

Centre-State Relations

“The basic principle of federations is that the legislative and executive authority is partitioned between the centre and the states not by any law to be made by the centre, but by the constitution itself... The states are in no way dependent upon the centre for their legislature or executive authority. The states and the centre are coequal in this matter”. - Dr. B.R. Ambedkar

The above statement makes it quite clear that the Indian Constitution introduces a federal system as the basic structure of government of the country. The union and the states derive their authority from the constitution which divided all powers - legislative, executive and financial as between them.

The result is that the states are not delegates of the union, but they are autonomous within their own spheres as allotted by the constitution. “The union and the states are also equally subjected to the limitations imposed by the constitution”, for instance, the exercise of legislative powers being limited by fundamental rights, if any of these constitutional limitations are violated, the law of the legislature concerned is liable to be declared invalid by the courts.

As mentioned above, neither the Union Legislature nor a State Legislature can be said to be sovereign in the legalistic sense each being limited by the provisions of the constitution, the scheme of the distribution of powers and fundamental rights.

Legislative Relations Chapter I of Part XI (Article 245-254) of the Indian Constitution specified two-fold division of Legislative powers between the Union and the States.

1. with respect of territory
2. with respect of subject matter

Territorial Jurisdiction

As regards territory, Article 245 (1) provides that subject to the provisions of this constitution, a State Legislature may make laws for the whole or any part of the state to which it belongs. It is not possible for a State Legislature to enlarge its territorial jurisdiction

under any circumstances except when the boundaries of the state itself are widened by an act of Parliament.

Parliament has, on the other hand, the power to legislate for 'the whole or any part of the territory of India, which includes not only the states but also the union territory of India [Art. 246 (1)]. It also possess the power of 'extra-territorial legislation [Art. 245 (2), which no state legislature possesses. This means that laws made by parliament will govern not only persons and property within the territory of India but also Indian subjects resident and this property situated anywhere in the world.

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) 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 (Art. 240).
- b) The application of Acts of Parliament to any scheduled area may be barred or modified by notifications made by the Governor (Para 5 of the V Schedule (3) of the Indian Constitution).
- c) Para 12 (1) (6) of the VI Schedule 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.

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.

Distribution of Legislative Powers (subject matter)

As has been pointed out at outset, a federal system postulates a distribution of powers between the centre and the states. The nature of distribution varies according to the local and political background in each country. In America, the sovereign states did not like complete subordination to the central government. Hence, they believed in entrusting subjects of common interest to the central government, while retaining the rest with them. Australia followed the American pattern of only one enumeration of powers. In Canada, there is double enumeration, federal and provincial leaving the residue for the centre. The Canadians were conscious of the unfortunate happenings in the United States of America, culminating Civil War of 1891. They were aware of the shortcomings of the weak centre. Hence they opted a strong centre. Indian Constitution-Makers followed the Canadian scheme obviously opting for a strong centre. However, they added one more list - concurrent list.

As regards the subjects of legislation, the constitution adopts from the Government of India Act, 1935 and divides the powers between the Union and the States under three lists. They are as follows:

- i. The Union list (ii)
- ii. The State List and (iii)
- iii. The Concurrent List.

The Union List

At present the Union List consists of 99 Subjects over which the Union shall have exclusive power of legislation. The Subjects mentioned in the Union List are of national importance, for example, defence and foreign affairs etc.

The State List

The State List comprises of 61 Subjects over which the states have exclusive power to make laws. The Subjects mentioned in the State List are of local or regional importance, such as public order, police and public health etc.

Concurrent List

The Concurrent List includes 52 subjects and both the union and the states can make laws on this list but in case of conflict between the Central Law and the State Law, the Central Law will prevail over the State law. The purpose of adding the List to the constitution was to secure uniformity in the main principles of law throughout the country.

Residuary Powers

It is quite interesting to note that the residuary powers are vested in the union, while in the United States of America and Australia, these powers are given to the states. Article 248 says that, Parliament has exclusive power to make any law with respect to any matter not enumerated in any one of the three lists. This reflects the leanings of the Constitution-makers towards a strong centre. Another notable thing regarding to residuary powers is that “the final determination as to whether a particular matter falls under the residuary power or not is that of the courts.