



Centre-state legislative relations an overview



Centre State Legislative Relations



Art 245 to 255

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Part XI

LEGISLATIVE RELATIONS BETWEEN THE UNION AND THE STATES

- Basic provisions regarding the distribution of powers between the Central and the State Governments are in Part XI of the constitution
- There are three lists provided in Constitution, The Union List, The State List and Concurrent List in Schedule 7 of Indian Constitution which defines the powers

Territorial extent of central and state Legislation

- Parliament law extends to whole or any part of territory of India
- State law extends to whole or any part of the state
- Parliament **alone** can have extra-territorial jurisdiction – i.e Applicable to Indian citizens resident and their property situated anywhere in the world.

Distribution of Legislative subjects

- The Union List
 - It consists of 100 Subjects(Originally 97 Subjects)
 - Atomic energy
 - Foreign affairs
 - Citizenship
 - Audit of Government accounts
 - Elections
 - Income tax
 - Railways
 - Communication
 - Banking, Insurance, RBI, Stock exchange
 - Residual power

Distribution of Legislative subjects

□ The State list

- It consists of 61 Subjects(Originally 66 Subjects)
 - Public order & Police
 - Agriculture
 - Public health and sanitation
 - Irrigation
 - Land revenue

● The Concurrent list

- It consists of 52 Subjects(Originally 47 Subjects)
 - Once parliament enacts a law on an item in this list ,Parliamentary law shall prevail over any state law on the item

- 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
- **Art 248-Residuary Powers**
 - United States, Switzerland and Australia the residuary powers are assigned to the federating units
 - India, like Canadian federation, the residuary powers are vested in the Union
- **Major financial powers are with centre when compared to states – State powers to tax even more reduced after introduction of GST**

PARLIAMENT CAN LEGISLATE ON THE SUBJECTS OF STATE LISTS

- **Art 249.** (1) If the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that Parliament can legislate in State List because of National interest, Parliament can legislate on State List
 - This resolution valid for 1 year at a time
 - Can be renewed any no of times but not exceeding one year at a time
 - A law made under this provision valid for upto six months after resolution ceases to have effect
- **(2) Under Article 250**
 - If there is a proclamation of National Emergency (Art 352), then Parliament can legislate on state list
 - Laws valid for upto six months after Proclamation ceases to have effect

- **(3) Under Article 252**

When the legislatures of two or more states pass resolutions requesting the parliament to enact laws on a matter in the state list.

- **(4) Under Article 253**

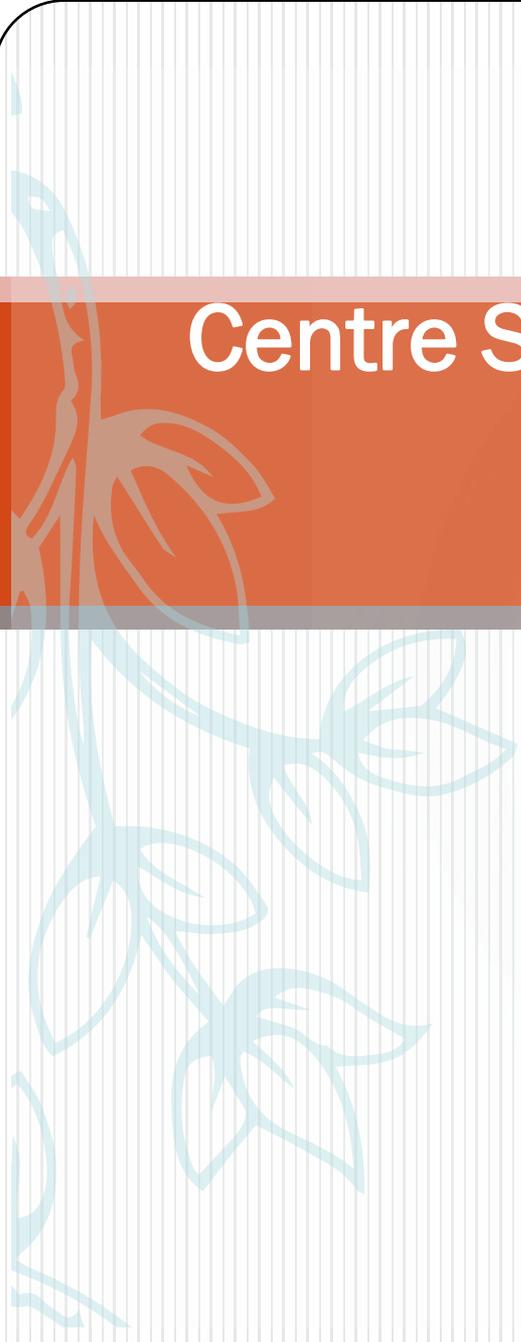
- Parliament had power to make any law for the whole or any part of India for implementing any treaty ,agreement or convention with any other country or countries or any decision made at any international conference, association or other body

- **(5) Under Article 356**

- If the President is 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 Constitutions.

Recent amendments – GST amendment

- 246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.
- (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.
- Suitable amendments to other Articles have also been carried out through Constitution 101st amendment



Centre State Administrative Relations

Art 256 to 263

Part XI

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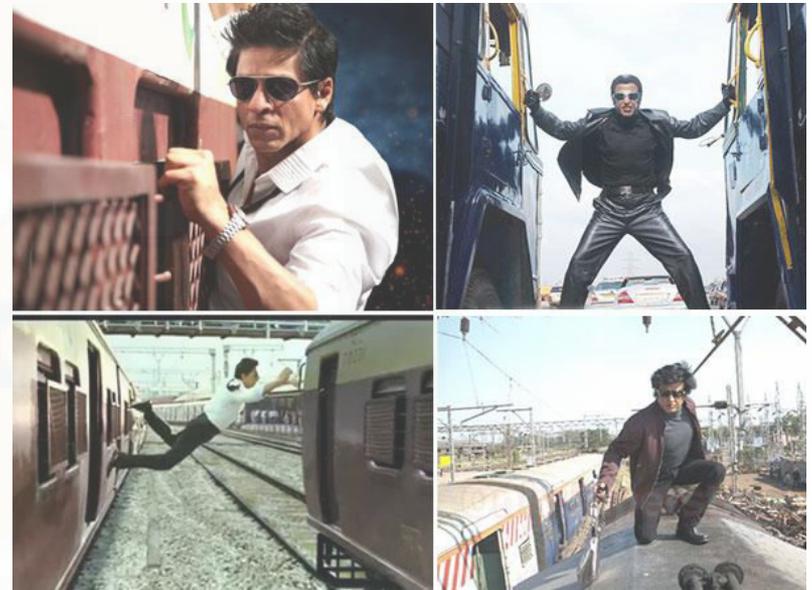
Instruments available for Union to control States

- (1) Under **Article 256 of the Constitution** that the executive power of the **States shall be so exercised as to ensure compliance with the laws of Parliament.** Also the union executive power extends to the giving of such directions to the states as may appear to the Government of India to be necessary for the purpose.
- (2) Under **Art 257(1)** the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the **executive power of the Union,** and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

- (3) Under Art 257(2) the executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance



- (4) Under Art 257(3) the executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of the railways within the State



- **Art 365. Effect of failure to comply with, or to give effect to, directions given by the Union.**—Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution

- Art 353. Effect of Proclamation of Emergency.—While a Proclamation of National Emergency is in operation, then—
(a) notwithstanding anything in this Constitution, the **executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised**

- Art 355. Duty of the Union to protect States against external aggression and internal disturbance. It shall be the duty of the Union **(A) to protect every State against external aggression and internal disturbance and (b) to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution**



Other Provisions

- 1.The governor of a state is appointed by the president. He holds office during the pleasure of the President. In addition to the Constitutional head of the state, the governor acts as an agent of the Centre in the state. He submits periodical reports to the Centre about the administrative affairs of the state.
- 2.The state election commissioner, though appointed by the governor of the state, can be removed only by the President.

- **Art 356. Provisions in case of failure of constitutional machinery in States.**—(1) If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation— (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State

Centre State Financial Relations

Article 268 to 293

Part XII



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- The Financial relationship between the Centre (Union) and the States is provided in the constitution.
- The constitution gives a detailed scheme of distribution of financial resources between Union and the States.
- The constitution makes a broad distinction between the power to levy a tax and the power to appropriate the proceeds of a tax.

- Thus the legislature which levies(imposes) a tax is not necessarily the authority which retains the proceeds of a tax levied.
- The constitution grants the Union Parliament exclusive power to levy taxes on several items(15 Subjects). The state legislatures enjoy similar power with regard to several other specified items(20 Subjects). In general, the Union Parliament levies taxes on items mentioned in the union list while the state legislatures levy taxes on items mentioned in the state list.

- Art 266 – Establishment of ‘Consolidated Fund of India’ – All revenues received by GOI, All loans raised by GOI, all moneys received by GOI in repayment of loans
- Public Account of India – All other moneys received by or on behalf of GOI
- Similar accounts for States as well.
- Art 267 – Contingency Fund of India and Contingency fund of state

- **(1) Art 268. Duties levied by the Union but collected and appropriated(used) by the States.**—Stamp duties as are mentioned in the **Union List** shall be levied by the Government of India but shall be **collected and appropriated by the states** in which they are collected
- Art 268-A has been omitted by Const 101st amendment Act
- Art 269 – Effectively after GST, only **taxes on inter-state consignment of goods** shall be **levied and collected by GOI** but **assigned to states** in which collected

- '269A. -Goods and services tax on supplies in the course of inter-State trade or commerce shall be **levied and collected** by the Government of India
- Such tax shall be **apportioned between the Union and the States in the manner as may be provided by Parliament by law** on the recommendations of the Goods and Services Tax Council.
- Imports will also be treated as supply of goods in the course of inter-state trade

- **(4) Art 270. Taxes levied and distributed between the Union and the States.**—(1) **All taxes and duties referred to in the Union List**, except the duties and taxes referred to in articles 268, 269 & 269A, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and **shall be distributed between the Union and the States** in the manner provided by the Finance commission

- (1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the same manner

- **(6) Taxes levied and collected and retained by States**

- Excise duties on Alcoholic liquors for human consumption
- Land revenue
- Agricultural income
- Sales Tax (other than newspapers)
- Taxes on land and buildings
- Stamp duty,
- Estate duty,
- Entry tax,
- Taxes on vehicles and luxuries etc.



Distribution of Non-tax Revenues

- **A. The Centre** The receipts from the following form the major sources of non-tax revenues of the Centre: (i) posts and telegraphs; (ii) railways; (iii) banking; (iv) broadcasting (v) coinage and currency; (vi) central public sector enterprises; and (vii) escheat and lapse
- **B. The States** The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprise; and (v) escheat and lapse.

- **(7)Art 275. Grants from the Union to certain States.**—(1) Such sums as Parliament may by law provide shall be charged on the Consolidated Fund of India in each year as **grants-in-aid** of the revenues of such States as Parliament may determine to be in need of assistance, and **different sums may be fixed for different State**
- (Grants in aid means giving of federal funds to a state or local government to subsidize a public project)

- **Art 279A – Constitution of GST Council**
 - Union Finance Minister –Chairperson
 - Union Minister of State incharge for revenue or Finance-Member
 - Minister of Finance or any minister nominated by each State Government – member
 - Will advise union and states on various matters
 - Decisions will be by 3/4th majority – Union Govt having 1/3rd weightage and all State Govt – 2/3rd weightage

- **Art 280 – Constitution of Finance commission every 5 years as a quasi-judicial body**
- **Criteria for allocation as per 14th Finance Commission**
 - **Fiscal capacity (50%)**
 - **Population of 1971 and 2011 (27.5%)**
 - **Area (15%)**
 - **Forest cover (7.5%)**

Inter-Governmental Tax Immunities

- **Exemption of Central Property from State Taxation** The property of Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats and so on.
- **Exemption of State Property or Income from Central Taxation** The property and income of a state is exempted from Central taxation.

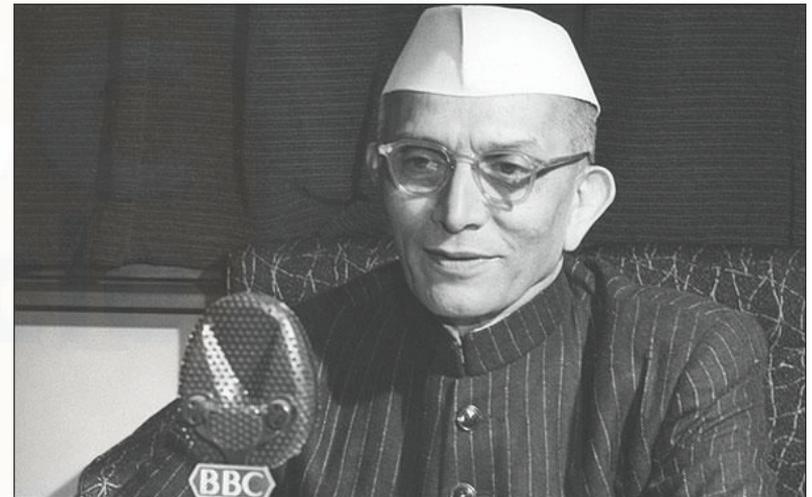


Committees on Centre State Relations

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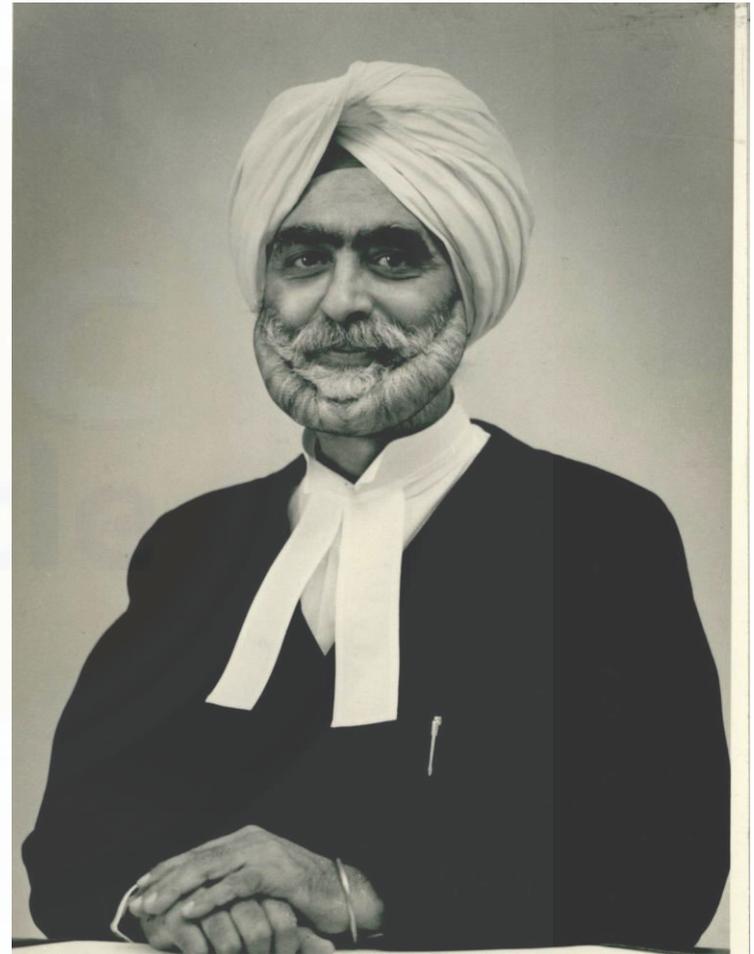
Administrative Reforms Commission

- Recommended in 1969
- Establishment of Inter State Council under Art 263 of Indian Constitution
- Appointment of persons having long experience in public life and administration and non partisan attitude as Governors
- Transferring of more financial resources to the States
- No action taken by Central Govt on ARC



Sarkaria Commission

- In 1983, Central Govt appointed
- Gave report in 1987
- Commission gave 247 recommendations
- Art 356 should be used sparingly
- All India Service should be further strengthened
- Residuary power only with parliament
- If President withholds his assent to the State bills, reasons should be given
- Centre should consult the States before making a law on Concurrent List



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- Procedure of consulting the CM in appointment of Governor should be prescribed in the Constitution itself
- The present division of functions between Finance Commission and Planning Commission shall continue
- Establishment of Inter State Council under Art 263
- Strict 5 year tenure for Governors
- Many recos were accepted by Centre

Punchhi Commission

- GOI set up in 2007
- Gave its reco in 2010
- Consultation with States while legislating on matters on Concurrent List
- Under Art 201, President should either give consent or reject within 6 months
- Follow SC judgment in Art 356 and amend accordingly
- Like President, Governor can also be only impeached

