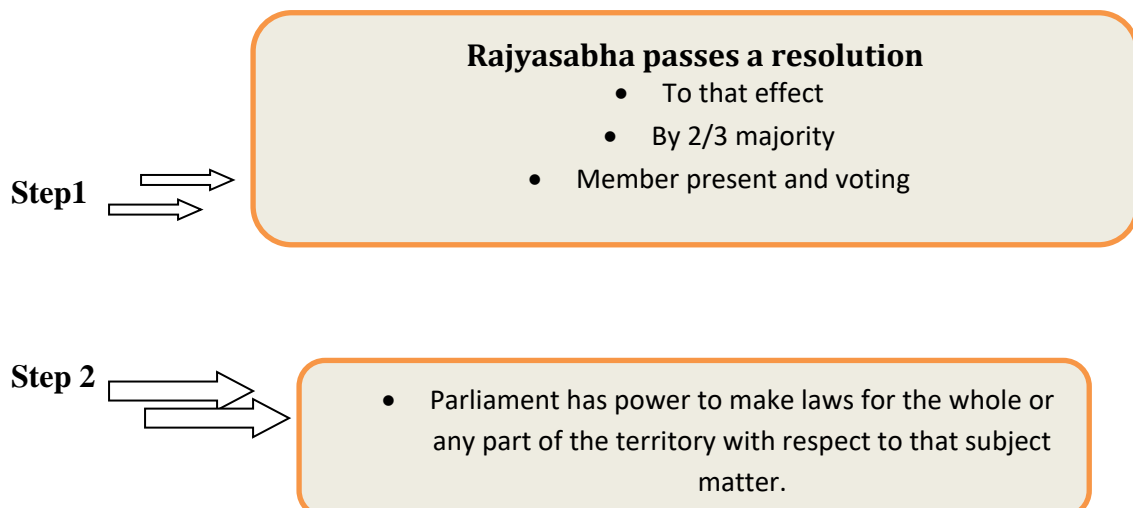
These powers discussed below in details as follow –





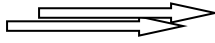
Power of Parliament to enact law over a subject in State list for national interest under Article 249

If there is a case of national interest than without formal amendment of constitution, here under this Article, Parliament can assume authority to legislate over a subject in list II. The procedure for such legislation by parliament is –





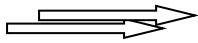
Step 3



Such resolution duration is –

- 1 year from it passed
- Its renewal (when required
- Its extension is maximum 1 year

Step 4



Laws passed by parliament under this Article –
Cease to have effect
On the
Expiration of 6 months
After resolution has ceased to operate

3.1 During Emergency Proclaimed by President , Article 250

When there is emergency proclaimed in that case this procedure will follow –

Step 1

- Any restriction on parliamentary legislative authority
- In relation to the subject matter
- Enumerated in the state list
- Such restrictions are removed during the emergency

Step 2

- Parliament has power to make laws for the whole or any part of the territory of India with respect to that subject matter.

Step 3

- Such legislation shall cease to effect after the expiration of 6 months, after the proclamation of emergency ceased to operate.

If situation arises –

As we know, from the above study Parliament can invade the State list in
2 situations –

- Where subject matter in state list assumes national interest.
- Where a proclamation of Emergency has been issued by president.

Now, the question arises that what is the state legislature power to deal



Solution of this problem is given here –
Article 251, where it is mentioned that – “nothing in Article 249 and 250 shall restrict the power of the legislature of a state to make any law which under this constitution has power to make”

Interpretation of these words –

The power of state legislature to deal with matter falling in state list is not abrogated.

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Consent between two states

If two or more State legislatures pass a resolution to the effect that it is desirable to have a law passed by Parliament on any matter mentioned in State list, such laws passed by Parliament are lawful.

Point to be remembered – These laws passed by Parliament under the powers given in this Article can only be amended or repealed by the Act of Parliament.

3.3 For giving effect to treaties and international agreement under Article 253

Government of India or Union Parliament is empowered to legislate in relation to foreign agreement/s under following –

- 1) Entry 10 of Union list
- 2) Entry 14 of Union list
- 3) Under Article 253- Article 253 empowers Parliament to make any law for the whole or any part of the territory of India for implementing treaties and International agreements and conventions. Government of India implements all international commitments. Such treaties are not self-operative and not required to be ratified by the Parliament. Parliamentary legislation is required for the implementation of provisions of the treaties ratified.

Note -Enforcement of such laws, subject to constitutional limits cannot infringe fundamental rights

3.3 when there is failure of Constitutional machinery in State under Article 356

When according to the constitutional provisions, Parliament declares that government of state is not functioning in accordance with Constitution, then situation arises which

Article 356, empowered parliament to make laws with respect to all matters mentioned in state list



will legislatively control the functioning of state – Constitutional Solution of this problem -

Conclusion -

Above mentioned all the provisions enabled the Centre to legislate in those circumstances where there are specific situations mentioned in list II. Indian Constitution has given more powers to Union Parliament than the State legislatures to maintain and ensure strong center, required for the stability of the country. Following are the important points which should be observed while discussing legislative relations between Union and State Legislatures –

1. There is distribution of subject matters between three lists; the subjects assigned to State by the Constitution, even after that there is not exclusive jurisdiction with the State.
2. There are few subjects over which State has power, subordinate to the Centre.
3. There are very few good examples of flexible distribution of power.
4. Powers given to Centre are only in specific situation and for limited period.
5. There are Article 249, 250, 252, 253 and 356 which are directly related to the Centre and State legislative relations.
6. Articles 304(b) authorize a State legislature to impose reasonable restrictions on the freedom of trade, commerce and intercourse within State in the “public interest”. But such laws cannot be introduced in State legislatures without the previous sanction of the President.

Interesting facts

1. In India -

Do you know, Some Bills are reserved by the state Governor for the signature of the President after being passed by the state Legislature e.g. Bills concerning restrictions as the powers of High Courts and Bills concerning acquisitions on property by the state by paying compensation etc. The President has the power of absolute veto over the Bills which are thus reserved by the Governors for his signature. A critical-examination-of legislative relation leaves the impression that the Centre is very powerful in legislative matters and it can impose its will on the state. All subjects of national importance are in the Union list and in the concurrent list Centre is all powerful.



2 Do you know –

The Constitution (Ninty-First) Amendment Act of 2003 says that the total number of ministers including the prime minister in lok sabha shall not exceed 15% of the total number of member of loksabha.

3 Do you know -

Stamp duties and duties on medicinal and toilet preparations mentioned in union list is levied by government of India and collected and appropriated by states.

