LEGAL THEORY II

NATURE OF LEGISLATIVE POWER UNDER INDIAN CONSTITUTION

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CHAPTER I

INTRODUCTION

The Constitution of India which came into force on 26 January 1950, provides for a bicameral Parliament consisting of the President and the two Houses known as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha).

Scope of the Study

This study deals with an important aspect of Indian federalism, namely, the concurrent powers of legislation under the Constitution. The subject of federalism in any country covers a vast area, embracing legislative, executive and judicial powers, as distributed between the federal union and its units. Distribution of legislative power is only one branch of the subject; and in that branch, the topic of concurrent legislative power is only a sub-branch (so to say).

Part XI of the Indian constitution defines the power distribution between the federal government (the Centre) and the States in India. This part is divided between legislative, administrative and executive powers. The legislative section is divided into three lists: Union list, States list and Concurrent list. Unlike the federal governments of the United States, Switzerland or Australia, residual powers remain with the Centre, as with the Canadian federal government.

Federalism in India has a strong bias towards the Union Government. Some unique features of federalism in India are:

- There is no equality of state representation. Representation in the Parliament can vary widely from one state to another depending on a number of factors including demography and total land area.
- No double citizenship, i.e. no separate citizenship for country and state.

- The consent of a state is not required by the Parliament to alter its boundaries.
- No state, except Jammu and Kashmir, can draw its own Constitution.
- No state has the right to secede.
- No division of public services
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MEANING OF LEGISLATION

The term “legislation” is derived from two latin words *legis* meaning law and *latum* meaning make or put or set. Etymologically legislations means the making or the setting of law.

According to salmond “Legislation is that source of law which consists in the declaration of legal rules by a competent authority. According to Gray Legislation means the formal utterances of the legislative organs of the section.

According to Austin “ there can be no law without a legislative act” the term legislation is sometimes used in a wider sense to include all methods of law-making.

Importance of the subject

Nevertheless, the subject has its own theoretical and practical importance. Theoretically, the subject carries an appeal, because (i) it represents the vesting of power in two parallel legislatures, operating at the same time and (ii) also because such a scheme is to be found in most federations of the world, though the details vary.

The practical importance of the Concurrent list, (when adopted in any federation) lies in the fact, that the vesting of the same type of power in two parallel agencies carries, within it, the seeds of a possible conflict. This implies, that the Constitution (of the country concerned) should provide, in advance, a mechanism for resolving such conflict. In India, article 254 of the Constitution primarily seeks to incorporate such a mechanism.

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Scheme of discussion

In this short paper, it is proposed, to deal, first, with the general scheme of distribution of legislative powers under the Indian Constitution; next, to state, in brief, the main principles for the interpretation of legislative entries; and thereafter, to focus on the various entries in the Concurrent list itself, concentrating on their rationale. It will then be possible to formulate the questions that can possibly arise on the present scheme.

CHAPTER II

LEGISLATIVE POWERS IN THE FEDERATION

The essence of federalism lies in the sharing of legal sovereignty by the Union and the federating units. And, in general, the most precise way of demarcating the respective areas of the federation and federating units is to demarcate their respective areas in regard to legislation. There are many reasons for this; but the two most important, are the following:

(a) Demarcation of legislative power helps in defining boundaries the of the executive power also, as usually the former controls the latter.

(b) It is easier to verbally formulate, with reasonable precision, the various topics on which the legislative power can be exercised, as the legal system of a country would usually have had occasion to deal with the topic in some form or other – say, by or through proposals for legislation, actual legislation, academic or (occasionally), in political debates or academic discussions. In other words, the topics would (in many cases) have a ring of familiarity for the practising or academic lawyer.

Under Article 216, Parliament may make laws for the whole or any part of the territory of India, and the Legislature may make laws for the whole or any part of the State. No law of Parliament shall be invalid because of its extra-territorial operation. Under Article 217, Parliament has the exclusive power to make laws regarding the Union List, and for any part of the territory of India not included for the time being in Part I of III of the First Schedule. Both Parliament and State Legislatures can make laws on subjects in the Concurrent List. The State Legislature alone can make laws affecting matters in the State List, subject to the limitations in Article 217 (1) and (2). The control and Powers over the legislation affecting the constitution and organisation of the Supreme Court is vested in Parliament, and the Legislature of the State has the exclusive power to deal with matters affecting the High Court, as also its jurisdiction, and the procedure to be followed in

Criminal and Civil matters. In any of the matters affecting the High Courts in Parts II First Schedule (Delhi, Ajmer-Merwara, and Coorg), Parliament and also the State Legislatures have the power to legislate. Under Article 223, matters not enumerated in the Concurrent or State List are strictly within the legislative ambit of Parliament and it shall extend to imposing a tax not mentioned in either the Concurrent or State List.

Article 224 restricts the power of Parliament to make laws with respect to certain matters regarding (a) Posts and Telegraphs in any State or group of States which has not yet entered into an agreement with the Government of India, (b) Telephones, Wireless and Broadcasting in the Indian States in Part III – (First Schedule), except for their regulation and control, (c) the incorporation, winding up and regulation of corporations in the States. Under Article 225, the power of Parliament to legislate for the Indian States in Part III (A) is subject to the limitation of the agreement between them and the Government of India.

Article 226 gives power to Parliament to legislate with respect to any matter in the State List on a resolution to that effect by two-thirds of the members present, that it is expedient in the national interest to do so. During a Proclamation of Emergency, Parliament has the power to legislate for the whole of India in regard to any matter in the State List. In the event of any repugnancy between the State Legislation and that of Parliament, the latter shall prevail. Under Article 229, Parliament can legislate for one or more States by consent on matters on which it has no power to make laws for the States, and such an Act can be amended or repealed by the State Legislature. Parliament can make laws for any State to implement any treaty, engagement, or convention with another country. Under Article 231, in case of inconsistency between the laws enacted by Parliament and those of the State Legislature, the law made by Parliament shall prevail, except in regard to matters in the Concurrent List, in which case the State legislation shall prevail, if the same had been reserved for the consideration of the Governor and received his assent. Article 232 removes any defect in legislation due to technical flaws, as in the case of a want of recommendation by the Governor, if he has subsequently given his assent, or that of the President, if he gives his assent later.

The division of Legislative Powers between the Centre and the Provinces has always been a vexed question in all Constitutions. Its satisfactory solution has for long been evading leading students of constitutional law. Dicey in his *Law of the Constitution* suggested four tests to discover the distribution of powers between the Center and the States Governments in a Federal State: (1) Whether it is the National Government (Central Government) or the States to which belong only 'definite powers' *i.e.*, the powers definitely assigned to it under the Constitution. (2) Whether the enactment's of the Federal Legislature can be nullified by any other authority or tribunal, or treated as void. (3) To what extent the Federal Government can control the legislation of separate States. (4) What is the nature of the body (if such there be) to amend the Constitution.

In the Constitution of the U.S.A., the powers conferred on the Central Government are strictly 'definite'; those left to the States are undefined and indefinite, with the result that the Central Government cannot claim any power which is not expressly conferred by statute, while the federating States could claim to exercise all powers of independent States, which have not been expressly removed under the Constitution. So much so, the Federal Legislation is subject to the Constitution and could be challenged in Courts, as in the case of the State Legislation, if it were to transgress the Constitution. No power is vested in the Federal Government to disallow or annul the States Legislation. Amendment of the Constitution can be effected only with the sanction of three-fourths of the States[2]

In the Dominion of Canada, the authority of the Dominion Government is indefinite; that of the Provinces is circumscribed within the narrowest limits. The legislative field of the Dominion Parliament extends to all matters not exclusively assigned to the federating Units, while the powers of the States Legislatures are restricted to subjects specifically allotted to them. Both the Dominion and Provincial Legislation could be nullified by a competent court in the event of their infringing the Constitution. Acts passed by the States could be disallowed by the Dominion Government. Before the Statute of West-minister, 1931, a modification of the Constitution was possible only by an amendment of

2. awmin.nic.in/ncrwc/finalreport/v1ch8.htm

the British North America Act of 1867, by an Act of the Imperial Parliament of the United Kingdom.

In Australia, the authority of the Federal Government is limited; that of the component States, unlimited. The Legislation of both is subject to the Constitution of the Commonwealth of Australia. The Commonwealth Government is powerless to annul the State Legislation. Amendment of the Constitution is permitted by a Bill to be passed to that effect by the Commonwealth Parliament and approved by a majority of voting electors and of the federating States. As in the case of Canada before 1931, the British Parliament alone was competent to amend the Constitution.

In the Union of South Africa, under the Act of 1909 which constituted the Provinces into the Union, the Union Parliament possesses un-limited powers of Legislation for the peace and good government of the Union. The Legislative Powers of the Provinces are limited to (1) making ordinances, (2) subjects specified in the Act and as subsequently amended, (3) matters which the Union Parliament may delegate to them, and (4) all subjects which in the opinion of the Union Government are purely local or of a private character.

The Authors of the Draft Constitution of India did not accept any one of the above Constitutions in its entirety. From the analysis of the provisions enumerated above, it will be apparent that their effort has been to build up a strong Centre in which should vest the Residuary Powers, and the Provinces should have only such powers as are expressly assigned to them in the Constitution Act. This is a departure from the principle of decentralization, which culminated in the Provincial Autonomy of 1937. During the Round Table Conference (1930-33) the British India delegates from predominantly Muslim areas like the North-West Frontier, the Punjab, Sind, and Bengal pleaded that the Residuary Powers in the Indian Federation, envisaged at the time, should vest in the Provinces and not with the Centre; on the other hand, the delegates from Provinces like Madras, Bombay, U.P., Bihar etc., where the Hindus are in a majority, pressed for the retention of those powers with the Centre. The Joint Select Committee of Parliament on Indian Constitutional Reforms tried to meet the demand of both, half-way; but in effect the distribution of Legislative Powers was defective in many particulars. The plan

adopted in the White Paper of 1933, and subsequently approved, was that the allocation of residuary legislative power should be left to the discretion of the Governor-General and settled by him *ad hoc* on each occasion when the need for legislation arose. Dealing with the inherent difficulty of a clear scheme of allocation of powers, the Joint Select Committee in their Report (Vol. I Part I) said:

"……It will be observed that, for the purpose of reducing the Residuary Powers to the smallest possible compass, the lists of subjects dealt with in all the three Lists are necessarily of great length and complexity: whereas, apart from the question of Concurrent List, if it had been possible to allocate residuary legislative powers to, *e.g.*, the Provinces, only a List of Central Powers would have been required, with a provision to the effect that the legislative powers of the Provinces extended to all power, not expressly allocated to the Centre; and, conversely, if the residue had been allocated to the Centre. This, broadly, is the plan which has been adopted in Canada and Australia, the Residuary Powers being vested, in the case of Canada, in the Dominion Legislature, and in the case of Australia, in the Legislatures of the States. Even so, experience has unhappily shown that it has been impossible to avoid much litigation on the question whether legislation on a particular subject falls within the competence of one legislature or the other…..On the point of constitutional substance it seems to us that, if a choice were to be made between the two alternative principles to which we have just drawn attention, the logical conclusion in the White Paper would be the allocation of all Residuary Powers to the Provincial Legislatures; but this solution would, we think, require to be accompanied by the insertion in List of some general overriding power of Central legislation in matters of all-India concern, since any new subject cannot be said to fall automatically into the Provincial field, irrespective of its natural implications….

While therefore matters of a purely local nature would fall within the provincial field of legislation, there would be cases where the frontiers of the Provinces extend beyond their geographical boundaries, *e.g.,* (1) legislation affecting the Indian Codes which deal with the main principles of law throughout the country and are of an all-India character, (2) Labour legislation, (3) Legislation to combat epidemic diseases. On such matters the Central Government can legislate concurrently with the Provinces. The Authors of the

Draft Constitution have drawn up three Lists, (1) Union List, (2) State List, and (3) Concurrent List. This is at variance with other Constitutions where the method adopted is to allocate exhaustively powers to one Legislature, and to assign the entire unspecified residue to the other. A statutory delimitation of legislative jurisdictions is capable of mischief, because so far as the Concurrent List is concerned, there may be overlappings which will have to be decided by a judicial tribunal. But there is danger the other way too, in the enumeration of powers to the Centre and the allocation of unspecified residue to the Provinces, which might involve a reservation to the Central Government of an overriding power, and the possibility of the Provinces assuming for themselves any unspecified sources of taxation to be devised hereafter, such as provided under Article 223. The broad principle therefore is that while the Centre should have a power of coordinating or unifying regulation in the Concurrent List, if they have a closer semblance to the State list than to the union List, they shall be administered mainly on lines of Provincial policy. In the event of a conflict, the Union legislation shall prevail as provided in Article 228. But an unqualified provision to that effect would cut across the Provincial jurisdiction in the List, so as to throw overboard the Provinces by an aggressive Centre.

Under Article 223, the Residuary Powers are expressly vested in Parliament which is given exclusive power to make any law with respect to any matter not enumerated in the Concurrent or State Lists. Under Article 227, the power of Parliament to legislate for the whole of India on any subject in the State List arises during a Proclamation of Emergency. It shall be lawful for Parliament to make laws for the whole of India in the national interest, under Article 226, on any subject in the State List if agreed to by two-third members of the State Legislature. These are all-embracing powers which the Authors have thought fit to confer on the Centre to make it strong, and to guard against fissiparous tendencies among the States so as to build up a powerful national Government. The attempt is indeed laudable, but it is sought to be achieved at a high cost to the Provinces.

The main argument of the enthusiasts of a strong Centre is that, in the face of the present uncertain state of affairs in India, which is further complicated by the fluid international

situation abroad, it is only a Powerful Centre that can cope with the political situation. This would necessarily involve the vesting of Residuary Powers with the Centre, as against the Provinces, and these provisions should stand at least for some years, till things settle down to normal. The contention is sound, especially if viewed against the background of the defence of India, the protection of Indian Nationals and their rights abroad, the food problem, and other industrial and hydro-electric power projects in which the Government of India's interests are predominantly linked with those of the Provinces, and wherein the Centre alone can give an effective lead. But even here, there are limits to such special features: they are unusual events of a passing phase though their incidence may be abnormal. To be obsessed with such eventualities as to deprive the Provinces of a liberal field of Legislative Powers, and to arm the Centre with all the powers may not be an ideal solution. Any subsequent amendment of the Constitution to set right the uneven allocation, if an actual working it proves defective, would be a difficult process. One of the main objections against the Indian Federation envisaged under the Government of India Act 1935, was that nearly 75 per cent of the revenues of India was reserved for the Federal Center, and the Provinces were to share the small residue. An amendment of the Constitution after the Act comes into force would be a laborious and thankless task with uncertain results. Such amendments have been equally complicated in other Constitutions. While therefore the anxiety of the Authors for a strong Centre can be appreciated, especially to meet a grave emergency or an abnormal crisis, the Provinces should not be made to depend on the mercy of the Union Centre in regard to their Legislative Powers. It would be against the principles of devolution and decentralisation which reached their acme in the Provincial Autonomy of 1937. It will throw to the winds the healthy notion that the Provinces are to be autonomous Units in a federal India, as visualised earlier. The distribution of Legislative powers in the Draft Constitution requires an equitable revision, so that the Provinces can be met half-way, without the Centre losing its all-India role of an effective coordinating authority.3

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3 BY V. P. KRISHNAN NAMBIAR, M.A., B.L. *(Advocate, Madras)*

Union and State legislation

(a) The co-existence of Central and State laws in a particular area can give rise to litigation. Such problems arise, either because the Union or a State may illegally encroach upon the province of the other (parallel) legislature, or they may arise because (though there is no encroachment, as such, on each other's sphere), the two laws clash with each other.

(b) The two situations are, strictly speaking, different from each other; and they must be judged by two different tests. Where the subject-matter of the legislation in question falls within either the Union List or the State list only, then the question is to be decided with reference to legislative competence. One of the two laws must necessarily be void, because (leaving aside matters in the Concurrent List), the Indian Constitution confers exclusive jurisdiction upon Parliament for matters in the Union List and upon a State Legislature for matters in the State List. The correct doctrine applicable in such cases is that of *ultra vires.* Since one of the two laws must be void, the question of inconsistency between the two has no relevance. Only one law will survive; and the other law will not survive, because *ex hypothesi,* it has no life.

(c) In contrast, where the legislation passed by the Union and the State is on a subject matter included in the Concurrent List, then the matter cannot be determined by applying the test of *ultra vires* because the hypothesis is, that both the laws are (apart from repugnancy), constitutionally valid. In such a case, the test to be adopted will be that of repugnancy, under article 254(2), of the Constitution.

(d) It follows, that it is only where the legislation is on a matter in the Concurrent List, that it would be relevant to apply the test of repugnancy.

Notwithstanding the contrary view expressed in some quarters, this appears to be the correct position[4]

INTERPRETATION OF LEGISLATIVE ENTRIES :

Determination of nature of legislation

It is obvious, that where either the Union or the State legislature proposes to enact a law, it must, in the first place, decide whether it has legislative competence with reference to the subject matter of the law. For this purpose, the draftsman will necessarily have to examine whether the subject matter falls within the relevant list, that is to say:

(a) The Union List or the Concurrent list (for the draftsman in the Union) or

(b) The State List (for the draftsman in the State).

Doctrine of pith and substance

For this purpose, the test of "pith and substance" is usually applied. In no field of constitutional law is the comparative approach more useful, than in regard to the doctrine of "pith and substance". This is a doctrine which has come to be accepted in India and derives its genesis from the approach adopted by the courts (including the Privy Council), in dealing with controversies arising in other federations. Briefly stated, what the doctrine means, is this. Where the question arises of determining whether a particular law relates to a particular subject (mentioned in one List or another), the court looks to the substance of the matter. Thus, if the substance falls within Union List, then the incidental encroachment by the law on the State List does not make it invalid.

The Privy Council applied this doctrine in **Profulla Kumar Mukerjee v/s .bank of Khulna[5]**

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4. by Dr. D. Basu in his Commentary on the Constitution of India (1950) 1st edition, page 564**,**

In this case the validity of the Bengal Money Lenders' Act, 1946, which limited the amount and the rate of interest recoverable by a moneylender on any loan was challenged on the ground that it was ultra virus of the Bengal legislature in so far as it related to 'Promissory Notes a central subject. The Privy Council held that the Bengal Money-lenders' Act was in pith and substance a law in respect of lending and money-lenders-a State subject, and was valid even though it trenched incidentally on "Promissory note"-a Central subject..

In **State of Bombay v. F. N. balsara**[6]
the Bombay Prohibition act, which prohibited sale and possession of liquors in the State, was challenged on the ground that it incidentally encroached upon import and export of liquors across custom frontier- a Central subject. It was contended that the prohibition, purchase use possession and sale of liquor will effect its import. The Court, held that Act valid because the pith and substance of the Act fell under the state List not under Union List even though the Act incidentally encroached upon the Union Powers of Legislation.

Colourable Legislation

In K.C.G. Narayan Dev v/s State of Orissa,[7]

> The Supreme Court explained the meaning and Scope of the doctrine of Colourable Legislation in the following terms
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> "If the Constitution distributes the legislative power amongst different Legislative bodies, which have to act within their respective spheres marked out by specific legislative entries or if there are limitations on the legislative authority in the shape of fundamental rights, question arises as to whether the Legislature in a particular case has or has not, in respect to the subject-matter of the statute or in the method of enacting it, transgressed the limits of its constitutional powers.

5 .AIR 1946 SC 375
6.AIR 1951 SC 318
7 .AIR 1987 SC 2213

> Such transgression' may be patent, manifest or direct, but it may also be disguised, covert or indirect, or and it is to this latter class of cases that the expression colourable legislation has been applied in judicial pronouncements. The idea conveyed by the expression is that although apparently a legislature in passing a, statute purported to act within the limits of its powers, yet in substance and in reality it transgressed these powers, the transgression being veiled by what appears, on proper examination, to be a mere pretence or disguise ..... In other words, it is the substance of the Act that is, material and not merely the form or outward appearance, and if the subject-matter in substance is something which is beyond powers of that Legislature to legislate upon the form in which the law clothed cannot save it from condemnation. The Legislature cannot violate the constitutional prohibitions by employing indirect methods.

"Colourability" is thus bound up with incompetency and not tainted with bad faith or evil motive. A thing is colorable which in appearance only and not in reality, what it purports to be.

Thus the whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly". In these cases the Court will look in the true nature and character of the legislation and for that its object, purpose or design to make law on a subject is relevant and not its motive. If the Legislature has power to make law, motive in a making the law is "irrelevant".

State of Bihar v/s Kameshwar Singh [8]

This is the only case where a law has been declared invalid n the ground of colourable legislation. In this case the Bihar Land Reforms Act, 1950, was held void on the ground ,that though apparently it purported to lay down principle for determining compensation yet in reality it did not lay down any such principle and 'thus indirectly sought to deprive the petitioner any compensation.

Decisions

The principle of "pith and substance" had come to be established by the Privy Council, when it determined appeals from Canada or Australia involving the question of legislative competence of the federation or the States in those countries. In India, the doctrine of pith and substance came to be adopted in the pre-independence period, under the Government of India Act, 1935. The classical example is the **Privy Council decision in Prafulla Vs. Bank of Commerce**[9] , holding that a State law, dealing with money lending (a State subject), is not invalid, merely because it incidentally affects promissory notes (See now Union List, entry 46). The doctrine is sometimes expressed in terms of ascertaining the "nature and true character of legislation"; and it is also emphasized, that the name given by the Legislature (to the legislation) in the short title, is immaterial. Again, for applying the "pith and substance" doctrine, regard is to be had (i) to the enactment as a whole, (ii) to its main objects, and (iii) to the scope and effect of its provisions.

8.AIR 1952 SC 352
9. AIR 1946 PC 60

CHAPTER III

UNION AND STATE LEGISLATURE OF INDIA

A LEGISLATIVE RELATIONS

The Constitution of India makes two-fold distribution of legislative powers-
(1) with respect to territory,
(2) with respect to subject matter.

Territorial jurisdiction

As regards territory Article 245 (1) provides that subject to the provisions of the constitution, Parliament may make laws for the whole or any part of the territory of India. According to clause (2) of Article 245 a law made by Parliament shall not be deemed to be invalid on the ground that it has extra-territorial operation' ie. takes effect outside the territory of India. **In A. H. Wadia v./s income-tax Commissioner Bombay**[10] the Supreme Court held : "In the case of a sovereign Legislature question of extra-territoriality of any enactment can never be raised in the municipal court as a ground for challenging its validity . The legislation may offend the rules of international law, may not be recognized by foreign courts. Or there maybe practical difficulties in enforcing them but these are quest of policy with which the domestic tribunals are concerned."

The legislative powers of Parliament and the state Legislatures is subject to the provisions of the Constitution. viz. (I) the Schemes of the distribution of powers. (2) Fundamental Rights. (3) other provisions of the constitution.

Theory of Territorial Nexus

The Legislature of a State may make laws for the whole or any part of the State, [Art. 245(1)]. This means that State Laws would be void if it has extra-territorial, operation

10. AIR 1949 FC 18

i.e., takes effect outside the State.' However, there, is one exception of the general rule. A State law of extra-territorial operation will be valid if there is sufficient nexus between the object and the State.

In Wallace v/s Income-tax Commissioner, Bombay[11] a company which was registered in England was a partner in the firm in India. The Indian Income-tax Authorities sought to tax the entire income made by the company. The Privy Council applied the doctrine of territorial nexus and held the levy of tax valid. it said that derivation from British India of major part of its income for a year gave to company for that year sufficient territorial connection to justify its being treated as at home in India for all purposes of tax on its income for that year from whatever source income may be derived.

In State of Bombay v. R. M. D. C.s[12]

The Bombay State levied a tax on lotteries and prize competitions. The tax was extended to a newspaper printed and published in Bangalore but had wide circulation in Bombay. The respondent conducted the prize competitions through this paper. The, 'Court held that there existed a sufficient territorial nexus to enable the' Bombay State to tax the newspaper. If there is sufficient nexus between the person sought to be charged and the State seeking to tax him, the taxing statute would be upheld. But the connection between the State and the subject matter of law must be real and not illusory and the liability sought to be imposed must be pertinent to that connection. Whether there is sufficient connection is a question of fact and will be determined by Courts in each accordingly. In Tata Iron and Steel Company v. State of Bihar/' the Supreme Court applied the theory of territorial nexus to sales-tax laws.

Legislative power is plenary-

The power of the Legislature under Article 245 to enact laws is a plenary power subject only to its legislative competence and other constitutional limitations. The power to make

11.AIR 1948 SC 118
12. AIR 1957 SC 699

a law includes the power to give effect to it prospectively as well as retrospectively. The Legislature has power to alter the existing law retrospectively. The power to validate a law retrospectively is, subject to other constitutional limitations, an ancillary power to - legislate on the, particular subject,"

Legislation declaring earlier decision invalid unconstitutional—
In state of Haryana v. Karnal Co-operative Farmer's Society [13]

it has been held that legislature has power to render ineffective the earlier judicial decisions by removing or altering or neutralizing the legal basis in the unamended law on which such decisions were founded even retrospectively, but it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a legislature under our Constitution. Accordingly, the Court held that the Punjab Village Common Lands (Regulation)
Haryana Amendment Act, 1981 which merely directs the Assistant Collector to disregard or disobey the earlier Civil Court's decrees and judicial orders (i.e., retrospectively) is unconstitutional as being an encroachment on judicial power.

Delegated legislation

Delegated or subordinate legislation may be defined as rules of law made under the authority of an Act of Parliament. although laws are to be made by the Legislature, but the Legislature may by statute delegate its power to other persons or bodies. Such a statute is commonly known as "the enabling Act" and lays down the broad principles and leaves the detailed rules to be provided by regulations made by a Minister or other persons. Delegated legislation exists in the form of rules, regulations ,orders and byelaws

Factors responsible for the growth of delegated Legislation.-

13.(1993) 2SCC 363

The practice of delegating power to make subordinate legislation has greatly increased in the modern times due to the following reasons :

1. Pressure on Parliamentary time.-Parliament being a busy body has insufficient time to deal adequately with the increasing mass of legislation necessary to regulate affairs of a complex modem Stale.

2. Technicality of subject-matter- Technicalities .of modem legislation require expertise knowledge of problems which is not expected of the legislators in the Legislature which are composed of politicians.

3. Opportunity for experimentation- Delegated legislation is more flexible, easily amendable and revocable than ordinary legislation. There is enough scope for experimentation.

4. Unforeseen contingencies- Subordinate legislation enables a Government to deal with problems which could not be foreseen when the 'enabling Act' was passed and to act quickly in an emergency.

5. Emergency powers- During the emergency quick and decisive action is necessary and at the same time it is to be kept confidential. The Legislature is not fit to serve this end and therefore the executive is delegated the power to make rules to deal with such situations.[14]

The Indian Constitution permits subordinate legislation by delegation. Art. 13 (3) provides that "law" "includes any ordinance, Older, bye-law, rule, regulation, notification, custom or usages having in the territory of India the force of law. The theory of separation of power which is an important feature of the American constitution is absent in India as well as in England. So, there is no constitution impropriety in the practice of delegating legislative power to executive. In the U.S.A: the entire legislative power is vested the Congress.

Parliament of the Indian Union as also the State Legislature can delegate both administrative as well as legislative details to any subordinate body or individual. There

14.J.N Pandey the constitutional law of india page no 643

are, however, some salient safeguards or limitations to this power. The rule or regulation made by the delegated body must be ultra virus of the statute.

Limits- The limits of delegated legislation have been set out in the various decisions of the courts after the new Constitution came into force. It has been held that the Legislature cannot delegate its essential legislative functions which consist in declaring the legislative policy and laying down the standard which is to be enacted into a rule of law with sufficient clearness, and what can be delegated is the task of subordinate legislation which by very nature is ancillary to the statute which delegates the power to make it effective. The courts cannot interfere in the discretion vested in the Legislature in determining the extent of the delegated power in a particular case.

Need to control exercise of delegated legislation

In 1929 the Lord Chief Justice lord Heward in his book the new despotism criticized the growth of delegated legislation and pointed out the dangers of its abuse. As a result the 'Committee on Minister's Powers was set up which in its report accepted the necessity for delegated legislation but considered that the power delegated might be misused and recommended the following modes of control over the delegated legislation namely:

1. Nomenclature of various forms of delegated legislation should be Supplied and better provision be made for publication.
2. The precise limits of law-making power which Parliament intended to confer on a Minister should be clearly defined.
3. The use of "Henry VIII clause" authorizing a Minister to amend the enabling Act itself should be an exception and be confined to bringing can Act into operation.
4. Clauses excluding jurisdiction of the Courts should be abandoned in all but the most exceptional cases.
5. Consultation with interested bodies should be extended.
6. Parliamentary scrutiny and control should be improved,

There are two types of control over delegated legislation-

(I) Judicial control.

(2) Parliamentary control.

Judicial control-

The Courts have power to consider whether the delegated or subordinate legislation is consistent with the provisions of the 'enabling Act'. Their validity can be challenged on the ground of ultra virus i.e., beyond the competence of the Legislature. The Courts can declare the parent Act unconstitutional on the ground of excessive delegation or violation of fundamental rights or if it is against the scheme of distribution of Legislative powers under Art. 246 of the Constitution. The parent Act may be constitutional but the delegated legislation emanating from it may come in conflict with some provisions of the Constitution and hence it can be declared unconstitutional.

Parliamentary control.-

It is the primary duty of the Legislature to supervise and control the exercise of delegated power by the executive authorities. Parliamentary control over the delegated Legislation is exercised at three stages. The first stage is the stage when power is delegated to the subordinate authorities by Parliament. This stage comes when the Bill is introduced in the Legislature. The second stage is when the rules made under the statute are laid before the Houses of Parliament through the committees on subordinate legislation. The Committee on subordinate legislation scrutinizes the rules framed by the executive and submits its report to the Legislature if the rules are beyond the permissible limits of delegation. These rules are laid before the Legislature and debated in the Legislature. If they are ultra virus questions may be put to the Minister concerned and if necessary even a motion of censure on the Minister responsible for the 'rules and regulations maybe moved.[15]

Publication of delegated legislation.-

15.Dr J.N.Pandey the constitutional law of india 48th edtn page 640

This is a very sound safeguard against the misuse of the delegated legislation by the executive authorities. This safeguard was incorporated in the Acts in Britain and in United States of America. ln India 'such type of Act have not been passed but the safeguard of publication of delegated legislation is available under the Judicial decisions. The Supreme Court has held that Unless the delegated legislation is published It cannot be enforced.

Distribution of Legislative Powers –Subject matter.

As has been pointed out at the outset, a federal system postulates a distribution of powers between the Centre and States. The nature of distribution varies according to the local and political background in each country. In America, the Sovereign States which were keen to federate, 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. Thus American Constitution only enumerates the powers of the Central Government and leaving the residuary power to the States. Australia followed the American pattern of only one enumeration powers, i.e., of Central government leaving the residuary powers, to the States because their 'problems were Similar to the Americans. In Canada there is double enumeration, Federal and Provincial leaving the residue for the Centre. The Canadians were conscious of the unfortunate happenings in U. S. A. culminating in Civil War of 1891. They were aware of the shortcomings of the weak Centre. Hence, they opted for a strong Centre. Our Constitution-makers followed the Canadian scheme obviously opting for a strong Centre. However, they added one more List-- the Concurrent List.The Government of India Act 1935 introduced a scheme of three-fold enumeration. viz; Federal, Provincial and Concurrent.

Union List

Union list consists of 100 items (previously 97 items) on which the parliament has exclusive power to legislate with including: defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping

and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit of Government accounts, constitution and organisation of the Supreme Court, High Courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty, terminal taxes.

State List

State list consists of 61 items (previously 66 items). Uniformity is desirable but not essential on items in this list: maintaining law and order, police forces, healthcare, transport, land policies, electricity in state, village administration, etc.The state legislature has exclusive power to make laws on these subjects. But in certain circumstances,the parliament can also make laws on subjects mentioned in the State list.Then the parliament has to pass a resolution with 2/3rd majority that it is expedient to legislate on this state list in the national interest.

Though states have exclusive powers to legislate with regards to items on the State list, articles 249, 250, 252, and 253 state situations in which the federal government can legislate on these items.

Concurrent List

Concurrent list consists of 52 items (previously 47 items). Uniformity is desirable but not essential on items in this list: Marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press, stamp duties.[16]

16. Indian Constitution by Vijay Jaiswal On August 27, 2013

Article 1 of the Indian constitution declares India to be a "**Union of States**." India thus establishes a federation. A federation is a composite polity. There are two sets of co-ordinate authorities, each autonomous and independent of control by the other. The two sets combined constitute the total polity.

In terms of Article 246 of the Indian constitution, there is a **threefold distribution of legislative powers between Union and the State Governments.** The VIIth Schedule of the constitution contains 3 lists.

1. **The Union List** gives exclusive legislative powers on 99 items of all India character such as defence, foreign affairs, currency and coinage etc.
2. **The State list** similarly gives exclusive legislative powers to the states on 61 items, now expanded to 65 items. Such subjects are essentially subjects of local interest.
3. **The concurrent list** empowers both the union and the states to legislate on 52 items. The subjects in this list are such that both national government and the governments of the states are interested in them. Education, Civil and Criminal procedure code, marriage and divorce, bankruptcy and insolvency etc. are some prominent items in this list.

Both the union and the state governments are competent to legislate on subjects in the concurrent list. In case of conflict between a central law and a state law on a subject in this list; normally, the union law should prevail. If however a state law reserved for the Presidents assent receives, his assent, it will prevail over the union law. The power to legislate on a matter not enumerated in any of the 3 lists is vested in the union Parliament by Art. 248. Thus in India residuary powers belong to the union government.

Thus the distribution of legislative powers by the constitution is heavily tilted towards the centre. Over and above this, the constitution visualizes 5 extraordinary situations, **when the Union Parliament will be competent to legislate on matters in the state list**.

- **Firstly**, under Art 249, the Parliament may legislate on any subject in the state list, if the Rajya Sabha passes a resolution by not less than a 2/3 majority that it is necessary to do so in the national interest.
- **Secondly**, under Art 250, the Union Parliament may legislate on state subjects when a Proclamation of National emergency is in operation under Art. 352.
- **Thirdly**, under Art 252, the Parliament may legislate on state subjects on request by the legislatures of two or more states.
- Fourthly, under Art 253, the Parliament is competent to legislate on subjects in the state list for the implementation of international treaties, a agreements or convention with foreign states.
- **Finally**, when a breakdown of constitutional machinery in a state occurs and there is a consequent President's rule in state under Art. 356, the powers of the State Legislature are exercised by the Parliament.

India is a quasi federal state rather than a truly federal state. In his opinion, the Indian constitution is a unitary constitution with subsidiary federal features, rather than a federal constitution with subsidiary unitary features.

The unitary or the centralizing tendency in India is very strong. In all federations in the world today, the centralizing tendency is very marked. But in India, this tendency is so strong, that the state governments constantly live in fear of central intervention. There is hardly any meaningful area of state autonomy.

Administrative powers

The Union and states have independent executive staffs fully controlled by their respective governments and executive power of the states and the Centre are extended on issues they are empowered to legislate.

Union control over states

According to the Article 356 of the Constitution of India, states must exercise their executive power in compliance with the laws made by the Central government. Article 357 calls upon every state not to impede on the executive power of the Union within the states. Articles 352 to 360 contain provisions which empower the Centre to take over the executive of the states on issues of national security or on the breakdown of constitutional machinery. Governors are appointed by the Central government to oversee states. The president can dissolve the state assembly under the recommendation of the council of ministers by invoking Article 356 if and when states fail to comply with directives given by the Centre.

The Constitution provides that, except in a few cases, union law trumps state law. If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void. There is an exception to this in cases "where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."[17]

17. www.importantindia.com/2049/**union-and-state-legislature**-of-india/

CHAPTER IV

RATIONALE OF THE SCHEME OF DISTRIBUTION OF POWERS

Four salient features

Four salient features mark the scheme of distribution of legislative powers under the Indian Constitution.

(1) There is a three-fold distribution of legislative power-represented by three lists – Union, State and Concurrent.

(2) The supremacy of federal laws is maintained in two situations (which are the principal situations of practical importance):

(a) In determining the extent of legislative power of the federation and the units, (if a doubt arises as to the list in which a particular subject of legislation falls, the *non obstante* clause in article 246 achieves federal supremacy);

(b) In determining the question whether a federal law will prevail or a State law will prevail; (if both have an impact on a particular human activity, and are in conflict with each other, then the federal law prevails).

(3) If a particular topic does not find an express mention in the three legislative lists, then the power to legislate thereon (i.e., the residuary law-making power) is vested in the federation.

(4) In certain situations (even apart from emergencies), the federation may come to be vested with legislative power, even on state subjects.

The scheme of distribution in India (articles 245-246)

(a) The constitutional provisions in India on the subject of distribution of legislative powers between the Union and the States are spread out over several articles (articles 245-254). However, the most important of those provisions – i.e, the basic one – is that contained in articles 245-246.

Article 245 provides, *inter alia*, that (subject to the provisions of the Constitution).

(i) Parliament may make laws for the whole or any part of the territory of India and

(ii) the legislature of a State may make laws for the whole or any part of the State.

(b) Thus, article 245 sets out the limits of the legislative powers of the Union and the States from the geographical (or territorial) angle. From the point of view of the subject matter of legislation, it is article 246 which is important. Article 246 reads as under:

"246(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List 1 of the Seventh Schedule (in this Constitution, referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and subject to clause (1), the Legislature of any State also, shall have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution, referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution, referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State, notwithstanding that such matter is a matter enumerated in the State List"[18]

18. Dr J.N.Pandey the constitutional law of india 48th edtn page 648

CHAPTER V

DISTRIBUTION OF LEGISLATIVE POWERS UNDER THE INDIAN CONSTITUTION

THE distribution of Legislative Powers between the Union and the States in the Draft Constitution of India is dealt with in Chapter I of IX and is covered by Articles 216–232.

Under the Indian constitution, a state government has the power to make laws in respect of water resources of that state. The Parliament has the power to legislate the regulation and development of interstate rivers. Thus the authority of the state Government over water can be exercised, subject to certain limitations that may be imposed by the Parliament.

Here it is important to make clear distinction between an inter-state river and an intra-state river. A river that lies within one state from its source to its mouth is an intra-state river and any river which flows in the territory of two or more states is an inter-state river.

The legislative framework of the constitution related to water is based on Entry 17 of the State List, Entry 56 in the Union List, and Article 262 of the Constitution. These are:

a) **Entry 17 in List II (State List) in Schedule VII**

Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List-I. It can be seen immediately that it is not an unqualified entry. Although water is in the State List, this is subject to the provisions of Entry 56 in the Union List, which reads as:

b) **Entry 56 of List I (Union List):**

Regulation and development of inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

c) **Also relevant here are the provisions of 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 the waters of, or in, any Inter-State river or river valley.

(2) Not withstanding anything in this Constitution, Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in clause (1).Some other articles and entries may also have a bearing on the matter.

Article 248 (Residuary powers of legislation):

Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

Article 254: Inconsistency between laws made by Parliament and laws made by the Legislatures of States

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law-made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the state shall, to the extent of the repugnancy, be void.

Provided that nothing in this clause shall, prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. So far the Parliament has not

made much use of the powers vested in it by the Entry 56 of the Union List. In view of the supremacy of the parliament, it is not totally right to say that water is a state subject. Moreover, most of India's important rivers are inter-state. Hence, water is potentially as much a union subject as a state subject. Further, the legislative power of a state under Entry 17 has to be exercised in such a manner that the interests of other states do not suffer adversely and a dispute is created.

The power and role given to the Union Government with regard to the management of inter-state rivers is very important and necessary. In this context, the provisions of Entry 20 in the Concurrent List, namely, economic and social planning, are also quite relevant. By virtue of this provision, the major and medium irrigation, hydropower, flood control and multi-purpose projects are required to seek clearance of the central government for inclusion in the national plan.

Article 254 – repugnancy

Since the Concurrent List16 – article 246 (2) – gives power to two legislatures, a conflict can arise between laws passed on the same subject by the two legislatures. To deal with this situation, article 254 of the Constitution makes the following provision:[19]

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision is repugnant to the provisions

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19. Dr J.N.Pandey the constitutional law of india 48th edtn page 654

of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter, including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

In M. Karunanidhi v. Union of India[20]

Fazal Ali, J, reviewed all its earlier decisions and summarized the test of repugnancy.?

According to him a repugnancy would arise between the two statutes in the following situations :

I. "It must be shown that there is clear and direct inconsistency between the two enactments [Central Act and State Act] which is irreconcilable, so that they cannot stand together or operate in the same field.

2. There can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. Where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collusion with each other, no repugnancy results.

4. Where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field.

The above rule of repugnancy is, however, subject to the exception provided in clause (2) of this Article. According to clause (2) if a State Law with respect to any of the matters

20.AIR 1979 SC 898

enumerated in the Concurrent List contains any provision. repugnant to the provisions or an earlier law made by Parliament, or an existing law with respect of that matter, then the State law if it has been reserved for the assent of the President and has received his assent, shall prevail notwithstanding such repugnancy. But it would still be possible for the Parliament under the provision to clause (2) to override such a law by subsequently making a law on the same matter If it makes such a law the State Law would be void 'to the extent of repugnancy with the Union Law.

In Deep Chand v , State of U. P[21]

The validity of U.P. Transport Service (Development) Act was involved. By this Act the State Government was authorized to make the Scheme for nationalization of Motor Transport in the State. The law was necessitated because the Motor Vehicles Act, 1939 did not contain any provision for the nationalization of Motor Transport Services. Later on, in 1956 the Parliament with a view to introduce a uniform law amended the Motor Vehicles Act, 1939, and added a new provision enabling the State Government to frame rules of nationalization of Motor Transport. The Court held that since both the Union Law and the State Law occupied the same field, the State Law was void to the extent of repugnancy to the Union Law.

In '**Zaverbhai v/s State of Bombay**[22]

Parliament enacted the Essential Supplies Act, 1946, for regulating production, supply and distribution of essential commodities. A contravention of any provision of the above Act was punishable with imprisonment up to 3 years or fine or both. In 1947, considering the punishment inadequate, the Bombay Legislature passed an Act enhancing the punishment provided under the Central Law. The Bombay Act received the assent of the President and thus prevailed over the Central Law and become operative in Bombay. However, in 1950 Parliament amended its Act of 1946 and enhanced the punishment. It

21.AIR 1959 SC 648
22.AIR 1954 SC 752

was held that as both occupied ,the Same field (enhanced punishment) the State law became void as being repugnant to the Central law.

Article 255

Notice should also be taken of article 255 of the Constitution, quoted below Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only.-

No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given -

(a) Where the recommendation was that of the Governor, either by the Governor or by the President;

(b) Where the recommendation required was that of the Rajpramukh, either by the Rajpramukh or by the President;

(c) Where the recommendation or previous sanction required was that of the President, by the President. "

Parliaments powers to legislate on state subjects

(Article 249, 250, 252, 253 and 256)

Though in normal times the distribution of powers must be strictly maintained and neither the State nor the Centre can encroach upon the sphere allotted to the other by the Constitution, yet in certain exceptional circumstances the above system of distribution is either suspended or the powers of the Union Parliament are extended over the subjects mentioned in the Slate List. The exceptional circumstances are,

(1) Power of Parliament to legislate in the national interests.-

According to Article 249. if the Rajya Sabha passes a resolution supported by, 213 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 State Law, then it shall be lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter so long as the resolution remains in force. Such a resolution normally lasts for a year; it may be renewed as many times necessary but not exceeding a year at a time. These laws of Parliament will, however, cease to have effect on the expiration of the period of six months after resolution has ceased to operate.

(2) During a Proclamation of Emergeney.-

According to Article 250 while the Proclamation of Emergency is in operation the Parliament shall have power to make laws for the Whole or any part of the territory of India with respect to all matters in the State List. Such a law, however, shall cease to have effect on the expiration of six months after the of emergency has ceased to operate.

(3) Parliament power to legislate with the consent of the State

according to Article 352 if the legislature of two or more states pass resolution to the effect that it is desirable to have a law passed by parliament on any matter in the state list, it shall be lawful for parliament to make laws regulating that matter. any other state may adopt such a law by passing a resolution to that effect, such law can only be amended or repealed by the act of the parliament.

(4) Parliament's power to legislate for giving effect to treaties and 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 subject in the State List. Art 253 enables the Government of India to implement all international obligations and commitments. Treaties are not required to be ratified by Parliament. They are, however, not self-operative. Parliamentary legislation will be necessary for implementing the provisions of a treaty. But laws enacted for the enforcement of treaties will be subject to the constitutional limits, that is, such a law cannot infringe fundamental right.

(5) In case of failure of constitutional machinery in a State.-

Under Article 256 Parliament is empowered to make laws with respect to all matters in the State List when the Parliament declares that the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

Thus from the scheme of distribution of legislative powers between the Union and the States it is quite evident that the framers have given more powers to the Union Parliament as against the States. The States are not vested with exclusive jurisdiction even over the subjects assigned to the States by the Constitution and thus it makes the States to some extent subordinate to Centre. Indeed this is a clear departure from the strict application of the federal principle followed in America and Australia. Critics of our Constitution take these provisions In support of their arguments that due to these provisions the federal character of the Indian Constitution, if not disappeared, has been greatly modified.

Centre's control over State Legislation.-

In addition to the Parliament's power to legislate directly on the State subjects under the foregoing Articles, the Constitution also provides for the Centre's consent before a Bi1I passed by a State Legislature can become a law. The following Articles give Centre a control over State Legislation;

Article 31 (3) provided that a State law providing for compulsory acquisition of private property shall have no effect unless it has received the consent of the President. Article 31 has been omitted by the Constitution by 44th Amendment Act 1978. Article 31- A grants immunity to laws providing for agrarian reforms from Arts 14 and 19. The immunity of Art 31-A will not be available to a State law unless it has received the assent of the President. The object of these provisions is to ensure uniformity in law providing for agrarian reforms. Article 200 directs the Governor of a State to reserve a Bill passed by a State Legislature for the consideration of the President if in his opinion, if passed into law, would derogate the power of the High Court so as to endanger the position which the Court is designed to fulfil under the Constitution. The object of the Article is to preserve the independence and dignity of a High Court which may be affected by a State law. Article 288 (2) authorizes a State to tax in respect of water or electricity stored, generated, consumed, distributed or sold by any authority established by law made by Parliament. But it makes it clear that no such law shall be valid unless it has been reserved for the consideration of the President and has received his assent. Article 304 (b) authorizes a State Legislature to impose reasonable restriction on the freedom of trade, commerce and intercourse within the State in the public interest" But such laws cannot be introduced in the State Legislature without the previous sanction of the President. This provision is intended to ensure the free flow trade and commerce, which may be hampered by unreasonable restriction imposed by a State law. In this case, Supreme court struck down a law on the ground that it was passed without Centre's consent.

CHAPTER VI

FUNCTIONS OF LEGISLATURES IN INDIA

Since the time of Aristotle it has been accepted that the functions of the government can be grouped into three categories; to make laws, to execute them and to adjudicate them. The three organs corresponding to these three functions are the legislature, the executive and the judiciary. The legislature unquestionably occupies the most important place as it formulates and expresses the will of the state. Although the emergence of the welfare state, to a large extent, has minimized the importance of the legislature, the legislature continues to be a significant organ of any form of government.

FUNCTIONS

The functions of legislatures are not the same in every country. The form of government in each state determine their function. The nature and extent of role a legislature plays under a monarchy or aristocracy is different from that of a legislature in a democracy.

The legislature plays very significant role in a Parliamentary System of government under such a system the legislature is superior to the executive. The executive remains responsible and answerable to the legislature for all its actions. Continuing in power on the part of the executive depends on the satisfaction and support of the legislature.

Although the organisation, nature and functions of the legislatures differ from country to country, their main functions are more or less the same. They may be classified as legislative, regulatory, financial, deliberative, judicial, constituent and electoral functions.

1. Legislative functions

Law making is the foremost function of a legislature as it is the direct source of legislation. Law is regarded as the expression or the will of the people. The laws reflect the changing conditions of society and the new social environment. The policies of the government are put to executive though the laws made by legislature. The laws have to

adjust themselves to the ever changing requirements of the society. Therefore one of the major functions of the legislature besides making law, amending and repealing them wherever they become obsolete or outdated. Laws are enacted according to prescribed procedure of the constitution. The law making powers of the legislatures are absolute. They are limited by the provisions of the constitution.

2. Regulatory Functions

Under Parliamentary System of government the legislature exercises its immediate and direct control over the executive. The executive is under responsible and answerable to the legislature for all its actions. The legislature exercises its control by a) asking questions to the ministers to elicit important information relating to matters of administration and matters of public importance. Secondly b) it, can move adjournment motions or raise debates to point out specific lapses of the government and most importantly c) it can move no confidence motion. Though such a motion it can express its lack of confidence in the government, which if passed by the legislature forces the party in power to resign. These powers of the legislature regulate the working of the government to a large extent.

3. Financial Powers

The legislature has very important powers is the field of finance. It acts as the guardian of national purse. It regulates the "income and expenditure of the government in respect of its various projects, administrative and welfare. People's money must be controlled and spent under the supervision and control of their representatives to prevent its misuse and wasteful expenditure. The theory no taxation without representation recognises the supremacy of the legislature, which is the fund raising and fund granting authority. It is a fundamental principle, recognised in all civilized country, that no tax shall be collected or expenditure be made without the approval of the legislature . All proposals for financial legislation are routed through the popular chamber.

4. Deliberative Functions

The Legislature is a deliberative body, a forum where many persons represent numerous interests, various points of view of different sections of the community. This is a body which facilitates determination of policies and legislation through a process of debate and discussion. This discussion provides with opportunities to each member not only to present the view and perception of his party but also permits to mould his own views in light of the discussion made in the House Over and above the various viewpoints presented in the House contribute to the growth of political consciousness of the people in general and educate the members of executive to find out the solutions to various problems in particular. Through this power the legislative acts as a link between the public and the government.

5. Judicial Function

The legislature also exercises some judicial function. Certain countries have entrusted to their legislatures the function of trying high constitutional authorities like the head of the executive, members of judicially and other constitutional bodies through the motion of impeachment. In India the President, the judges of Supreme Court, the members of U.P.S.C, the Comptroller and Auditor General can be impeached by the Parliament after fulfilling certain constitutional formalities. In England the Upper House of the Parliament Acts as the highest court of appeal. Also in United States the President can be impeached by the Senate. Very often the legislatures appoint commissions of inquiry relating to trade, commerce, agriculture, industry etc.

6. Constitutional Functions

The legislatures also have constitutional functions to perform. Most of the legislatures have been entrusted with the powers to amend the constitution. In India all amendment proposals can be initiated only in the legislature. So is the case with Britain and U.S.A. In all such cases the legislature exercises its constituent powers under a number of procedural restrictions.

7. Electoral Functions

Many of the legislatures participate in electoral functions. The Indian Parliament takes part in the election of the President and Vice-President of India. It also elects some its members to various committees of the House. It elects its presiding and deputy presiding officers[23.]

23.en.wikipedia.org/wiki/Part_Eleven_of_the_Constitution_of_India

CONCLUSION AND SUGGESTION

There are historic reasons why the founding fathers made India an over centralized union. With its vast size and manifold diversities, the fissiferrous tendencies are inherent in India. To hold such a diverse polity under one-fold, it was deemed necessary that the central government should be armed with enough powers to check divisive tendencies.

Yet, the states are not made subordinate units of the centre. In normal times, they have been granted enough autonomy to act as independent centers of authority. Prof. D.N. Banerji was right in his observation that **India is a federation in peace times and a unitary state in time of emergency.**

it is important to note that, the interplay of certain extra-constitutional forces like the multi-party system, Political attitudes and Political movements have considerably influenced the actual pattern of centre-state relations. during the initial decades, the working of the constitutional schemes of centre-states relations was smooth, and Problems if any were transient and were settled at the level of the individual political parties, as the governments operating at the centre and the states invariably belong to the same political party. however, the demand for more powers and autonomy to the states assumed new dimensions under the impact of changing political scenario, particularly after the fourth general elections.

Divisions of powers between the federation and the units where they are given ordinate and equal status within their respective fields is known as co-ordinate federalism. where the units and the federations do not compete for power , but co-operate through various instrumentalities to promote the common purpose is known as co-operative federalism. whereas the present stage in India can be described as organic federalism.

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