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CONSTITUTIONAL FRAMEWORK OF LEGISLATIVE RELATIONS IN INDIA

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Abstract: 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 highlights constitutional provisions of legislative relations in India.

Keywords: Federalism, Government of India Act-1935, Legislative Relations.

Introduction: The fact is that federalism implies the co-existence of two sets of government, the national government and the governments of the constituent units. Hence, division of powers between the Centre and the States is absolutely essential. Usually, matters of national importance are assigned to the Central government and matters of local importance are assigned to the governments of the constituent units. For certain matters which can neither be solely given to the Centre nor to the units, usually a provision for concurrent jurisdiction of both the governments is made and matters not specifically mentioned in the Constitution, constitute the residuum. The Canadian patterns was followed in the Government of India Act, 1935, with slight modifications.

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The constitution in its Part XI lays down the Legislative Relations between the Union and the States. It effects a division of legislative powers between the two. While doing so, it does not follow the American model. In the American federation, the constitution specifies the powers of the federal government and vests the residuary powers with the states. The Constitution of India, on the other hand, follows the Canadian model. Section 91 of the Canadian constitution divides various subjects into three lists. The Dominion List with 31 subjects, Provincial List 16 subjects, and the Concurrent List 3 subjects. Further, it vests the residuary powers, unlike the constitutions of USA, Australia, Switzerland and Germany with the centre. The Indian constitution also divides the various subjects into three lists.

The Union list which consists of ninety-seven items is the longest of the three. It includes items such as defense, 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 organization of the Supreme Court, High Courts and the Union Public Service Commission, Income-tax, Customs duties and export duties, duties of excise, Corporation tax, taxes on capital value of assets, estate duty, terminal taxes, etc. Parliament has exclusive powers of legislation with regard to the items mentioned in this list. The selection of these items is made on the basis of common interest to the Union and with respect to which uniformity of legislation throughout the union is essential.

The State list consists of sixty-six items. Some of the more importance of these items are as follows: Public order, administration of justice, prisons, local Government, Public Health and Sanitation, education, agriculture, animal husbandry, water supplies and irrigation, land rights, forests, fisheries, money-lending, State Public Services and the State Public Service Commission, land revenue, taxes on

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agricultural income, taxes on lands on buildings, estate duty, taxes on electricity, taxes on vehicles, taxes on luxuries, etc. The selection of these items is made on the basis of local interest and it envisages the possibility of diversity of treatment with respect to different items in the different States of the Union. The State legislature has the exclusive power of legislation with regard to every one of the items included in the State List. In the words of Prof. M.V. Pylee, "The scope of the application legislation arising out of items included in this list."

The Concurrent List consists of forty-seven items. These are items with respect to which uniformity of legislation throughout the Union is desirable but not essential. As such, they are placed under the jurisdiction of both the Union and the States. The list includes items such as marriage and divorce, transfer of property other than agricultural land, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons economic and social planning, trade unions, security, labor welfare, electricity newspapers, books and printing presses, stamp duties, etc.

The parliament of India and the State legislatures have concurrent powers of legislation over the items included in this list. Once Parliament enacts a law on an item in this list, parliamentary law shall prevail over any state law on the item. There is, however, one exception to this general rule. According to this a later law of the state legislature on any item in the Concurrent List shall prevail over an earlier law of Parliament on the same subject, if the state law was reserved for the consideration of the President and received his assent. This enables a State to pass a more advanced piece of legislation then an existing parliamentary law. This also provides for any special conditions and circumstances that may prevail in any State.

In the federations of the United States, Switzerland and Australia the residuary powers are assigned to the federating units. While in India, like Canadian federation, the residuary powers are vested in the Union.

The Constitution, under Article 248 vests the residuary powers of legislation

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with the Union. This article states, "The Parliament has exclusive powers to make any law with respect to any matter not enumerated in the concurrent List or State List." "Such power shall include the power of making any law and imposing a tax not mentioned in either of these lists."

In a federal system an independent and impartial Judiciary is also required to play the role of an umpire in constitutional disputes between the Centre and the States. It acts like a permanent constitutional convention at work and its decision is final as well as binding. This requirement is fulfilled by the Supreme Court. Thus, all the three requirements of a federal system have been met in our federal system. The 'federal principle' has been accepted which suggests the method of dividing powers "so that the Central and regional government are each, within a sphere, coordinate and independent.

This distribution of legislative powers is based on two considerations:

- The territory over which the federation and the units shall, respectively, have their jurisdiction.
- The subjects to which their respective jurisdiction shall extend.

The state legislature suffers from a limitation to which Parliament is not subject, namely, that the territory of the Union being divided amongst the states, the jurisdiction of each state must be confined to its own circumstances. The Union Parliament has, on the other hand, the power to legislate for 'the whole or any part of the territory of India' which includes not only the states but also the union territories or any other area. It also possesses the power of 'extra-territorial legislation' (Article 245 [2]), which no state legislature possesses. But this territorial jurisdiction of Union Parliament is subject to three limitations.

- As regards some union territories, such as the Andaman and Lakshadweep groups of Islands, regulations may be made by the President to have the same force as Acts of Parliament and such regulations may repeal or amend a

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law made by Parliament in relation to such territory.

- The application of Acts of Parliament to any Scheduled Area may be barred or modified by notifications made by the Governor.
- The Governor of Assam may, by public notification, direct that an Act of Parliament shall not apply to an autonomous district or an autonomous region in the State of Assam or shall be apply to such district or region or part there of subject to such exceptions or modifications as he may specify.

Not only has the Constitution permitted the Union government to encroach upon the State List subject in more than one condition. It talks of circumstances under which the Centre can expand the scope of its legislative jurisdiction and circumscribe the powers of the states. These situations are:

- If the Council of States declares by a resolution of two-third its members present and voting, that it is necessary in the national interest that Parliament shall have power to legislate over such matters. Each such resolution may give a lease of one year to the law in question. A law made by Parliament would not cease to have effect on the expiration of a period of six months. The resolution of the Council of States may be renewed for a period one year at a time.
- If a proclamation of 'Emergency' made by the President is in operation, Parliament shall have similar power to legislate with respect to state subjects. The Union law shall case to be operative after a period of months.
- 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, the Parliament can grant extension of jurisdiction of Union Parliament by consent of the state legislatures.
- If the President makes a proclamation about the failure of constitutional machinery in the stats.

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- If compliance of international obligation or treaty relations demand Union legislation, upon the subject which falls in the State List.

Both the Centre and the States have been given power to make laws. The Centre can make a law on any item of the Union List. The States can take up any item of the State List for a legislative purpose. Both the Centre and the State can make a law on an item of the Concurrent List with this provision that in the event of any conflict between the Central and State laws, the law of the Centre shall prevail and the law of the State shall be void to the extent of being repugnant to that. It shows that while the Centre has direct control over the items of the Union List, it has the same kind of control over the items of the Concurrent List as well. However, the important point to be noted here is that under some conditions, the Centre can make a law on an item of the State List as well under these conditions:

Article 249 says that the Rajya Sabha may adopt a special resolution by two-thirds majority of its members, present and voting, and thereby shift an item of the State List to the Union List or to the Concurrent List on the ground that it has become expedient in the national interest. Such a resolution shall remain in force for a period of one year, but the Rajya Sabha may readopt this resolution again and again. So long as this resolution stands, the Centre shall have the power to make a law on that item of the State List. Such a law of the Centre shall remain in force and the law of the State or State shall remain 'suspended' to the extent of being repugnant to the Central law, but it shall come into effect when the law of the Centre is revoked. Such a law of the Centre, unless revoked earlier, shall remain in force at the most for a period of 6 months after the lapsing of that resolution.

Art 250 says that the Centre shall have the power to make a law on an item of the State List during the period of 'emergency'. It should be noted here that Parliament's power in this regard shall cover the whole country in case of emergency under Article 352 and to some State in the case of emergency under Article 356 in force. It should be repeated here that the State Law shall remain 'suspended' to the

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extent it is repugnant to the Union law. However, the Union law, unless revoked earlier, shall remain in operation at the most for six months after the termination of emergency.

Article 252 says that the Parliament shall have the power to make a law on an item of the State List when there is a request to this effect by two or more States. Such a law shall apply to the States that make such a request, or it may apply to some other State if it becomes a party to the request afterwards. It has also been made clear that such a law can be amended or repealed only by the Parliament at the request of the concerned State legislatures.

Article 253 says that the Parliament can make law on any item of the State List to implement some international treaty, agreement or convention.

Under Article 245, Parliament has the power to make laws for the whole or any part of India, and such laws may also have extra territorial operation. A parliamentary law may apply not only to persons and their property within India but also to Indian subjects and their property outside India. The legislature of a state on the other hand, can make laws only for the whole or any part of that state. There are, however, minor exceptions to the above general rule. The Governor of the state may be public notification direct that may particular Act of Parliament or state legislature shall not apply to a scheduled area within that state or shall apply subject to such exception and modification as he may specify.

Article 248 of the Constitution and item 98 of the Union List vest residuary powers in the Union Parliament and the state legislature shares legislative jurisdiction over subjects under concurrent list but in the latter case law passed by the Parliament shall have precedence over law passed by state legislatures. One is naturally struck by the size of the Union List and scope of the central authority outlined in its 98 items.

The Government of India appointed a Commission under R.S. Sarkaria, a retired Supreme Court Judge to look into all aspects of Centre state relations and it

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submitted its report in March 1989. The Commission observed that, residuary powers of legislation in regard to taxation matters should continue to remain exclusively in the competence of Parliament while the residuary field other than that of taxation, should be placed in the concurrent list. The Constitution may be suitably amended to give effect to this recommendation.

Under Article 304 (B), the Legislators of a states may by law imposes such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest, but a bill for this purpose can be introduced in the State Legislature only with the previous sanction of the President (Union Executive. Parliament too has power to impose similar restrictions or such restrictions on trade etc., between states or with any part of the Indian Territory in public interest, but in this connection it does not have even to consult the States much less secure their concurrence.

The predominance of Parliament was further established by Articles 356 and 357 of the Constitution. Article 356 stipulated that if the President was satisfied that a situation had arisen in which the Government of a State could not be carried on in accordance with the provisions of the Constitution he might declare that the powers of the Legislature of that State would be exercisable by or under the authority of Parliament. The effect of Article 356 would be that the legislature of the State in question would stand dissolved or suspended and the law-making powers would rest in Parliament during the period the proclamation of emergency was in force.

Article 246 makes it clear that the Union law shall prevail over any State law in the event of a conflict between the two. The Centre may enhance its legislative power so as to make law on a subject of State list by declaring any industry, highway, or a centre of advanced education and research, as a subject of national importance. Thus, although the State have exclusive power of legislation over every item in the State list, the predominance of Parliament is made clear in this sphere too.

Article 254 provides that if any provision of a law made by the State

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legislature with respect to the Concurrent list is repugnant to any provision of a law made by parliament, the latter shall prevail. At the same time it was provided that the State law would be allowed to prevail in a State if the President gave his assent.

Article 200 empowers the Governor to reserve a Bill for the consideration of the President. It is nowhere enjoined that in making such a reference the Governor should act on the advice of his Council of Ministers. Acting on the advice of the Prime Minister, the President may return the Bill for reconsideration by the Assembly for reasons stated or veto it without assigning any reasons. As no time limit has been set for the Presidential consideration, he may even put the bill in cold storage indefinitely. This provision, some suggest, could be perversely used to thwart the growth of the opposition party in power and even dislodge it from office, as once happened in Kerala.

Articles 255(2) and 304, reserve specific subjects like water and electricity taxes and intra-state commerce for Presidential scrutiny and sanction. Article 360 provides that in a financial emergency the President may direct any State to reserve all money bills for his consideration after these were passed by the Legislature of the State.

Article 251 of the constitution provides that in case of a conflict between a Union Law and a State Law, the former shall prevail over the latter. This provision gives a distinct superiority to the laws made by the Union Parliament.

Conclusion: Thus, we can say that in the legislative field, Constitution provides more powers for a strong Centre. Among the three lists, Union List is the largest, having 97 subjects of national importance. Only Union Parliament is empowered to legislate on the subjects enumerated in the Union List. The subjects falling under the other two lists, the Union Parliament interferes from time to time, Matters which are not included in any of the three lists, come under the jurisdiction of the Union Parliament. Both Union Parliament and state legislatures are empowered to make laws on the subjects enumerated in the Concurrent List, but when there is a conflict

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between the two, the law passed by the Union Parliament prevails. The Centre has been made all powerful by the Constitution in every field so that is may have full control over the state administration. Now both the governments are expected to follow the path of co-operative federalism so that federal relations in India could remain harmonious and cordial.

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