

**ADMINISTRATIVE RELATIONS BETWEEN THE CENTRE AND THE
STATE UNDER PROVISIONS OF THE CONSTITUTION OF INDIA**

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INTRODUCTION:-

The **Constitution of India** is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any sovereign country in the world, containing 448 articles in 25 parts, 12 schedules, 5 appendices and 98 amendments^[1] (out of 120 Constitution Amendment Bills). Besides the English version, there is an official Hindi translation. Dr. Bhimrao Ramji Ambedkar is widely regarded as the father of the Indian Constitution.

The Constitution follows parliamentary system of government and the executive is directly accountable to the legislature. Article 74 provides that there shall be a Prime Minister of India as the head of government. It also states that there shall be a President of India and a Vice-President of India under Articles 52 and 63. Unlike the Prime Minister, the President largely performs ceremonial roles.

Indian Constitution is neither purely 'federal' nor purely 'unitary'. The federal form is clearly manifest in the constitutional distribution of powers between the union and the states not only in the legislative field but also in executive and administrative fields. In normal times, the constitutional scheme has to ensure autonomy of the states in regard to the spheres of activities earmarked for the states in the Constitution.

[1] RAM JAWAYA V. STATE OF PUNJAB, AIR 1955 SC 549

Specific subjects have been allocated to the exclusive fields of the centre and the states respectively and certain subjects have been allocated to the 'concurrent field' with the stipulation that in the 'state' and 'concurrent' fields, the states should have the freedom to follow their own policies except to the extent that Parliament itself decides to legislate under the powers given to it under the Constitution.

Historically, a highly centralised colonial government had slowly been transformed into a semi-feudal set-up. In post-Independent India, the needs of planned development, national integration and maintenance of law and order resulted in a considerable degree of centralisation of powers in the hands of the centre. Single party rule for a long period of time has also contributed to the increasing preponderance of the centre. Centre-state relationship in reality is a matter of interaction between the two levels of governments in course of discharge of their duties to people. In administering subjects like education, health, agriculture, etc. the two levels of governments have to interact in the interest of efficient management of these functions. Administrative problems assume political colour when the interactions are conditioned by considerations of power and harmony. As the Administrative Reforms Commission commented "The problem of Centre-State relations has acquired new dimensions and new importance in recent times due to several political parties being in power at the Centre and in the States."

In the **Federal System of India**, the head of the Executive Union is the President of the country. The real political as well as social power, however, resides in the hands of the Prime Minister, who in turn heads the Council of Ministers. According to the Federal System of

India, it is clearly stated in the Article 74(1) of the Indian Constitution, that the Prime Minister and his Council of Ministers will advise and help the President. The Council of Members is answerable to the Lok Sabha or the House of People, as per the Federal System prevailing in India.

The administrative relations between the Centre and the States have been stated from Article 256 to Article 263 of the Constitution. As a rule, the Central Government exercises administrative authority over all the matters on which the Parliament has the power to make laws, whereas the State Governments exercise authority over the matters included in the State List.^[1]

ADMINISTRATIVE RELATIONS

Article 256 of the Constitution states that the executive power of the states shall be so exercised as to ensure compliance with the laws of Parliament. Also the union executive power extends to the giving of such directions to the states as may appear to the Government of India to be necessary for the purpose. It is further stipulated under Article 246 of the Constitution that 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. This article lays down that it shall be the duty of the states to exercise its executive power so as to ensure that due effect is given within the state to every act of Parliament and to every existing law which apply in that state. This is a statement of constitutional duty of every state. The government of India is entitled to give directions to the state government regarding the duty which is imposed upon it, by this article.

In order to ensure smooth and proper functioning of the administrative machinery at the two levels , the constitution embodies provisions for meeting all types of eventualities resulting from the working of federal system and also for protecting and maintaining peace and order in the country. The constitution provides for a flexible, permissive and not rigid, scheme of allocation of administrative responsibilities between centre and states.

The scheme of allocating the administrative responsibilities is drawn for the purpose of:-

- (i) The administration of law
- (ii) Achieving coordination between the centre and states

- (iii) The settlement of disputes between centre and states *inter se*; and
- (iv) For the purposes of Article 355^[1].

DIVISION OF ADMINISTRATIVE POWERS

Adequate provisions have been made in the Constitution for the division of executive powers between that centre and the states, like the division of the legislative powers between centre and states. Subject to few exceptions, the executive powers has been declared as co – extensive with the legislative power of both the governments.

Article 73 provides that subject to the provisions of the Constitution, the executive power of the union shall extend –

- (a) To the matters with respect to which parliament has power to make laws; and
- (b) To the exercise of such rights, authority and jurisdiction as are exercisable by the government of India by virtue of any treaty or agreement.

Article 162 provides that subject to provisions of the Constitution, the executive power of a state shall extend to matters with respect to which the legislature of the state has power to make laws

In case of concurrent list –

- (a) The Union shall exercise executive power only if the Constitution so expressly provides or any law made by the parliament so confers the powers expressly on the centre.
- (b) The States shall have the executive powers only if the Constitution or a Parliamentary law has not conferred such power expressly on the Union.

1. Article 355 - Duty of the union to protect states against external aggression and internal disturbance

Deployment of Military and Para-military Forces:

These can be deployed in a state by the union, if situation warrants, even against the wishes of the state government.

Judicial System:

A distinctive feature of our federal system is the presence of integrated judicial system. Though we have federal form of government with two sets of government and dual powers, there is no dual system of administration of justice. This is clear by the presence of single integrated chain of courts to administer both union and state laws with the Supreme Court at the apex of hierarchy of courts.^[1]

1. <http://www.mapsofindia.com/>

CENTRE - STATES CO-ORDINATION

India, being a federation, the Constitution establishes dual polity with the union at the centre and the states at the periphery. The dual government system and the division of powers are key features of the federal system. As there are two governments existing at same time with different powers, as conferred by the Constitution, so there is always a possibility of situations which give rise to conflicts or disputes may be due to inefficient communication or lack of co-ordination. So, the Constitution of India has adopted the following techniques of co-ordination between the Centre and the States -

- (i) Inter – governmental delegation of administrative powers;
- (ii) Centre’s directions to the states;
- (iii) All-India Services; and
- (iv) Inter-State Council.

(i) Inter – governmental delegation of administrative powers

Delegation of powers may be done either by agreement or by legislation. While the Centre may adopt both the methods, where as a State can delegate its administrative powers on the centre only under an agreement with the Centre.^[1] This delegation process is applicable by the virtue of Article 258 of Indian Constitution.

(1) Delegation by the Centre as per Article 258.

(I) By agreement :- **Article 258 (1) provides that the president may, with the consent of the governor of the state, entrust either conditionally or unconditionally, to that government or to its officers, functions in relation to any matter to which the executive power of the Union extends.**

While delegating its functions, the centre may impose conditions and what conditions are to be imposed, is for the Union to decide. Usually, while entrusting its functions, the centre reserves to itself power to issue directions to delegate states for the exercise of powers so delegated. The delegation of the functions has to be with the consent of the concerned state government. A notification issued by the President under Article 258 (1) entrusting functions to a state government has been held to be **a legislative act**. Moreover, the delegation under clause (1) of article 258 may be specific, i.e., to one or more states named therein, or it may be general i.e. to all the states.

The Supreme Court in **Jayantilal Case**[1], distinguished *between the functions exercisable by the President on behalf of the union and functions conferred on the President under expression provision of the Constitution*. Only the former functions can be delegated under Article 258 (1) and not the latter functions. It must also be noticed that only a executive function can be delegated under clause (1) of Article 258, and not a quasi-judicial function.

[1] Jayantilal Amritlal, AIR 1964 SC 648.

However in *Shamsher Singh v. State of Punjab*[1], it was clarified that the distinction made by the Supreme Court in *Jayantilal Amritlal* case between the executive functions of the Union and the executive functions of the President does not lead to the conclusion that the President is not the constitutional head of Government. Moreover, all the functions exercised of President are to be exercised with the aid and advice of the Council of Ministers.

(II) By legislation ;-

Article 258 (2) – A law made by parliament which applies in any state may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

Article 258 (2) empowers the Parliament to make laws authorizing the delegation by the Central government of its powers and functions to the states or officers and authorities in the States. Such a law may relate to matters with respect to which the Legislature of the State has no power to make laws. Such matters are enumerated on List I and List III of the Seventh schedule to the Constitution. For example, the *Central Sales Tax Act 1956*, enacted by the parliament with respect to Entry 92A, List I, delegates to the state's authorities the power to assess and collect sales tax on inter-states sales.

[1] AIR 1974 SC 2192

When the functions are entrusted by a State Government to the Government of India, the latter does not become “an agent” of the former Government.

Article 258 (3) – Where by virtue of this article, powers and duties have been conferred or impose upon a State or officers or authorities thereof, there shall be paid by the government of India to the State, such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

Article 258 A – Notwithstanding anything in the Constitution , the governor of a state may, with the consent of the Government of India, entrust either conditionally or unconditionally , to that government or to its officers functions in relation to any matter to which the executive power of the state extends.

Article 258 A was added by the **Constitution (Seventh Amendment) Act, 1956**. The object behind the insertion of this provision was to remove any practical difficulty in connection with the execution of certain development projects in a State.

When the functions are entrusted by a State Government to the Government of India, the latter does not become “an agent” of the former Government.

(ii) Centre's Direction to the States (Article 256 & 257)

The executive power of the union also extends to giving of direction to the state under Article 256 for their compliance. This power of the Union extends to the limit of directing a state in a manner it feels essential for the purpose. For instance, the union can give directives to the state pertaining to the construction and maintenance of means of communication declared to be of national or military importance or protection of railways within the state. This is essential to ensure the implementation of parliamentary laws throughout the country. Non-compliance of the directives might lead to a situation where the union can invoke Article 356, for imposition of President's rule in the state and take over the administration of state. Moreover, the Constitution imposes certain obligations on the State governments in order to ensure that a State government, by exercising its powers, does not interfere with legislative and administrative actions of Central Government and enable Centre to exercise its powers over the territory which is administered directly by the States. The Constitution thus confers Central Government powers to have administrative control over States. This is provided under:-

Article 256 - The executive power of the states shall be so exercised as to ensure compliance with the laws of Parliament. Also the union executive power extends to the giving of such directions to the states as may appear to the Government of India to be necessary for the purpose. The idea is that central laws should be properly executed in states. It is incumbent upon the State government to act in accordance with the directions given by the central government.[1]

[1] Rameshwar Oraon v. State of Bihar, AIR 1995 pat 173

Article 257 (1) – The executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Unions shall extend to giving of such directions to state as may appear to the Government of India to be necessary for that purpose.

Article 257 (2) and (3) - Centre can give directions to State in two specific manners;-

- (a) In respect of construction or maintenance of means of communications of national or military importance.**
- (b) For the protection of railways within the State.**

“**Communications**” is a state subject. But clause (2) of this article empowers the Union to direct a State to construct and maintain means of communications which may be declared to be of national or military importance.

“**Railways**” is Union subject. But police, including Railways police, is a state subject. Under clause (3), the Union executive can give directions to a State as to the measures to be taken for the protection of railways within the state.

Article 257 (4) – If in carrying out any directions given to a state under clause (2) and (3) as mentioned above , additional costs are incurred by the State concerned, it shall be paid by the Central Government such sum as may be agreed. In case of default of agreement, the matter is to be referred to the arbitrator as appointed by the Chief Justice of India. Where any state has failed to comply with the directions given by the Union in the exercise of its executive powers, the provisions of Article 356, may be invoked by the president against the State.

(iii) All India Services

All India Services: Besides central and state services, the Constitution under Article 312 provides for the creation of additional "All-India services" common to both the union and states. The state has the authority to suspend the officials of All India Services. The power of appointment and taking disciplinary action against them vests only with the President of India. The idea of having an integrated well knit All India Services to manage important and crucial sectors of administration in the country which was the legacy of the past was incorporated in our Constitution. Their recruitment, training, promotion disciplinary matters are determined by the central government. A member of the Indian Administrative Service (IAS) on entry into the service is allotted to a state where he/she serves under a state government. This arrangement wherein a person belonging to the All India Service being responsible for administration of affairs both at the centre and states. The object is to ensure greater inter-state co-ordination and implementation of the policies of the Union Government through the members of these services. It also facilitates the execution of the Union laws in the States.

(iv) INTER-STATE COUNCIL

India is a union of states wherein the centre plays a prominent role but at the same time is dependent on the states for the execution of its policies. The Constitution has provided for devices to bring about inter-governmental co-operation, effective consultations between the centre and states so that all important national policies are arrived at through dialogue, discussion and consensus. One such device is the setting up of the **Inter-State Council**, along with **Zonal Councils**.

Article 263 says for establishment for an, **Inter-State Council** which may be charged with the duty of –

- (a) Inquiring into and advising upon disputes which may have arisen between States:
- (b) Investigating and discussing subjects in which some or all of the states, or the Union and one or more of the States, have a common interest; or
- (c) Making recommendations upon any subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

The Inter-State council may be established by the President by order, if it appears to the president that public interest would be served by the establishment of the council. The President may further define the nature of the duties to be performed by the council, along with its organisation and procedure to be followed by it.

The President has constituted the Central Council of Health and the Central Council of Local Self-Government in the exercise of his power under Article 263 only.

Five Zonal Councils were set up under the **State Re-Organisation Act, 1956**. These are, **Northern Council, Eastern Council, Western Council, Southern Council, and the Central Council**^[1]. Each Zonal Council consists of the Union Home Minister, The Chief Ministers of the member States and two other Ministers appointed by the governor of the States concerned. The Union Home Minister also acts as the ex-officio Chairman of these councils. These councils have been set up as instruments of inter- governmental consultation and cooperation and, also to arrest the growth of controversies among the States.

1. <http://himanshuaroras.blogspot.in/2013/03/administrative-relations-bw-centre-and.html>

Establishment of Inter-State Council

The President issued the Inter-State Council Order, 1990 on May 28, for setting up of the Inter-State Council. The membership of the Council consists of:-

- (i) Prime Minister;
- (ii) Chief Ministers of all the States and the Union territories having a Legislative Assembly;
- (iii) The Administrators of the Union Territories not having a Legislative Assembly ; and
- (iv) Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister.

The Minister of State, having independent charge in the Union Government may be invited when any item concerning their Ministry is to be discussed in the council. The Prime Minister shall be the chairman of the Council and shall preside over the meetings of the Council.

Duties of the Inter-State Council

The Council shall be a recommendatory body and shall perform the following duties-

- (a) To investigate and discuss objects of common interests;
- (b) To deliberate on such matters of general interest to the States as referred by the Chairman of the Council.

Inter – State Water disputes (Article 262)

In India there are many inter-state rivers and their regulation and development has been a source of inter-state function. These relate to the use, control and distribution of waters of

inter-state rivers for irrigation and power generation. In the Indian Constitution, water-related matters within a state are included in the state list, while the matters related to inter-state river waters are in the union list. Keeping in view this problem of unending river water disputes, the Constitution framers vested the power to deal with it, exclusively in Parliament. The Parliament hence, may by law provide for the adjudication of any dispute or complaint, with regard to use, distribution or control of the waters. The Inter-State Water Disputes Act was enacted by the Parliament in 1956 according to which tribunals are set up for adjudication of water disputes referred to them.

Article 262 –

- (1) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of waters of, or in, any inter- state river or river valley.**
- (2) Notwithstanding anything in this constitution, Parliament may by law provide that neither the Supreme Court or any other court shall exercise its jurisdiction in respect of any such dispute or complaint as referred to in Clause (1).**

In T.N Cauvery Sangam v. Union of India[1], the Supreme Court held that if the central government had failed to make a reference of the dispute, the Court could , on an application under Article 32 by an aggrieved party, issue *mandamus* to the Central Government to carry out its statutory obligation.

In the exercise of power conferred by Article 262, Parliament has passed the *River Board Act*, 1956 and *Inter-State Disputes Act*, 1956. The former provides for the regulation and development of Inter-States rivers and river valleys whereas the latter empowers the Union government to set up a Tribunal for the adjudication of disputes relating to waters of Inter-State rivers or river valleys.

Public Acts, Records and Judicial Proceedings (Article 261)

Federal government involves dual government. It is therefore necessary to provide for the acceptance of public acts of both governments to avoid inter-governmental conflict. In the functioning of federation, a state refusing to recognise acts and records of another state may give rise to confusion and inconvenience. To eliminate such a possibility, the Constitution of India provides the 'full faith and credit clause'. Article 261(i) of the Constitution stipulates that full credit and faith shall be given throughout India to public acts, records, and judicial proceedings of the union and all the states. The term 'public acts' relates to not only statutes but to all other legislative and executive acts of the union and the states. This clause serves a very important purpose of eliminating any possible hindrance to the normal transaction of administrative activities in the Indian Federation.^[1]

1. http://en.wikipedia.org/wiki/Federalism_in_India

Jurisdiction of Union in relation to territories outside India

(Article 260)

The government of India may by agreement with the government of any territory not being part of territory of India undertake any executive, legislature or judicial functions vested in the Government of such territory, but every such agreement shall be subjected to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.

CONCLUSION:

An objective study of the Constitution at work cannot miss a basic fact of constitutional government in India, namely, the existence and functioning of full-fledged Parliamentary and Cabinet government in the States of the Indian Union.

A local executive fully responsible to a local Legislature ensures a good deal of local internal sovereignty and sovereignty means statehood, limited as it may be by the distribution of powers. Local States pursue local policies, sometimes in accordance with the policy of the Centre, sometimes not.

This distinguishes them precise, from the position which prevails in administrative federations in which local units must toe the line and always follow the policy of the Centre. India is undoubtedly a federation in which the attributes of statehood are shared between the Centre and Local States.

Instead of defining her by the vague term of 'quasi-federation', it seems more accurate to exclude her from the category of administrative federations and to consider her a federation with virtually divided sovereignty.

Moreover, the position of local States is also strengthened by two significant developments, one connected with the formation of coalition governments in a number of local States, the other with the reorganisation of the Union on linguistic lines."

Yet, the basic fact remains that India is not ruled by one government but simultaneously by twenty-eight governments, one National government and twenty-eight State governments sharing between them the totality of governmental powers under the Constitution.

Such sharing of sovereign powers by different governments under the same Constitution is possible only under a federal system and that is what makes India a federal Union and its Constitution a federal Constitution.

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