

SUBJECT: POLITICAL SCIENCE IV

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MODULE: VII, CENTRE-STATE RELATIONSHIP

LEGISLATIVE RELATIONS

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states. Besides these, there are some other articles dealing with the same subject.

Like any other Federal Constitution, the Indian Constitution also divides the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation. Further, the Constitution provides for the parliamentary legislation in the state field under five extraordinary situations as well as the centre's control over state legislation in certain cases. Thus, there are four aspects in the Centre-states legislative relations, viz.,

- Territorial extent of Central and state legislation;
- Distribution of legislative subjects;
- Parliamentary legislation in the state field; and
- Centre's control over state legislation.

1. Territorial Extent of Central and State Legislation

The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states in the following way:

- (i) The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories, and any other area for the time being included in the territory of India.
- (ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.
- (iii) The Parliament alone can make 'extraterritorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.

However, the Constitution places certain restrictions on the plenary territorial jurisdiction of the Parliament. In other words, the laws of Parliament are not applicable in the following areas:

(i) The President can make regulations for the peace, progress and good government of the five Union Territories– the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Ladakh. A regulation so made has the same force and effect as an act of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.

(ii) The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.

(iii) The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

2. Distribution of Legislative Subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule:

(i) The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 98 subjects (originally 97 subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.

(ii) The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 59 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.

(iii) Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (originally 47 subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning,

drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.

(iv) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state even though that matter is one which is enumerated in the State List. This provision has reference to the Union Territories or the Acquired Territories (if any).

(v) The 101st Amendment Act of 2016 has made a special provision with respect to goods and services tax. Accordingly, the Parliament and the state legislature have power to make laws with respect to goods and services tax imposed by the Union or by the State. Further, the parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of inter-state trade or commerce.

(vi) The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.

From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.

In US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration— Federal and Provincial, and the residuary powers are vested in the Centre.

The Government of India Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the governor- general of India. In this respect, India follows the Canadian precedent.

The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.

In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the Central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the president and has received his assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

Reference:

M.Laxmikanth (2019), Indian Polity, Mc Grow Hill Education, New Delhi