



Distance Learning Programme

UPSC Prelims

Indian Polity – II





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INDIAN POLITY-II


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CHAPTER

LEGISLATIVE, ADMINISTRATIVE & FINANCIAL RELATIONS

The Constitution of India provides for a federal system of government of the country. It has divided powers (legislative, executive and financial) between the union and the states. However, the Constitution has established an integrated judicial system to enforce both the union and state laws. In this way, the centre and the states are supreme in their respective fields. However, to establish effective harmony and co-ordination between the two, the Constitution contains elaborate provisions that regulate the various dimensions of the relations between them.

The Union-State relations can be studied under the following heads:

Legislative Relations

- Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the union and the states. Besides these, there are some other constitutional provisions dealing with the same subject.
- 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 like any other Federal Constitution.
- 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 of the Centre-states legislative relations:

Territorial Extent of Central and State Legislations

- The Parliament can make laws for the whole or any part of the territory of India. Territory of India includes the states, UTs and any other area for the time being included in the territory of India.
- The Parliament can alone make 'extra territorial legislation' thus the laws of the Parliament are applicable to the Indian citizens and their property in any part of the world.
- Subject to the provisions of the 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 the Parliament.
- However, certain restrictions are placed by the Constitution on the plenary territorial jurisdiction of the Parliament or in other words the laws of the Parliament are not applicable in following areas:
 - The President is conferred with the power to make regulations for the peace, progress and good governance of the four Union Territories—the Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli.



- A regulation made by the President has the same force and effect as an act of Parliament and may also repeal or amend any act of Parliament in relation to these union territories.
 - The Governor is conferred with the power to restrict or modify the applicability of an act of Parliament in the scheduled area of the state.
 - 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.

Limitations of Territorial Jurisdiction of Parliament

The plenary territorial jurisdiction of Parliament is also restricted to some extent by special provisions of the Constitution.

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- The President can make regulations for the peace, progress and good government of the 4 union territories viz., Lakshadweep, Andaman and Nicobar Islands, Daman and Diu and Dadra and Nagar Haveli. Such a regulation made by the President has the same force and effect as an Act of Parliament. It may also repeal or amend a law made by Parliament in relation to such territory.
- The application of Acts of Parliament to any scheduled area in the state may be barred or modified by notifications made by the Governor.
- The Governor of Assam may, by public notification, direct that any other act of Parliament shall not apply to a tribal area (autonomous district) in the state or shall apply to such district or region or part thereof subject to such exceptions or modifications as he may specify in the notification. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Mizoram and Tripura.

Distribution of Legislative Powers

The Constitution divides the legislative powers between the union and the states in the following 3 lists mentioned in the Seventh Schedule:

- **Union List:** It consists of 100 subjects (originally 97 subjects). The subjects mentioned in the Union List are of national importance and include defence, foreign affairs, banking, currency and coinage, union taxes and duties. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in the Union List.
- **State List:** It consists of 61 subjects (originally 66 subjects). These are of local importance such as, local government, public order and police, agriculture, forest, public health and sanitation, fisheries, education, State taxes and duties. The states under normal circumstances have exclusive power to make laws on subjects mentioned in the State List.
- **Concurrent List:** It consists of 52 subjects (originally 47 subjects) at present. Both the Parliament and the state legislature can make laws on the subjects mentioned in the Concurrent List. If there is a conflict between the central and the state law on Concurrent subjects, the Central law will prevail. Some of the subjects under this list include population control and family planning, electricity, labour welfare, economic and social planning, marriage and divorce, drugs, newspapers, books and printing press and others.

Parliament is conferred with the power to make laws with respect to residuary subjects.



The 42nd Amendment Act of 1976 transferred five subjects from the State List to the Concurrent List. These are forests, education, protection of wild animals and birds, weights and measures, and administration of justice; constitution and organisation of all courts except the Supreme Court and high courts.

Parliamentary Legislation in State's Domain

The Constitution also empowers the Parliament to legislate on state subjects under the following extraordinary circumstances:

■ When Rajya Sabha passes a resolution to that effect

- Under Article 249, if the Rajya Sabha passes a resolution supported by 2/3rd of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated within the State List, then the Parliament becomes competent to make laws on that matter.
- Such a resolution normally lasts for one year at a time. It may be renewed any number of times, but not exceeding one year at a time.
- These laws of Parliament will, however, cease to have effect on the expiration of the period of 6 months after resolution has ceased to operate.

Residuary Powers

Article 248 vests the residuary powers in the Parliament. The Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or the State List. The residuary power of legislation also includes the power to levy residuary taxes.

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Predominance of Union List

In the case of conflict between the Union and the State List, it is the Union List which is to prevail. In case of conflict between the Union and the Concurrent List, it is again the Union List which will prevail. In case of conflict between the Concurrent List and State List, it is the Concurrent List that shall prevail.

If there is a conflict between the central and the state law on concurrent subjects, the central law will prevail. But, there is an exception to this provision. 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. However, still the Parliament is competent to override such a law by subsequently making a law on the same matter.

■ During a National Emergency

- Under Article 250, Parliament has the power to make laws with respect to all matters in the State List while the proclamation of national emergency is in operation.
- Such a law, however, shall cease to have effect on the expiration of 6 months after the proclamation of emergency has ceased to operate.

In both the above mentioned cases, the state legislature has the power to make laws on the same matter. However, the parliamentary law will prevail in case of repugnancy between a state and parliamentary law.

■ When states make a request

- As per Article 252, if the legislature of two or more states passes a resolution to the effect that it is desirable to have a law passed by the Parliament on any matters in the State List, then the Parliament can make laws for regulating that matter.

- A law so enacted applies only to those states which have passed the resolutions.
- Any other State may adopt such a law by passing a resolution to that effect in its legislature.
- Such a law can only be amended or repealed by an Act of Parliament and not by the concerned state legislatures.
- In the provision mentioned above, the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter.
- **To implement international agreements**
 - Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions.
 - In other words, the normal distribution of powers will not stand in the way of Parliament to pass a law for giving effect to an international obligation even though such law relates to any of the subjects in the State List.
- **During President's Rule**
 - Under Article 256, the Parliament is empowered to make laws with respect to all matters in the State List when the President's Rule is imposed in the concerned state.
 - A law made so by the Parliament continues to be operative even after the President's Rule ceases to operate. However, such a law can be altered or repealed or re-enacted by the state legislature concerned.

Centre's Control Over State Legislation

Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution also provides for the centre's consent before a bill passed by a state legislature can become a law.

- The Governor can reserve certain types of bills passed by the state legislature for the consideration of the President and the President enjoys absolute veto over them.
- There are also certain types of bills on the matters enumerated in the State List that can be introduced in the state legislature with the previous sanction of the President.
- The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a Financial Emergency.

Administrative Relations

Articles 256 to 263 of Part XI of the Constitution, lays down the administrative relations between the union and the states. Besides these, there are some other constitutional provisions dealing with the same subject.

Distribution of Executive Powers

- Adequate provisions have been made in the Constitution for the division of executive powers between the centre and the states except in a few cases.
- The executive power of the centre extends primarily to:
 - matters with respect to which Parliament has exclusive authority to make laws and
 - to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement.



- Similarly, the executive powers of the states extend to its territory in respect of matters on which the state legislature has the exclusive power of legislation.
- But with regard to the matters which are in the concurrent list where both the Parliament and the state legislature have powers of legislation, the executive power rests with the states, except when a parliamentary law or a Constitutional provision specifically confers it on the centre.
- In this way, a law on a concurrent subject, though enacted by the Parliament is to be executed by the states, except when the Constitution or the Parliament has directed otherwise.

Obligation of Union and States

- The Constitution has placed some of the restrictions on the executive power of the state so that the centre could exercise its executive power in an unrestricted manner.
- The executive power of the states shall be so exercised:
 - as to ensure compliance with the laws made by the Parliament and any existing law which apply in the state and
 - as not to impede or prejudice the executive power of the union in the state.
- In both the cases, the executive power of the union extends to giving such directions to the states as may appear to the Government of India to be necessary for the purpose.
- If the state government fails to endorse the laws passed by the Parliament within its jurisdiction, the union government can issue directions to the states to ensure their compliance and these directions are coercive in nature.
- Article 365 of the Constitution states that if any state fails to comply with or to give effect to any directions given by the union, it shall be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. In such a situation, the President's Rule can be imposed in the state under Article 356.

Union's Direction to States

Besides the above two cases, the executive power of the union also extends to giving of directions to the states with regard to:

- the construction and maintenance of means of communication by the state declared to be of national or military importance;
- the measures to be taken for the protection of railways within the states;
- the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state; and
- the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state.

The coercive sanction behind the Central directions under Article 365 is also applicable in these cases.

Mutual Delegation of Functions

- Generally, the executive powers between the union and the states are divided on the basis of subjects in the Lists but, the President may entrust (either conditionally, or unconditionally) any of the executive functions of the union to the state government with its consent.



- Similarly, the Governor can confer (either conditionally, or unconditionally) the administrative functions of the union with its consent.
- The Parliament is also authorised by the Constitution to entrust any of the executive functions of the centre to the state without the consent of that state, however, not vice versa.

All India Services

- The Constitution provides for the creation of an additional All India Service, common to both the union and states, besides the central and state services. Though these services are controlled both by the centre and the states, the ultimate control lies with the centre, while the immediate control lies with the state governments. They are recruited and trained by the centre.

In 1947, the Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All India Services. Indian Forest Service (IFS) as the third All India Service was created in 1966.

- The Parliament has been authorised by the Constitution under the Article 312 to create a new All India Services on the basis of a Rajya Sabha resolution to that effect.

Public Service Commissions

- The Parliament may by law, provide for a Joint State Public Service Commission (JSPSC) when two or more states pass a resolution to that effect. The chairman and members of the JSPSC are appointed and removed by the President.
- There is also a provision in the Constitution, wherein on request by two or more states, the Union Public Service Commission can assist those states in framing and operating schemes of joint recruitment to any service for which candidates with special qualifications are required.
- The Union Public Service Commission can serve the needs of a state at the request of the Governor and with the approval of the President.
- The chairman and members of the state public service commission can only be removed by the President though appointed by the Governor.

Integrated Judicial System

- The Constitution established an integrated judicial system with the Supreme Court at the top and the high courts below it.
- This single system of the judiciary enforces both the central and the state laws, this is done to remove diversities in the remedial process.
- The judges of the high courts are appointed by the President in consultation with the Chief Justice of India and the Governor of the State concerned. They can also be transferred and removed by the President.
- The Parliament can establish a common high court for two or more states.

Relations During Emergencies

- During the operation of a National Emergency under Article 352, the centre becomes entitled to give executive directions to a state on any matter.