

Distribution of Legislative Powers between the Centre and States

*Anu Mishra

Our Constitution is one of the very few that has gone into details regarding the relationship between the Union and the States. A total of 56 Articles from Article 245 to 300 in Part XI and XII are devoted to the State-Centre relations. Part XI (Articles 245-263) contains the legislative and administrative relations and Part XII (Articles 246-300) the financial relations.

By going into great details of the relations, the Constitution framers hope to minimize the conflicts between the centre and the states. By and large, the confrontations between the two have been minimal.

Legislative Relations (Articles 245-255):

From point of view of the territory over which the legislation can have effect, the jurisdiction of a State Legislature is limited to the territory of that State. But in the case of Parliament, it has power to legislate for the whole or any part of the territory of India i.e.

States, Union Territories or any other areas included for the time being in the territory of India. Parliament has the power of 'extraterritorial legislation' which means that laws made by the Union Parliament will govern not only persons and property within the territory of India, but also Indian subjects resident and their property situated anywhere in the world. Only some provisions for scheduled areas, to some extent, limit the territorial jurisdiction of Parliament.

Legislative Methods of the Union to Control over States:

- (i) Previous sanction to introduce legislation in the State Legislature (Article 304).
- (ii) Assent to specified legislation which must be reserved for consideration [Article 31 A (1)].
- (iii) Instruction of President required for the Governor to make Ordinance relating to specified matters [Article 213(1)].
- (iv) Veto power in respect of other State Bills reserved by the Governor (Article 200).

The Three Lists:

As for the subjects of legislation the Constitution has adopted, as if directly from the Government of India Act, 1935, a three-fold distribution of legislative powers between the Union and the States, a procedure which is not very common with federal constitutions elsewhere.

The Constitutions of the United States and Australia provided a single enumeration of powers— power of the Federal Legislature— and placed the residuary powers in the hands of the States.

Canada provides for a double enumeration, dividing the legislative powers between the Federal and State legislatures. The Indian Constitution introduces a scheme of three-fold enumeration, namely, Federal, State and Concurrent.

List I includes all those subjects which are in the exclusive jurisdiction of Parliament.

List II consist of all the subjects which are under exclusive jurisdiction of the State Legislature, and

List III which is called the Concurrent List, consists of subjects on which both Parliament and the State legislatures can pass laws.

(i) Union List:

List I, or the Union List, includes 99 items, including residuary powers, most of them related to matters which are exclusively within the jurisdiction of the Union. Subjects of national importance requiring uniform legislation for the country as a whole are inducted in the Union List.

The more important examples are defence, armed forces, arms and ammunition, atomic energy, foreign affairs, coinage, banking and insurance. Most of them are matters in which the State legislatures have no jurisdiction at all.

But, there are also items dealing with inter-state matters like inter-state trade and commerce regulation and development of inter-state rivers and river valleys, and inter-state migration, which have been placed under the jurisdiction of the Union Parliament.

Certain items in the Union List are of such a nature that they enable Parliament to assume a role in certain spheres in regard to subjects which are normally intended to be within the jurisdiction of the States; one such example is that of industries.

While assigned primarily to the State List; industries, the control of which by the Union is declared by a law of Parliament, to be expedient in the public interest' are to be dealt with by parliamentary legislation alone. Parliament, by a mere declaration, can take over as many industries as it thinks fit.

It is under this provision that most of the big industries, like iron, steel and coal, have been taken over by Parliament under its jurisdiction. Similarly, while museums, public health, agriculture etc. come under State subject, certain institutions like the National Library and National Museum at New Delhi and the Victoria Memorial in Calcutta have been placed under the jurisdiction of Parliament on the basis of a plea that they are financed by the Government of India wholly or in part and declared by a law of Parliament to be institutions of national importance.

The university is a State subject but a number of universities have been declared as Central Universities and placed under the exclusive jurisdiction of Parliament. Elections and Audit, even at the State level, were considered matters of national importance. The Extensive nature of the Union List thus places enormous powers of legislation even over affairs exclusively under the control of the States in the hands of Parliament.

(ii) State List:

List II or the State List, comprises 61 items or entries over which the State Legislature has exclusive power of legislation. The subject of local importance, where variations in law in response to local situations may be necessary, has been included in the State List.

Some subjects of vital importance in the list are State taxes and duties, police, administration of justice, local self-government, public health, agriculture, forests, fisheries, industries and minerals.

But, in spite of the exclusive legislative jurisdiction over these items having been given to the States, the Constitution, through certain reservations made in the Union List has given power to Parliament to take some of these items under its control. Subject to these restrictions, one might say, the States have full jurisdiction over items included in the State list.

(iii) Concurrent List:

The inclusion of List III or the Concurrent List, in the Constitution gives a particular significance to the distribution of legislative power in the Indian federal scheme. The Concurrent List consists of 52 items, such as criminal law and procedure, civil procedure, marriage, contracts, port trusts, welfare of labour, economic and social planning.

These subjects are obviously such as may at some time require legislations by Parliament and at other by a State Legislature. The provision of a Concurrent List has two distinct advantages.

In certain matters in which Parliament may not find it necessary or expedient to make laws, a State can take the initiative, and if other States follow and the matter assumes national importance, Parliament can intervene and bring about a uniform piece of legislation to cover the entire Union Territory.

Similarly, if a State finds it necessary to amplify a law enacted by Parliament on an item included in the Concurrent List in order to make it of a greater use of its own people, it can do so by making supplementary laws.

The items included in the Concurrent List can be broadly divided into two groups-those dealing with general laws and legal procedure, like criminal law, criminal procedure, marriage, divorce, property law, contracts etc, and those dealing with social welfare such as trade unions, social security, vocational and technical training of labour, legal, medical and other professions etc.; while the items coming under the first group are of primary importance to the Union Government, they have been left, by convention, to Parliament. In matters of social welfare, it is open to the State legislatures either to take the initiative in making laws or to enact laws which are supplementary to the Parliamentary laws.

Predominance of Union Law:

In case of over-lapping of a matter between the three Lists, predominance has been given to the Union Legislature, as under the Government of India Act, 1935. Thus, the power of the State Legislature to legislate with respect to matters enumerated in the State List has been made subject to the power of the Union Parliament to legislate in respect of matters enumerated in the Union and Concurrent Lists, and the entries in the State List have to be interpreted accordingly.

In the Concurrent sphere, in case of repugnancy between a Union and a State law relating to the same subject, the former prevails. If however, the State law was reserved for the assent of the President and

has received such assent, the State law may prevail notwithstanding such repugnance. But it would still be competent for Parliament to override such State law by subsequent legislation.

Residuary Powers:

The Constitution vests the residuary power, i.e., the power to legislate with respect to any matter not enumerated in any one of the three Lists in the Union Legislature (Art. 248). It has been left to the courts to determine finally as to whether a particular matter falls under the residuary power or not.

It may be noted, however, that since the three lists attempt an exhaustive enumeration of all possible subjects of legislation, and courts generally have interpreted the sphere of the powers to be enumerated in a liberal way, the scope for the application of the residuary powers has remained considerably restricted.

Expansion of the Legislative Powers of the Union under Different Circumstances:**(a) In the National Interest:**

Parliament shall have the power to make laws with respect to any matter included in the State List for a temporary period, if the Council of States declares by a resolution of 2/ 3 of its members present and voting, that it is necessary in the national interest.

(b) Under the Proclamation of National or Financial Emergency:

In this circumstance, Parliament shall have similar power to legislate with respect to State Subjects.

(c) By Agreement between States:

If the Legislatures of two or more States resolve that it shall be lawful for Parliament to make laws with respect to any matters included in the State List relating to those States, Parliament shall have such power.

It shall also be open to any other State to adopt such Union legislation in relation to itself by a resolution passed on behalf of the State legislature. In short, this is an extension of the jurisdiction of the Union Parliament by consent of the Legislatures.

(d) To implement treaties:

Parliament shall have the power to legislate with respect to any subject for the purpose of implementing treaties or international agreements and conventions.

(e) Under a Proclamation of Failure of Constitutional Machinery in the States:

When such a Proclamation is made by the President, the President may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.