



## Parliamentary legislations in states field: A comparative study

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### Abstract

The Constitutions may be Unitary or Federal in nature. The federalism implies the division of powers between the governments. The Indian federalism is not competitive like true federal countries it is co-operative federalism. The co-operation and co-ordination between the two governments is the pre-requisites for the successful working of the democracy in India. The Indian federalism also known as quasi-federal in nature, the federal means the method of dividing the powers so that the general and regional governments are each within their sphere co-ordinates and independent and not subordinate to one another'. The division of powers between the governments was first coined by the Montague Chelmsford reforms. The government of India Act of 1935 is another code which divided the powers between the governments as provincial and central powers to legislate. Article 280 of the Indian Constitution empowers the President of India to set up a Finance Commission once in every five years to give recommendations with regard to tax sharing between the Central and State Governments.

**Keywords:** Indian federalism, democracy in India, independent, not subordinate

### 1. Introduction

India is a federal state with strong unitary features. The success of the federal country depends upon the sharing of powers between the Central and States Governments. The division of powers between the governments is the pre-requisites of the federal government. The 7<sup>th</sup> schedule of the Indian Constitution says about the division of powers<sup>[1]</sup>. The Union Government is having exclusive powers to make law in the subject matters comes under the Union List. The State government is having exclusive power to make the law in the subject matters falls under the State List. Both the governments have equal power to legislate in the subject matters comes under Concurrent list.

### 2. Distribution of Powers in other countries

#### 2.1 In Canada

Section 91 of the British North America Act, 1861 empowers the Centre Government to make laws for the peace, order and good government of Canada with respect to subjects not exclusively assigned to the provisions, but for greater certainty and not so as to restrict the generality of the foregoing provision. The 30 specific heads of powers have been mentioned in their section like, defence, postal service, currency and coinage, regulation of trade and commerce, unemployment insurance, taxation and criminal law etc.

Section 92 of the Act empowers the Provincial Governments to legislate exclusively 16 subject matters like, property and civil rights, education etc. *Section 95 of the Act*, provides that agriculture and immigration are concurrent subjects. But the centre has supremacy over the provincial law.

In one of the case the Privy Council has been held that, all federal laws would be invalid if they dealt with national or general aspects of any subject matters even though they come under section- 92 of the Act<sup>[2]</sup>.

Section 132 provides the relationship with foreign countries is a central subject. The Canadian Parliament has necessary and proper power to perform the obligations of Canada towards foreign countries arising under treaties between the Empire and such other foreign countries.

In *Attorney General for British Columbia v. Attorney General for Canada*<sup>[3]</sup> the Privy Council had declared that, regulation of trade and commerce does not permit the regulation of individual forms of trade or commerce confined to the province. In war time it can enact the law but in peace time it cannot do so.

#### 2.2 In U S A

In *Missouri v. Holland*<sup>[4]</sup> the Supreme Court of America has held that, it is not lightly to be assumed that in matters requiring national action, the power must belong to and somewhere reside in every civilized government is not to be found. In another case<sup>[5]</sup> the court has been held that, even the constitutional power may be established by usage. The Congress is given power to make all laws which may be necessary and proper to give effect to its enumerated powers.

#### 2.3 In Australia

Section 51 of Commonwealth Act, provides the 40 subject matters for the Central Parliament to legislate like,-

1. borrowing money on the public credit for defence and external affairs,
2. the seat of the central government
3. places acquired by the centre for public purposes
4. territory surrendered to the Commonwealth by any state
5. public services of the Centre
6. duties of customs and excise
7. naval and military forces
8. bounties in the production or export of goods

9. Coinage of money or legal tender etc.

### 3. Distribution of Legislative Powers in India

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

1. The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 100 subjects (originally 97 subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.
2. The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 61 subjects (originally 662 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.
3. Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (originally 473 subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, (a) education, (b) forests, (c) weights and measures, (d) protection of wild animals and birds, and (e) administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts. The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes. From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List.
4. The matters of regional and local importance and the matters which permits diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity. In US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration—Federal and Provincial, and the residuary powers are vested in the Centre. The Government of India (GoI) Act of 1935 provided for a three-fold emumenration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither

to the federal legislature nor to the provincial legislature but to the governor-general of India. In this respect, India follows the Canadian precedent.

5. The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail. In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the Central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the president and has received his assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

### 4. Central Control over State Legislations in India

#### 4.1 Saving of laws providing for acquisition of estates, etc.

A law regarding acquisition of estates will not be invalid even if it is inconsistent with Articles 14 or 19<sup>[6]</sup>. To ensure, the State governments are justifiable in use of their powers to deviate from fundamental rights. This is a safeguard against undue, excessive and indiscriminate abridgement of fundamental rights by way of states legislation<sup>[7]</sup>.

#### 4.2 Saving of laws giving effect to certain directive principles

The Directive Principles of State Policies are not enforceable but they are fundamental in the governance of the country<sup>[8]</sup>. The provision of the Constitution gives overriding effect to the Directive Principles of State Policies and Fundamental Rights under Article 14 or 19. But a state law can claim this effect only in the President of India gives his assent to it<sup>[9]</sup>.

#### 4.3 Governor assent to the bill

Governor of a State has been ordained not to assent to, but to reserve for the consideration of the President, any bill passed by the State Legislature which in his opinion, would if it became law to derogate from the powers of the High Court<sup>[10]</sup>. The reasons for consideration to the governor to reserve the bill for consideration of the President of India are,-

- a. For preserving independent judiciary
- b. To preserve the integrity of the High Courts
- c. Ensuring a safeguard against a state passing any law which may adversely affect the powers, jurisdiction and status of the High Court.

Article 201 of the Constitution confers an unrestricted power on the Central Government to examine the reserved state laws. The Central executive is entitled to examine the State law from all angles like,

- a. Whether or not it is in conformity with the Constitution or the Central Policies?

#### b. Whether it is inconsistent with any Central law etc?

The above question has been raised in case of the Punjab Temporary Tax Bill<sup>[11]</sup> which permitted to levying a surcharge of 1% on Sales Tax. The Central Government was refused to give its assent to the bill because the bill effect to levy of 8% tax on luxury goods as against the ceiling of 7% fixed by the Chief Ministers Conference. And the bill levied a tax of 3% on goods declared essential on which only 2% Sales tax was permissible under the Central Sales Tax Act, 1956. In 1961 the Central Government was refused to assent to the Madhya Pradesh Panchayat Raj Bill, 1960 on the ground that the bill provided for nominated village panchayats to be set up for a year. The nomination is against the Panchayat Raj system.

In *Re Kerala Education Bill*<sup>[12]</sup>, the Kerala Legislature had passed a bill in 1957 to provide for the better organization and development of educational institutions in the State. Some of the contents of a bill raised a bitter public controversy in the State. The Governor was reserved the bill under article 200 of the Constitution for the consideration of the President. The President of India sought advisory opinion from the Supreme Court under Article 143. The Supreme Court has been held that, some of the provisions of the bill offended to article 30(1) of the Constitution which provides for the rights of minorities to establish and administer educational institutions. The bill was sent to the state for necessary amendments.

In case of the subsequent assent of the President to a bill can be sought under article 255 of the Constitution. It states that, 'no act of parliament or state legislature is to be invalid by reason only that the recommendation or previous sanction of the President required by the Constitution was not given if the assent is given to it by the President of India subsequently.

In *Jawaharlal v. State of Rajasthan*<sup>[13]</sup> The Government of Rajasthan enacted a law levying a tax, the law needed the Presidential assent but it was not secured. Later Rajasthan enacted another law declaring the earlier law would not be deemed to be invalid by reason of the fact that Presidential assent had not been secured. The later law had secured the assent of the President. The validity of earlier law was challenged on the ground of the constitutionality of the enactment.

The Supreme Court of India has been held that, the later law assent could not cure the infirmity of the earlier law. The infirmity could be cured only by Presidential assent and not by any legislative fiat.

The Sarkaria Commission on Centre State Relations<sup>[14]</sup> said that, during the period from 1977 to 1985 the total 1130 state bills were referred for the consideration of the President under article 254(2) to validate an inconsistency between a state law and central law in the concurrent list. In 31 cases the President assent was withheld the remaining bills were received the assent of the President of India.

#### 4.4 Imposition of tax under Article 288(2)

A State law imposing or authorizing the imposition of a tax in respect of any water or electricity stored, generated, consumed and distributed or sold by any authority established by the law made by the Parliament regarding or developing any inter-state river or river valley has no effect unless it has received the assent of the President of India.

#### 4.5 Trade, Commerce and Intercourse

The Constitution of India provides that, trade, commerce and intercourse shall be free throughout the territory of India<sup>[15]</sup>. A State legislature may impose reasonable restriction in public interest on the freedom of trade, commerce or intercourse within the State under article 304(b) of the Constitution. But, no such bill is to be moved in the State legislature without the previous sanction of the President.

#### 4.6 During Financial Emergency

The President of India can direct the States to reserve all Money Bills or financial bills for the President's consideration after they are passed by the state legislature<sup>[16]</sup>. The reasons for the Governor reference to President's assent,-

- a. If bill suffer from patent unconstitutionally
- b. If the bill derogates from the scheme to endanger the sovereignty, unity and integrity of the country.
- c. If the bill in conflict with a central law
- d. If the legitimate interests of another state or its people are being adversely affected.

The question of unconstitutionality may arise if the State Legislature may exceed its legislative competence. And if the bill infringes the fundamental rights or it infringes other Constitutional provisions or limitations.

#### 5. Parliamentary Legislations in the State Field

The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:

- a. **When Rajya Sabha Passes a Resolution:** If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force. This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.
- b. **During a National Emergency:** The Parliament acquires the power to legislate with respect to matters in the State List, while a proclamation of national emergency is in operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate. Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.
- c. **When States Make a Request:** When the legislatures of two or more states pass resolutions requesting the

Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states. The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.

- d. **Some examples of laws passed** under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.
- e. **To Implement International Agreements:** The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfil its international obligations and commitments. Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS. During President's Rule When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the president's rule. This means that the period for which such a law remains in force is not co-terminus with the duration of the President's rule. But, such a law can be repealed or altered or re-enacted by the state legislature.
- f. **Centre's Control Over State Legislation:** Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways: (i) The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The president enjoys absolute veto over them. (ii) Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president. (For example, the bills imposing restrictions on the freedom of trade and commerce). (iii) The President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency. From the above, it is clear that the Constitution has assigned a position of superiority to the Centre in the legislative sphere.
- g. In this context, the **Sarkaria Commission on Centre-State Relations** (1983–87) observed: "The rule of federal

supremacy is a technique to avoid absurdity, resolve conflict and ensure harmony between the Union and state laws. If this principle of union supremacy is excluded, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union-state concern will be stymied. The federal principle of unity in diversity will be very much a casualty. This rule of federal supremacy, therefore, is indispensable for the successful functioning of the federal system".

## 6. Repugnancy between Central and State laws

If any provision of a state law is repugnant to the provision in a law made by the Parliament which it is competent to enact or to any existing law with respect to one of the matters in the concurrent list, then the Parliamentary or the existing law will prevail over the State law. To the extent of repugnancy the State law is void<sup>[17]</sup>.

In *K. T. Planation Pvt. Ltd v. State of Karnataka* <sup>[18]</sup> The Supreme Court of India opined that, the repugnancy between two statutes arises if there is direct conflict with each other. These laws are fully inconsistent and have absolutely irreconcilable provisions and if the laws made by Parliament and the State legislature occupy the same field. Therefore every effort should be made to reconcile the two enactments and construe both to avoid repugnancy.

In another case <sup>[19]</sup> the court held that, the repugnancy has to exist in fact it must be shown clearly and sufficiently. The court further said that, there was no such repugnancy between sections 13 to 16 of the State Act i.e. the Maharashtra Control of Organised Crime Act, 1999 and the provisions of the Central Act i.e. the Telegraph Act, 1885, section 5(2) read with Telegraph Rules, 1951.

In *Srinivasa Raghavachar v. State of Karnataka* <sup>[20]</sup> The Advocates Act enacted under entries 77 and 78 of list-I. Section 48(8) of the Karnataka Land Reforms Act, 1961 prohibited legal practitioners from appearing before land tribunal. Therefore the State law was held invalid as repugnant to the Central law.

The Indian Medical Council Act, 1956 has been enacted by Parliament under entry no 26 of List-III. Section-27 of the Act provides that every person who is enrolled as a medical practitioner on the Indian Medical Register shall be entitled according to his qualifications to practise in any part of the country. A West Bengal Act prohibited members of the State Health Service from carrying on any private practice. The State act was enacted under entry number 41 of list-II. Therefore there is no conflict between two enactments.

Article 254(2) is an exception to the general rule as laid down in clause (1). It provides an expedient to save law repugnant to a Central law on a matter in the concurrent list and thus, relaxes the rigidity of the rule of repugnancy contained in Article 254(1). The existence of some peculiar local circumstances, to make some special provision, to introduce the element of flexibility and to make law suitable to the changing circumstances etc. Where a state law with respect to a matter in the concurrent list contains any provision

repugnant to the provisions of a previous central law with respect to that matter the state law prevails in the state concerned if;-

- a. having been reserved for the consideration of the President of India
- b. if it received the President assent

Then, it prevails in the state and overrule the central law.

The Tamil Nadu legislature passed the public men (criminal misconduct) Act, 1974 it received the President assent under Article 254(2). Action was initiated against M. Karunanidhi under the Act and also another action was initiated under section 5 (5) (d) of the Prevention of corruption Act. The double action under two laws was challenged by M. Karunanidhi. Tamil Nadu Public Men (Criminal Misconduct) Act, 1973-Whether inconsistent with the provisions of Code of Criminal Procedure 1898, Prevention of Corruption Act 1947 & Criminal Law (Amendment) Act, 1952. The court held that the state law prevails over the central law because the state law received the assent of the President of India<sup>[21]</sup>.

## 7. Conclusion

Thus, the successful working of federal government is depends upon the co-operation and co-ordination between the two governments. The central government is duty bound to protect the interest of the State Government in certain circumstances. Indian federalism is not a competitive in nature but it is a co-operative federalism. India is a quazi federal country with strong Central Government. The Parliament is having more powers to legislate in the fields of the State subject matters in certain situations as discussed above. If no co-operation between the two governments the successful administration is highly impossible in the welfare State. The Preamble to the Indian Constitution says to secure justice to all social, economic and political. The economic justice will be achieved is there is a co-operation between the two governments.

## 8. References

1. The Union List-I consist of 97 subject matters, the State List-II consists of 66 subject matters, the Concurrent List consists 47 subject matters.
2. In Russel v. The Queen A.C 829(7)
3. 1937 A.C.377
4. 252 US 416 (1920)
5. In Inland Waterways Corporation v. Young. 309 US 517 (1940)
6. Article 14 says about the right to equality and Article 19 guarantees the various freedoms.
7. Article 31 A (1) of the Indian Constitution.
8. Randhir Singh v. Union of India AIR 1982 SC.879
9. Article 31-C of the Constitution of India
10. Article 200(2) of the Constitution
11. Later The Government enacted the Punjab Sales Tax on Services Act, 2012
12. AIR 1958 SC 956
13. AIR 1966 SC 764
14. Sarkaria Commission was set up in June 1983 by the central government of India. The Sarkaria Commission's charter was to examine the relationship and

balance of power between state and central governments in the country and suggest changes within the framework of Constitution of India.

15. Article 301 of the Constitution
16. Article 360(4)(a)(ii) of the Constitution
17. Article 254(1) of the Indian Constitution.
18. AIR 2011 SC 3430
19. In State of Maharashtra v. Bharat Shanti Lal Shah, (2008) 13 SCC-5
20. AIR 1987 SC 1518
21. M. Karunanidhi v. State of Tamil Nadu 1979 AIR 898,