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Distribution of Powers under Legislative Relations in India: A Review

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Abstract: The fact is that the Indian Constitution, following the precedent set under the Government of India Act of 1935, divides the governmental powers into three lists – the Union List, the State List and the Concurrent List. The distribution is remarkably elaborated and detailed and attempt has been made to cover the whole field of all possible governmental activity as far as the human mind can visualize at present. If still some powers are left unspecified, they are vested in the Centre. The Union List contains those matters on which the Union Parliament has exclusive right to frame the laws. The State Legislatures have the exclusive powers of making laws with respect to matters enumerated in the State List. As regards the Concurrent List, both the Union Parliament and State Legislature have concurrent powers with the provision that, in case of conflict, the Central law must, to the extent of repugnancy, prevail over the State law. The present research paper makes a review of distribution of powers under legislative relations in Indian federalism.

Keywords: Constitution, Legislative, State List, Union Parliament, Federalism.

Introduction: The Constitution of India, as stated already, has established a federal form of Government characterized by a high degree of centralization. The essence of a federal system is the division of power between the Federal and State Governments by the Constitution. However, the scheme of distribution differs from country to country and embodies its peculiar needs. Hitherto the farmers of the federal Constitution have divided the governmental powers in either of the two ways: the specific powers of the Centre are enumerated and the residuary powers are left to the units; or the powers of the units are specified and the balance is left for the Centre. The farmer scheme has been adopted in the United States of America and Australia, while the latter in Canada. Surprisingly the word, 'Federation' is not found anywhere in the Constitution.

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The Union List contains 97 subjects including such subjects as defence; atomic energy; citizenship; railways; posts and telegraphs; foreign affairs; shipping; airways; banking and insurance; currency and coinage; mines and minerals; fisheries, opium, war, peace and treaties; etc. The State List contains 66 subjects and includes public order; police; jails; local government; education; agriculture and forests; public health and sanitation; roads, bridges, ferries, municipal tram ways and traffic therein; ponds and the prevention of cattle trespass; irrigation and canals; courts of wards; industries: weights and measures except establishment of standards; in as and innkeepers: betting and gambling: state public services; etc. The concurrent list contains 47 matters and includes such subjects as criminal law: criminal procedure: civil procedure: marriage: divorce: contracts: adulteration of foodstuffs: trade unions: labour welfare: price control; factories; electricity; newspapers; legal, medical and other professions; charities and charitable institutions; stamp duties other than judicial stamp etc.

From a perusal of the three lists it is quite clear that the Central government has been given very many powers. The total number of subjects specified the Union List is as much as 97 as compared with 66 that are enumerated in the State List. Besides, the Union Parliament has powers to make laws in respect of 47 items included the Concurrent List, but as told already in case of an inconsistency between the State Law and Union, the latter supersedes the former. It would be an exaggeration to say that whenever the Union so desires the Concurrent matters can for all practical purpose turns into Union matters.

The Union States relations in the legislative field have been dealt with by Articles 245 to 254 in the Constitution. It is clearly mentioned in the Constitution that the Parliament shall have exclusive jurisdiction to make law for the whole country or any part of the territory of India as far as the subjects mentioned in the Union List are concerned. The State enjoy exclusive powers over the subjects enumerated in the State List. There is a Concurrent List over which both the Union and the State Government can legislate, but in a situation of clash between the laws of each other. The laws framed by the union government will prevail. The Constitution vests (the residuary powers, viz., the powers not enumerated in any of the three lists) in the Central Government. This

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shows that in this distribution of powers the Union Government has an upper hand. Not only this, but under certain special circumstances the Union Parliament can make laws even on State subjects. These exceptions are:

- Article 249 provides that if the Rajya Sabha declares a resolution by not less than two-thirds members present and voting, then it is necessary and expedient in the national interest that the parliament should make laws with respect to any matter enumerated in the State List specified in the resolution. It became lawful for the Parliament to make laws for the whole or part of the territory of India with respect to that matter during the period the resolution remained in force. Such a resolution remains in force for one year and can be further extended for one year by means of subsequent resolution.
- Article, 252, authorizes Parliament to legislate on a subject if the Legislatures to two or more states feel it desirable that regarding any mater mentioned in the State List, the Parliament should make a law for them. They can authorize to do so by passing resolutions to that effect in both the houses of their legislatures. Which means that in a bicameral legislature both the Houses must approve the resolution. Thereafter any Act passed by the Parliament shall apply to such states and to any other State by which it is adopted afterwards by passing the resolution in their Houses. The Parliament has to right to amend or repeal any such act. This article was used in 1953 and again in 1955 when some of the State legislatures authorized Parliament to pass Estate Duty Act and Prize Competition Act respectively. The States of West Bengal and Bihar authorized the Parliament to legislate for the setting up of the Damodar Valley Corporation to control the Damodar river which caused floods in both the States. Similarly, Parliament enacted the Urban Land (Ceiling and Regulation) Act 1976 after eleven legislatures authorized it to enact the law under Article 252 (1) of the Constitution.
- The Parliament can make laws under Article 253, for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any International Conference, association or other body.

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K.M. Panikar considered this provision dangerous because there is no subject within the State list which may not be covered by International agreements and convention. This provision has probably been made to ensure smooth implementation of the International obligations of the country.

- Whenever an emergency is declared in the country under Article 352, the Parliament gets the power of making laws on subjects mentioned in the State List. Thus for all practical purpose the State List is automatically converted into a Concurrent List. It is important to note that in India there was emergency between 1962-68 and again between 1971 to 1977 i.e. total period of a about 10 years. In other federations of USA Canada and Australia there is no such Provision.
- Whenever the Constitutional machinery fails in the State, under Article 356 of the Constitution, President's rule is imposed. The powers of the legislature of the state become exercisable b or under the authority of Parliament. This empowers Parliament fully to legislate on any matter included in any list with respect to the state for which a proclamation has been made under Article 356.
- The provisions of Article 356 provide large scope for their political misuse and this Article has been used more than 100 times almost in all the states on different occasions and due to different reasons. This has been discussed under the Emergency power of the President. The Sarkaria Commission inter-alia wanted that the report of the Governor on which the President is moved to action under Article 356 should be a "speaking document" containing a precise and clear statement of all material facts an grounds. It should be given wide publicity, and President's rule in a State should be proclaimed on the basis of the report given by the Governor.
- The Constitution under Article 200 provides that the certain types of Bills such as those which endanger the position of the High Court or acquisition of or generated from Inter-state River or river valley (Article 288) must be reserved by the Governor for President's consideration. Some Bills concerning the subjects of concurrent list under Article 254 (2)

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may be reserved by the Governor for the consideration of the President. Some of the reserved Bills, after examination, were rejected by the President. They were Kerala Education Bill. 1959, M.P. Panchayat Bill, 1960 : Industrial Dispute (West Bengal) Bill 1969 : Kerala Land Reform (fixation of ceiling on Land) Second Amendment Bill, 1980. There are also examples of inordinate delay in consideration of such Bills by the President, for example, sixteen Bills passed by the West Bengal Assembly were pending till August 1984. Likewise a Bill concerning appointment and removal of Vice-Chancellors passed by Haryana Assembly in 1988 was returned with some suggestions after seven years. This has been criticized by the opposition parties ruling in states, on the ground that the Central Government did not allow them to implement popular welfare measures by using this Article.

- In the working of the Constitution, the question whether the particular matter falls within the ambit of one or other governments arises from time to time. Our Constitution provides that such matters have to be decided by the Courts which have to make sure that no Government exceeds its powers. However, the three lists of our Constitution contain over two-hundred entries, yet significant controversies in this area are very few. The Courts have developed several judicial principles to reconcile these entries.

The above discussion clearly shows that the entire scheme of the distribution of legislative powers displays a tendency towards a high degree of centralization. Inspite of the Union and State list for distribution of powers between the centre and the states, the Centre exercises appreciable control over their legislation. In our constitutional distribution of legislative powers do have an inherent tendency for conflict between the Centre and the States. Different political parties may be in office at the Centre and in the States and they may have their own political programmes. A party in power at State level may pass a Bill within its competence to give effect to these policies of economic and political ideologies. The Party in power at the Centre may not approve the approach of the State. The Constitution prescribes no method to override Central Veto over State legislation where the Centre's nod is necessary for the enactment of the State Law. Second, the

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power of the Governor to reserve a State Bill for the assent of the President can also lead to tension in Centre-State relations. The States ruled by the Parties opposed to party ruling at the Centre may feel that the Governor being an appointee of the Central Government may reserve a State Bill for the assent of the President on political considerations rather than on merits. Such controversies have arisen earlier but such issues were very few. Functionally, it is an interdependent arrangement. The Constitutional provisions are flexible enough to keep pace with the developing and heterogeneous society, therefore, the Sarkaria Commission, appointed to look into the Centre-State relations, has not suggested any wholesale structural changes in the fundamental scheme of the Constitution. The Commission has observed, "The rule of federal supremacy is a technique to avoid absurdity, resolve conflicts and ensure harmony between the Unions and State Laws. This principle, therefore, is indispensable for the successful functioning of any federal or quasi-federal constitution. It is indeed the Kingpin of the federal system. Draw it out, the entire system falls to pieces."

Conclusion: Thus, regarding the Administrative Relations we can conclude that the Administrative relations between the Union and the States were patterned on the Government of India Act of 1935. According to Article 256, the executive power of every State is to be exercised in such a way as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State. Further, the Union Executive is empowered to give such directions to a State as may appear to the Government of India for that purpose. Article 257 goes a step further and calls upon every State not to impede or prejudice the executive power the Union in the State. The extra expenditure incurred by the State in implementing special direction given by the Centre under Article 258 are to be paid for by the Union Government. In case of a disagreement over the amount to be paid, the matter will be referred to an arbitrator appointed by the Chief Justice of India. Now we can conclude that there is a tendency of centre's supremacy regarding the distribution of powers in Indian constitution.

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