DISTRIBUTION OF POWERS BETWEEN CENTRE & STATES

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1. Introduction

The distribution of powers is an essential feature of federalism. The object for which a federal state is formed involves a division of authority between the Central Government and separate states. A Federal Constitution establishes the dual polity with the union at the centre and the states at a periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution. "The one is not subordinate to the other in its own field; the authority of one is co-ordinate with that of other." In fact, the basic principle of federation is that the legislative, executive and financial authority is divided between the centre and state not by any law passed by the centre but by constitution itself. The nature of distribution of power varies according to the local and political background of each country.

Our Constitution makers followed the Canadian scheme opting for strong centre. The Government of India Act, 1935 introduced a scheme of three fold distribution viz., Federal, Provincial and Concurrent.

The present Constitution, based on the principle of federalism with a strong and indestructible union, adopts the method followed by the Government of India Act, 1935 and has a scheme of two fold distribution of legislative powers- with respect to territory; and with respect to subject matter. With respect to subject matter, The Constitution adopts a three-fold distribution of legislative powers by placing them in any of the three lists, namely, Union List, State List and Concurrent List.

Scheme of Distribution of Legislative Powers: According to Article 1 of the Constitution of India, India is a Union of States, which means a Federation of states. There is in a federation, a division of functions between the centre and the states.

Under the present Constitution, there is scheme of two fold distribution of legislative powers-

- With respect to territory; and
- With respect to subject matter.

With respect to subject matter, The Constitution adopts a three-fold distribution of legislative powers by placing them in any of the three lists, namely, Union List, State List and Concurrent List.

The constitutional provisions in India on the subject of distribution of legislative powers between the Union and the States are spread out over several articles (articles 245-254). However, the most important of those provisions – i.e., the basic one – is that contained in articles 245-246. From the point of view of the subject matter of legislation, it is article 246 which is important.

2. Types of Powers

In India, before the formation of the federation the States were not 'sovereign' entities.

As such, there was no need for safeguards to protect 'States'. On account of the exigencies of the situation, the Indian federation has acquired characteristics which are quite different from the American model.

i. The residuary powers under the Indian Constitution are assigned to the Union and not to the States. However, it may be noted that the Canadian Constitution does the same mode of distrib-uting the powers cannot be considered as eroding the federal nature of the Constitution.

ii. Though there is a division of powers between the Union and the States, the Indian Constitution provides the Union with power to exercise control over the legislation as well as the administration of the States. Legislation by a State can be disallowed by the President, when reserved by the Governor for his consideration.

The Governor is appointed by the President of the Union and holds office "during his pleasure". Again these ideas are found in the Canadian Constitution though not in the Constitution of the U.S.A.

iii. The Constitution of India lays down the Constitution of the Union as well as the States, and no State, except Jammu and Kashmir, has a right to determine its own (State) Constitution.

iv. When considering the amendment of the Constitution we find that except in a few specific matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the Constitution. The bulk of the Constitution can be amended by a Bill in the Union Parliament being passed by a special majority.

v. In the case of the Indian Constitution, while the Union is indestructible, the States are not. It is possible for the Union Parliament to reorganise the States or to alter their boundaries by a simple majority in the ordinary process of legislation.

The 'consent' of the State Legislature concerned is not required; the President has only to 'ascertain' the views of the Legislatures of the affected States. The ease with which the federal organisation may be reshaped by an ordinary legislation by the Union Parliament has been demonstrated by the enactment of the States Reorganisation Act, 1956. A large number of new States have, since, been formed.

vi. Under the Indian Constitution, there is no equality of representation of the States in the Council of States. Hence, the federal safeguard against the interests of the lesser States being overridden by the interests of the larger or more populated States is absent under our Constitution. Its federal nature is further affected by having a nominated element of twelve members against 238 repre-sentatives of the States and Union Territories.

Distribution of Powers: Legislative, Administrative and Financial:

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.

A. 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.

B. 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.

C. 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, mar-riage, 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 Sate 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 supple-mentary 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 Procla-mation 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.

Administrative Relations (Articles 256-263):

The distribution of executive powers between the Union and the States follows, in general, the pattern of distribution of the legislative powers. The executive power of a State is treated as coexten-sive with its legislative powers, which means that the executive power of a State extends only to its territory and with respect to those subjects over which it has legislative competence.

Looking at from the point of view of the Union Government, we can say that the Indian Constitution provides exclu-sive executive power to the Union over matters with respect to which Parliament has exclusive powers to make laws, (under List I of Schedule VII) and over the exercise of powers conferred upon it, under Article 73, by any treaty or agreement at the international level. On the other hand, the States have exclusive executive powers over matters included in List II.

In matters included in the Concurrent List (List III) the executive function ordinarily remains with the States, but in case the provisions of the Constitution or any law of Parliament confer such functions expressly upon the Union, the Union Government is empowered to go beyond giving directions to the State executive to execute a Central law relating to a Concurrent subject and take up the direct administration of Union law relating to any Concurrent subject.

In the result, the executive power relating to Concurrent subjects remains with the States, ex-cept in two cases-(a) Where a law of Parliament relating to such subject vests some executive functions specifically in the Union, e.g., the Land Acquisition Act, 1894; the Industrial Disputes Act, 1947 [Provision to Art. 73(1)].

So far as these functions specified in such Union Law are concerned, it is the Union and not the States which shall have the executive power while the rest of the execu-tive power relating to the subjects shall remain with the States, (b) where the provisions of the Constitution itself vest some executive functions upon the Union.

Thus, (i) the executive power to implement any treaty or international agreement belongs exclusively to the Union; (ii) the Union has the power to give directions to the State Governments as regards the exercise of their executive power in certain matters.

The Constitution has devised techniques of control over the States by the Union to ensure that the State governments do not interfere with the legislative and executive of the Union. Some of these administrative avenues of control are as under:

In Normal Times:

i. The power to appoint and dismiss the Governor (Article 155-156)
ii. The power to appoint other dignitaries in the State such as judges of the High Court, members of the State Public Service Commission (Article 217, 317).

There are some other specified agencies for Union Control

A. Directions to the State Government:

The Constitution prescribes a Coercive Sanction for the enforcement of the directions issued under any of the foregoing powers, namely the power of the President to make a Proclamation under Article 356.

B. Delegation of Union Functions:

While Legislating on a Union Subject, Parliament may delegate powers to the State Governments and their officers in so far as the Statute is applicable in the respective States [Article 258 (2)].

C. All-India Services:

Besides the person serving under the Union and the States, there are certain services which are 'common to the Union and the States'. There are called 'All-India Services' of which the Indian Administrative service and the Indian Police Service are the existing examples [Article 312 (2)].

The Indian Constitution has provision for the Organisation of certain all-India services, recruited and controlled by the Union Government as far as their general administration is concerned. The British Government had instituted the Indian Civil Services (ICS) in order to establish a kind of direct control over the provincial administration.

The idea was adopted by the Constituent Assem-bly and, under Article 312; power has been given to the Council of States, by a resolution sup-ported by not less than a two-thirds majority of the members present and voting, to constitute all- India service common to the Union and the States.

It was further provided that the Indian Admin-istrative Service (IAS) and the Indian Police Service (IPS), which had been constituted before the Constitution came into force, would be deemed to have been constituted under this Article. The Union Government is able to penetrate quite deep into the administrative affairs of the States through these all India services.

The IAS and the IPS are not the only all-India services. Serial new services, governed by the same conditions, have been added, like the Indian Engineering Service, the Indian Economic

Service, the Indian Statistical Service, the Indian Agriculture Ser-vice and the Indian Education Service.

D. Grant-in-Aid:

The Parliament is given such powers to make such grants as it may deem neces-sary to give financial assistance to any State which is in need of such assistance (Article 275). Besides this, the Constitution provides for specific grants on the following two matters:

(i) (a) For schemes of development;

(i)(b) For welfare of scheduled tribes;

(i)(c) For raising the level of administration of scheduled areas.

(ii) To the State of Assam, for the development of the tribal areas in that State [Article 275 (1)]

E. Inter-state Council:

Article 263 says that the President is empowered to establish an inter-State Council. The Constitution assigned three fold duties to this body.

A. To investigate and discuss subjects of common interest between the Union and the States or between two or more States;
B. Research in such matters as agriculture, forestry, public health etc., and
C. To make recommendations for co-ordination of policy and action relating to such subjects.

The Sarkaria Commission has recommended the Constitution of a permanent inter-State Council. Such a council, consisting of six Union Cabinet Ministers and the Chief Ministers of all the States, has been created in April 1990.

F. Inter-State Commerce Council:

For the purpose of enforcing the provisions of the Constitution, relating to the freedom of trade, commerce and intercourse throughout the territory of India (Article 301-305), Parliament is empowered to constitute as authority similar to the Inter-State Commerce Commission in the U.S.A. and to confer on such authority such powers and duties as it may deem fit (Article 307).

G. Extra-Constitutional Bodies:

Apart from the above Constitutional agencies for Union Control, there are some advisory bodies and conferences which held at the Union level which further the co-ordination of State policy and eliminate differences as between the States.

H. Planning Commission:

This extra-Constitutional and non-statutory body was set up by a reso-lution (1950) of the Union Cabinet and its main objective was to formulate an integrated Five Year Plan for economic and social development and to act as an advisory body to the Union Government.

I. National Development Council (NDC):

This council was formed in 1952 as an adjunct to the Planning Commission to associate the States in the formulation of the Plans. The main func-tions of this council are:

A. To strengthen and mobilize the efforts and resources of the nation in support of the plans;
B. To promote common economic policies in all vital spheres; and
C. To ensure the balanced and rapid development of all parts of the country.

J. National Integration Council (NIC):

Another non-constitutional body was created in 1986 to deal with the welfare measures for the minorities on an all India basis. Some of the burning issues before it were communal harmony, increased violence by secessionists, the problems in respect of Punjab, Kashmir, and Ram Janambhoomi-Babri Masjid.

During Emergency:

In 'Emergencies' the government under the Indian Constitution will work as if it were a unitary government.

Some of the important Provisions during 'Emergency' are as under:

i. During a Proclamation of Emergency, the power of the Union to give directions extends to the giving of directions as to the manner in which the executive power of the State is to be exercised, relating to any matter [Article 353(a)]. (So as to bring the State Government under the complete control of the Union, without suspending it).
ii. Upon a Proclamation of failure of Constitutional machinery in a State, the President shall be entitled to assume to himself all or any of the executive powers of the State [Article 356(1)].

During a Proclamation of Financial Emergency:

i. To observe canons of financial propriety, as may be specified in the directions [Article 360(3)].

ii. To reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the Judges of the Supreme Court and High Courts [Article 360(4)(b)].
iii. To require all Money Bills or other Financial Bills to be reserved for the consideration of the President after they are passed by the Legislature of the State [Article 360(4)].

Financial Relations Related to the Distribution of Revenue (Article 264-281):

Financial Relations:

All feasible sources of taxation have been listed and allocated either to the Centre or to the States. These are as follows:

i. There are certain items of revenue in the State List which are levied, collected and appropriated by the States. For example, naval revenue etc.;
ii. There are certain-items of revenue in the Union List which are levied, collected and appropriated by the Union, e.g. Customs duties etc.;
iii. There are certain duties levied by the Union but collected and appropriated by the States. For example, stamp duties etc.;
iv. There are certain taxes levied and collected by the Union but assigned to the States e.g. succes-sion and estate duties, taxes on railway fares and freights, etc.
v. There are certain taxes levied and collected by the Union and distributed between the Union and the States, e.g. excise duties etc.

Consolidated Funds and Public Accounts of India and of the States:

Subject to the provi-sions of Article 267 and to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, all revenues received by the Government of India, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one Consolidated Fund to be entitled "the Consolidated Fund of India", and all revenues re-ceived by the Government of a State, all loans raised by that Government by the issue of treasury bills, loans or ways and means advances and all moneys received by that Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the State" [Article 266(1)].

All other public money received by or on behalf of the Government of India or the Government of a State shall be credited to the Public Account of India or the Public Account of the State, as the case may be (Article 266(2)).

No money out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution [Article 266(3)].

Contingency Fund:

Parliament may by law establish a Contingency Fund in the nature of an impress to be entitled "the Contingency Fund of India" into which shall be paid, from time to time, such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the President to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Parliament by law under Ar-ticle 115 or Article 116 [Article 267(1)].

The Legislature of a State may by law establish a Contingency Fund in the nature of an impress to be entitled "the Contingency Fund of the State" into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislature of the State by law under Article 205 or Article 206 [Article 267(2)].

Finance Commission:

Arts. 270, 273, 275 and 280 provide for the Constitution of a Finance Commission (at stated inter-vals) to recommend to the President certain measures relating to the distribution of financial re-sources between the Union and the States, for instance, percentage of the net proceeds of income- tax which should be assigned by the Union to the States and the manner in which the share to be assigned shall be distributed among to the States [Art. 280].

The Constitution of the Finance Commission is laid down in Art. 280, which has to be read with the Finance Commission (Miscellaneous Provisions) Act of 1951, which has supplemented the pro-visions of the Constitution. Briefly speaking, the Commission has to be reconstituted by the Presi-dent, every five years.

The Chairman must be a person having 'experience in public affairs', and the other four members must be appointed from amongst the following

a. A High Court Judge or one qualified to be appointed as such;
b. a person having special knowledge of the finances and ac-counts of the Government;
c. a person having wide experience in financial matters, and administra-tion;
d. a person having special knowledge of economics,
e. a person familiar with treasures needed to augment the consolidated fund of a State to supplement the resources of the Panchayat, in the State.

It shall be the duty of the Commission to make recommendations to the President as to:

a. the distribution between the Union and the States of the net proceeds of taxes which are to be or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
b. the principles which should govern the grants-in-aid of revenues of the States out of the Consolidated Fund of India;
c. any other matter referred to the Commission by the President in the interests of sound finance.

The First Finance Commission was constituted in 1951, with Sri Neogy as the Chairman and it submitted its report in 1953.

Some Details of Distribution:

(i) Taxes which are exclusively central, and the revenues which are wholly appropriated for the use of the Central Government form one group. These include export duties, corporation tax, taxes on the capital value of the assets, exclusive of agricultural land of individuals and companies, (ii) Income tax constituting a separate category in as much as while it is the Centre which levies, fixes rates and collects the tax, it has to share the proceeds with the States as prescribed by the President on the basis of the recommendations made by the Finance Commis-sion. (iii) Union duties of excise other than duties which have been given to States, which may be shared if Parliament has so decided.

The Constitution has left it to the discretion of Parliament to decide by law whether any of the union duties of excise should be shared with the States, how these are to be shared, and how the shares are to be distributed to the States, (iv) Taxes which are to be levied and collected by the Centre, but to be distributed entirely (except for those proceeds which are attributable to the Union territories) to the States in accordance with such principles of distribution as may be laid down by Parliament by law.

These taxes consist of succession and estate duties; termi-nal taxes on passengers and goods carried by rail, sea or air taxes on railway fares and freights; taxes on the sale or purchase of newspapers; sale or purchase taxes on inter-State trade, (v) Taxes levied by the Centre but collected by the States and appropriated by them for their own use.

They are stamp duties and excise duties on medicinal and toilet preparations containing alcohol; in connection with these two taxes, the Centre only levies the tax, and fixes the rate of duty to be paid on the alcohol contained in the medical and toilet preparations, but each State collects the tax and appropri-ates it for its own purpose.

Grants and Loans:

Besides the devolution of revenues the Union meets the financial needs of the State in two other ways: (i) by making grants-in-aid of State revenues and other grants, and (ii) by giving loans. According to the Constitution, both the Union and the States are empowered to make grants.

But by virtue of the sums at its disposal, the Union's power is greater. The Union can make grants for purposes outside its legislative jurisdiction, and it is under this provision that many of the large capital grants for national development schemes are made.

Grant-in-aid may be made to a State to defray its budgetary deficits, or it may make grant-in-aid on the basis of budgetary need, and to aid States whose revenues, even after devolution fall short of their expenditures.

Efforts are generally made to keep these grants-in-aid to a minimum by making devolution adequate. Other grants are generally unconditional, but in certain cases, as in Assam, grants have been made for the development of backward areas and tribes.

Besides grants-in-aid, States also sometimes depend heavily on the Union for loans. The Union government has unlimited power to borrow either within India or outside, and may exercise this power subject only to such limits as might be fixed by Parliament from time to time.

In the case of the States, however, their borrowing power is subject to a number of Constitutional limitations. A State cannot borrow outside India. The State executive has the power to borrow within the territory of India, subject to many conditions.

Borrowing Powers:

The Union has unlimited power of borrowing, upon the security of the rev-enues of India either within India or outside. The Union Executive can exercise the power; subject only to such limits as may be fixed by Parliament from time to time.

The borrowing power of a State is, however, subject to a number of Constitutional limitations:

i. It cannot borrow outside India,
ii. The State Executive shall have the power to borrow, within the territory of India upon the security of the revenues of the State, subject to the following conditions:
    a. limitation as may be imposed by the State Legislature;
    b. if the Union has guaranteed an outstanding loan of the State, no fresh loan can be raised by the State without consent of the Union Government;
    c. The Government of India may itself offer a loan to a State, under a law made by Parliament; so long as such a loan or any part thereof remains outstanding, no fresh loan can be raised by the State without the consent of-the Government.

Distribution of Taxes between Union and the States:

The distribution of the tax-revenue be-tween the Union and the States, according to the foregoing principles, stands as follows:

I. <u>Taxes Belonging to the Union Exclusively:</u>

(i) Customs, (ii) Corporation tax. (iii) Taxes on capital value of assets of individuals and Companies, (iv) Surcharge on income tax, etc. (v) Fees in respect of matters in the Union List (List I).

II. Taxes belonging to the States Exclusively:

(i) Land Revenue, (ii) Stamp duty except in docu-ments included in the Union List, (iii) Succession duty, estate duty, and Income tax on agricultural land, (iv) Taxes on passengers and goods carried on inland waterways, (v) Taxes on lands and buildings, mineral rights, (vi) Taxes on animals and boats, on road vehicles, on advertisements, on consumption of electricity, on luxuries and amusements, etc. (vii) Taxes on entry of goods into local areas, (viii) Sales Tax. (ix) Tolls, (x) Fees in respect of matters in the State List, (xi) Taxes on professions, trades, etc., not exceeding Rs. 2,500 per annum (List II).

III. Duties Levied by the Union but Collected and Appropriated by the States:

Stamp duties on bills of Exchange, etc., and Excise duties on medicinal and toilet preparations containing alcohol, though they are included in the Union List and levied by the Union, shall be collected by the States insofar as leviable within their respective territories, and shall form part of the States by whom they are collected (Article 268).

IV. Taxes Levied as well as Collected by the Union, but Assigned to the States within which they are Leviable:

(i) Duties on succession to property other than agricultural land, (ii) Estate duty in respect of property other than agricultural land, (iii) Terminal taxes on goods or passengers carried by railway, air or sea. (iv) Taxes on railway fares and freights, (v) Taxes on stock exchange other than stamp duties, (vi) Taxes on sales of and advertisements in newspapers, (vii) Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of Inter-State trade or commerce, (viii) Taxes on Inter-State consignment of goods (Article 269).

V. Taxes Levied and Collected by the Union and Distributed between Union and the States:

Certain taxes shall be levied as well as collected by the Union, but their proceeds shall be divided between the Union and the States in a certain proportion, in order to effect an equitable division of the financial resources. These are:

a. Taxes on income other than on agricultural income (Article 270).
b. Duties of excise as are included in the Union List, excepting medicinal and toilet preparations may also be distributed, if Parliament by law so provides (Article 272).

Distribution of Non-Tax Revenue:

The principal sources of non-tax revenues of the Union are the receipts from:

Railways; Posts and Telegraphs; Broadcasting; Opium; Currency and Mint; Industrial and Commercial Undertakings of the Central Government relating to the subjects over which the Union has jurisdiction.

Of the Industrial and Commercial Undertakings relating to Central subjects may be mentioned. The Industrial Finance Corporation; Air India; Indian Airlines.

Industries in which the Government of India have made investments; such as the Steel Authority of India; the Hindustan Shipyard Ltd; the Indian Telephone Industries Ltd.

The States, similarly, have their receipts from: Forests, Irrigation and Commercial Enterprises (like Electricity, Road Transport) and Industrial Undertakings (such as Soap, Sandalwood, Iron and Steel in Karnataka, Paper in Madhya Pradesh, Milk Supply in Mumbai, Deep-sea Fishing and Silk in West Bengal).

Role of the Planning Commissions:

The institution which is sometimes held responsible for giving the maximum strength to the forces of centralisation in the country and yet has continued to remain an extra-statutory and extra-constitutional body is the Planning Commission.

A Planning Commission was set up under Nehru's Chairmanship by the Indian National Congress more than ten years before the country became independent to draw up a national plan. It had produced some voluminous reports.

A Planning and Development Department was set up and a Development Board was organised by the British Government during the Second World War but these were, comparatively, minor efforts. One might, therefore, say that real planning began with the setting up of the Planning Commission in 1950.

No attempt was, however, made to take resort to legislation or to an amendment of the Constitution. It was set up by a simple resolution of the Union Cabinet put forward by Prime Minister Nehru with himself as its Chairman, to formulate an integrated five-year plan for the economic and social development of the country and to act as an advisory board to the Union Government in this sphere.

But, even though the Planning Commission was set up without legislation or constitutional amendment, it has been growing in strength from year to year. Consisting of the Prime Minister, some important Cabinet Ministers of the Union and some non-officials, it has grown over the years as a heavy bureaucratic organisation.

The function of the Planning Commission, in theory, is to prepare a plan for the most effective and balanced utilisation of the country's resources, with a view to initiate "a process of development which will raise living standards and open out to the people new opportunities for a richer and more varied life". Its function, in other words, is to formulate a plan.

Development being related mostly to State subjects, the implementation of the plan rests with the States. The role that the Commission plays with regard to the States is merely advisory. Once the advice has been tendered by the Plan-ning Commission, it has no direct means of securing the implementation of the plan. The practice, however, is different.

The States have to depend on the Centre for financial assistance without which the plans cannot be implemented. Since the States cannot implement the plans without financial assistance from-the Centre, and the Union would like different States to follow a more or less uniform policy the Centre comes to exercise an immense control over the implementation part of the plans in the States.

National Development Council (NDC):

Constituted as the another part of the Planning Commission, it works in close cooperation with the Government of India. In order to promote coordination with the States, a National Development Council, consisting of all the Cabinet Ministers of the Government of India, the Members of the Planning Commission and the Chief Ministers of all the States, was set up. Having no statutory or constitutional basis, the National Development Council is an ad hoc improvised body, but, thanks to a convention, its decisions are regarded as binding on the Centre as well as on the State government.

It is interesting to note that there is no body analogous to the Planning Commission at the State level, though generally there are Planning Departments and sometimes Development Commission-ers in the States. All planning is done at the Union level and it is the responsibility of the States to implement the plans.

Part XI Articles 245-293: A Combination of Conflicts and Cooperation:

The relationship between the Centre and the States covers a wide range and embraces a very large part of the functions and activities in the administrative, social and economic spheres. Since 1950, many events have occurred which have a direct or indirect bearing on the Centre-State relations.

For instance, the Planning Commission was set up by a resolution of the Government of India in March, 1950 with the object of accelerating the economic growth of the country and to meet the social urge for the extension of social services.

Though not a creation of the Constitution, not even endowed with a statutory sanction, the Planning Commission assumed the role of the architect of India's destiny. There were widespread complaints and it was contended that Five-Year Plans had reduced the federal structure to almost a unitary system.

The reorganisation of the States in 1956 and there-after, especially with the emergence of non-Congress Governments in some States after the 1967 gave the issue of Centre-State relations a new dimension and importance.

Grievance of States in General against the Centre:

i. The States regard as inadequate the resources placed at their disposal and demand transfer of more financial resources. The tight control exercised by the Centre over the financial institutions of India restricts the action of States.

   The States have, consequently, to look to the Centre for funds in case of unforeseen calamities or to carry out various schemes. They do not see eye to eye with the Centre on the issue of overdraft facilities and debt and repayment liabilities of State governments.

ii. The Centre has the prerogative to decide finally the location of various industries and projects. Undue delays in clearance of projects have adversely affected the interests of the States.

iii. The States resent the Centre's encroachment into their sphere, evidence in the transfer of subjects from the State List to the Concurrent List. It may be noted that even the Congress-ruled States have objected to this. Nor do the States like the persistence of the Centre in the matter of getting sales tax abolished.

iv. The States disapprove of the Centre's practice of unilaterally increasing the wages and salaries of its staff, as this creates problems for the State governments vis-a-vis their own staff. The administered prices are controlled by the Centre, and arbitrary and drastic increase in the prices upset State budgets.

v. Resentment is also caused because of conflicting interests in location of new and important projects and industries.

Grievances of 'Opposition-Ruled' States against the Centre:

Besides the general grievances stated above, there are some specially felt by the States ruled by parties different from that of ruling at the Centre.

(i) They are critical of the role of the Governors; the manner of their appointment, transfers and dismissals. They feel that party considerations outweigh constitutional conventions in the matter Of Governors' appointment. They see the Governor as the Centre's agent.

(ii) They resent the frequent (and sometimes arbitrary) imposition of President's Rule and dismissal of State governments. This is seen as unwarranted and unconstitutional action on the Centre's part.

(iii) The State governments resent deployment of paramilitary forces such as CRPF, RPF, Central Industrial Security Force, etc. in the States without requisition from the States.

(iv) The States allege that the Centre shows little respect for the views expressed by State Chief Ministers or Ministers at conferences convened by the Centre. The Centre is alleged to expect unquestioned submission by the State governments like the appointment of Commission of in-quiry by the Centre against the governments and ministries, invariably, of those States ruled by parties other than that at the Centre.

Centre's Grievances against States:

The Centre, for its part, feels displeased at the attitude of the States over various issues. Its aim is to achieve equitable development of the country. It feels perturbed at the objections of the more advanced States over its special concessions and measures to develop the backward areas.

The Centre also alleges that State governments tend to divert funds allocated for a particular scheme to other purpose. The Centre also resents the States' claiming credit for the successful implementation of Centrally-sponsored projects.

Reforming Centre-State Relations:

Some of the major recommendations made by different committees and teams are as under:

1. The Setalvad Study Team:

The Setalvad Study Team had recommended the Constitution of an inter- State Council composed of the Prime Minister and other central ministers holding key portfolios, Chief Ministers and others, invited or co-opted. It suggested measures to rationalize the relationship between the Finance Commission and the Planning Commission.

Besides, it recommended that the office of Governor be filled by a person having ability, objectivity and independence and the incumbent must regard himself as a creation of the Constitution and not as an errand boy of the Central Government

2. The Administrative Reforms Commission:

The Administrative Reforms Commission noticed that the Central Government had even moved into the fields earmarked for the States under the Constitu-tion and asked it to withdraw from such areas.

It recommended the setting up of an inter-State Council but made a novel suggestion about its composition. Instead of giving seats in this body to all the Chief Ministers, it wanted to have five representatives one each from the five zonal councils.

Much more importantly, the ARC highlighted the need for formulation of guidelines for governors in the exercise of their discretionary powers. This would ensure uniformity of action and eliminate all suspicions of partnership or arbitrariness.

The question whether a Chief Minister enjoys majority support or not should be tested on the floor of the Legislature and for this he should summon the Assembly when-ever a doubt arises.

It also opined that when a ministry suffers a defeat in the Legislative Assembly on major policy issues and the outgoing chief minister advises the governor to dissolve the Assembly with a view to obtaining the verdict of the electorate, the governor should normally accept the advice.

3. Rajamannar Committee Report:

The DMK government of Tamil Nadu appointed a Commission with a direction to suggest changes in the existing level of Union-State relations. Their terms of reference were to examine the entire question regarding the relationship that should exist between the Centre and the States in a federal set-up and to suggest amendments to the Constitution so as to "secure utmost autonomy to the States."

The Committee headed by P.V. Rajamannar, a retired Chief Justice of Madras High Court, presented its report on May 27, 1971. *Some of the important recommendations of the Committee were:*

i. The Committee recommended the transfer of several subjects from the Union and Concurrent Lists to the State List. It recommended that the 'residuary power of legislation and taxation' should be vested in the State Legislatures.
ii. An Inter-State Council comprising Chief Ministers of all the States or their nominees with the Prime Minister as its Chairman should be set up immediately.
iii. The Committee recommended the abolition of the existing Planning Commission and that its place must be taken by a statutory body, consisting of scientific, technical, agricultural and economic experts, to advise the States which should have their own Planning Boards.
iv. The Committee advocated deletion of those articles of the Constitution empowering the Centre to issue directives to the States and to take over the administration in a State. The Committee was also opposed to the emergency powers of the Central Government and recommended the deletion of Articles 356, 357 and 360.
v. The Committee recommended that every State should have equal representation in the Rajya Sabha, irrespective of population.
vi. The Governor should be appointed by the President in consultation with the State Cabinet or some other high power body that might be set up for the purpose and once a person had held this office, he should not be appointed to any other office under the Government.
vii. On recruitment to the services, the Committee recommended that Article 312 should be so amended as to omit the provision of the creation of any new All-India cadre in future.
viii. The High Courts of States should be the highest courts for all matters falling within the jurisdic-tion of States.
ix. The Committee said that 'territorial integrity' of a State should not be interfered with in any manner except with the consent of the State concerned.
x. It recommended that the States should also get a share of the tax revenues from corporation tax, customs and export duties and tax on the capital value of assets and also excise duties.

4. Sarkaria Commission Report:

In view of the various problems which impeded the growth of healthy relations between the Centre and the States, the Central Government set up a Commission in June 1983, under the Chairmanship of Justice R.S. Sarkaria mainly to suggest reforms for an equitable distribution of powers between the Union and the States. The Commission submitted its report in 1988.

Major Recommendations:

i. Though the general recommendations tilt towards the Centre – advocating the unity and integrity of the nation, the Commission suggested that Article 258 (e.g. the Centre's right to confer authority to the States in certain matters) should be used liberally.
ii. Minimal use of Article 356 should be made and all the possibilities of formation of an alternative government must be explored before imposing President's Rule in the State. The State Assem-bly should not be dissolved unless the proclamation is approved by the Parliament.
iii. It favoured the formation of an Inter-Government Council consisting of the Prime Minister and the Chief Ministers of States to decide collectively on various issues that cause friction be-tween the Centre and the States.
iv. It rejected the demand for the abolition of the office of Governor as well as his selection from a panel of names given by the State Governments. However, it suggested that active politicians should not be appointed Governors.

    When the State and the Centre are ruled by different political parties, the Governor should not belong to the ruling party at the Centre. Moreover, the retiring Governors should be debarred from accepting any office of profit.

v. It did not favour disbanding of All India Services in the interest of the country's integrity. Instead, it favoured addition of new All India Services.
vi. The three-language formula should be implemented in its true spirit in all the States in the interest of unity and integrity of the country.
vii. It made a strong plea for Inter-State Councils.
viii. The Judges of the High Courts should not be transferred without their consent.
ix. It did not favour any drastic changes in the basic scheme of division of taxes, but favoured the sharing of corporation tax and 'every of consignment tax.
x. It found the present division of functions between the Finance Commission and the Planning Commission as reasonable and favoured the continuance of the existing arrangement.

Bargaining Federalism*- Emerging Trends*:

The end of one party rule in the Centre after the debacle of the Congress in 1996 has seen five national elections and governments in 1989, 1991, 1996, 1998 and 1999. In between 1996-97 the Central Government was run by the United Front made up of regional parties.

The regional leaders like Chandrababu Naidu, Karunanidhi, Mulayam Singh Yadav, G.K. Moopnar, Prafulla Kumar Mohanta emerged as the Prime Minister maker at the centre. With 24 allies, some of them volatile, Vajpayee has managed to run the coalition government successfully, because of bargaining.

The government's stability depended on its bargaining capacity coping with the diverse demands put up by the allies. The new emerging trend that is seen is that the regional parties forming the government in various provinces and they start the process of political bargaining with the coalition government at the centre.

This bargaining for sharing power at the Centre, apparently for the fulfillment of regional aspira-tions, was evident in the formation of the government after 1998, and 1999 elections.

Whether it was Mamta Banerjee wanting a Bengal Package, Telegu Desam Party wanting Central grants or the Lok Sabha speakership, or Miss Jayalalitha demanding waters from the Cauvery or Samata Party setting up a New Railway Zone in Bihar—all have tried to extract the maximum share of the spoils and to seek solutions of the problems in their respective states.

3. Doctrine of Territorial Nexus

According to this Doctrine, The Legislature of a State may make laws for the whole or any part of the State. This means that State Laws would be void if it has extra-territorial operation i.e. it is applied to subjects or objects located outside the territory of the state. However, there, is one exception of the general rule. A State law of extra-territorial operation will be valid if there is sufficient nexus between the object and the State. It is done by the application of "doctrine of territorial nexus".

This doctrine was first evolved by the Privy Council in Wallace v/s Income-tax Commissioner, Bombay. In this case, a company which was registered in England was a partner in the firm in India. The Indian Income-tax Authorities sought to tax the entire income made by the company. The Privy Council applied the doctrine of territorial nexus and held the levy of tax valid. it said that derivation from British India of major part of its income for a year gave to company for that year sufficient territorial connection to justify its being treated as at home in India for all purposes of tax on its income for that year from whatever source income may be derived.

The doctrine explains that it is not necessary that the object to which the law is applied should be physically located within the boundaries of the state making the law. It is enough if there is sufficient territorial nexus between the object and the state making the law.

The Supreme Court applied the doctrine in *State of Bombay v. R. M. D. C.s* [AIR 1957 SC 699] case: the Bombay State levied a tax on lotteries and prize competitions. The tax was extended to a newspaper printed and published in Bangalore but had wide circulation in Bombay. The respondent conducted the prize competitions through this paper. The Court held that there existed a sufficient territorial nexus to enable the Bombay State to tax the newspaper. If there is sufficient nexus between the person sought to be charged and the State seeking to tax him, the taxing statute would be upheld. For the application of the doctrine, there must be:

- Connection between the State and the subject matter of law which must be real and not illusory.
- The liability sought to be imposed must be pertinent to that connection.
- Whether there is sufficient connection is a question of fact and will be determined by Courts in each accordingly.
- Parliamentary law having extra territorial Operation

Union Parliament may make laws having extra territorial operation and such a law would not be void on the ground of having extra territorial operation.

In *A. H. Wadia vs Income-Tax Commissioner Bombay* [AIR 1949 FC 18], In this case, the Gwalior Government had loaned at Gwalior large sums of money to a company in British India on the mortgage of debentures over property in British India. The interest on loan was payable at Gwalior. It was taxed under the Indian Income tax Act. Upholding the levy, the Supreme Court held :

> *"In the case of a sovereign Legislature question of extra-territoriality of any enactment can never be raised in the municipal court as a ground for challenging its validity. The legislation may offend the rules of international law, may not be recognized by foreign courts, or there may be practical difficulties in enforcing them but these are quest of policy with which the domestic tribunals are concerned."*

4. Principles Interpretation of Lists

The power of the Centre and states are divided. They cannot make laws outside their allotted subjects. The distribution of subject matter cannot be claimed scientifically perfect and there happens to be overlapping between the subjects enumerated in the three lists. In such cases, questions constantly arise whether a particular subject fails in the sphere of one or the other government and also with regard to constitutionality of the enactment. This duty in a federal constitution is vested in the Supreme Court of India. The Supreme Court has evolved the following principles of interpretation in order to determine the respective power of the Union and the States under the three lists.

A. Rule of Harmonious Construction

It is the duty of the Courts to harmoniously construe different provisions of any Statute, Rule or Regulation, if possible, and to sustain the same rather than striking down the provision outright. The rule of harmonious construction is invoked in cases where there is found to be some ambiguity in provisions of a statute or where the provisions of a Statute seem to be inconsistent or repugnant with each other. In such a case, the rule requires the Court, interpreting the provisions of the Statute, to so interpret these provisions that all the provisions survive in harmony with each other. The Court should try, as far as possible, to reconcile entries and to bring harmony between them. When this is not possible only then the overriding power of the Union Legislature- the non obstante clause applies and the federal power prevail."

B. Doctrine of Pith & Substance

Many a times, a law passed by a legislature with respect to a matter, within its legislative competence, encroaches upon another matter outside its competence. In such cases, question with regard to constitutionality of law is to be determined by applying the doctrine of pith and substance. The doctrine flows from the words 'with respect to' under Article 246.

Thus, within their respective spheres, the Union and the State legislature are made supreme and they should not encroach into the sphere reserved to other. If a law passed by one

encroaches upon the field assigned to the other, the court will apply the doctrine of pith and substance to determine whether the legislature concerned was competent to make it. If the pith and substance of law, i.e., the true object of the legislation or a statute, relates to a matter with the competence of Legislature which enacted it, it should be held to intra vires even though it might incidentally trench on matters not within the competence of Legislature. In order to ascertain the true character of the legislation one must have regard to the enactment as a whole, to its object and to the scope and effect of its provision.

The Privy Council applied this doctrine in *Profulla Kumar v. Bank of Khulna* [AIR 1946 SC 375]. In this case the validity of the Bengal Money Lenders' Act, 1946 which limited the amount and the rate of interest recoverable by a money lender on any loan was challenged on the ground that it was ultra vires of the Bengal Legislature in so far as it related to 'promissory notes', a central subject. The Privy Council held that the Bengal Money-Lenders Act was in Pith and substance a law in respect of Money-Lending and Money-lenders a state subject, and was valid even though it trenched incidentally on "Promissory note"- a central subject.

In *State of Bombay v. F.N. Balsara* [AIR 1951 SC 318], the Bombay, Prohibition Act, which prohibited sale and possession of liquors in the state, was challenged on the ground that it incidentally encroached upon import and export of liquors across custom frontier- a central subject. It was contended that the prohibition, purchase, use, possession and sale of liquor will affect its import. The court held that Act valid because the pith and substance of the Act fell under the State List and not under the Union List even though the Act incidentally encroached upon the Union Powers of Legislation.

C. Plenary Power Doctrine

Plenary power is a power that has been granted to a body or person in absolute terms, with no review of or limitations upon the exercise of that power. The assignment of a plenary power to one body divests all other bodies from the right to exercise that power, where not otherwise entitled. Plenary powers are not subject to judicial review in a particular instance or in general.

D. Ancillary Power Doctrine

This principle is an addition to the doctrine of Pith and Substance. What it means is that the power to legislate on a subject also includes the power to legislate on ancillary matters that are reasonably connected to that subject. For example, the power to impose tax would include the power to search and seizure to prevent the evasion of that tax. However, power relating to banking cannot be extended to include power relating to non-banking entities.

However, if a subject is explicitly mentioned in a State or Union list, it cannot be said to be an ancillary matter. For example, the power to tax is mentioned in specific entries in the lists and so the power to tax cannot be claimed as ancillary to the power relating to any other entry of the lists.

As held in the case of *State of Rajasthan vs G Chawla, AIR 1959*, the power to legislate on a topic includes the power to legislate on an ancillary matter which can be said to be reasonably included in the topic.

However, this does not mean that the scope of the power can be extended to any unreasonable extent. Supreme Court has consistently cautioned against such extended construction. For example, in *R M D Charbaugwala vs State of Mysore, AIR 1962*, SC held that betting and gambling is a state subject as mentioned in Entry 34 of State list but it does not include power to impose taxes on betting and gambling because it exists as a separate item as Entry 62 in the same list.

E. Colourable Exercise of Power

This is applied when the legislature enacting the law has transgressed its power as is mentioned in the Constitution. The expression "colourable legislation" simply means what cannot be done directly, cannot be done indirectly too. It is the substance that is material and not the outward appearance.

Hence there are certain situations when it seems that it is within the power of the legislature enacting the law but actually it is transgressing. This is when this doctrine comes into the picture.

It was applied by the Supreme Court of India in the case State of Bihar vs Kameshwar Singh and it was held that the Bihar Land Reforms Act was invalid.

5. Residuary Power

Article 248 vests the residuary powers in the Parliament. It says that Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent list or the state list. Entry 97 in the Union list also lays down that the Parliament has exclusive power to make laws with respect to any matter not mentioned in the state list or the concurrent list including any tax not mentioned in either of these lists. This reflects the leaning of the constitution makers towards a strong centre.

In *Union of India v H.S. Dhillon* [AIR 1972 SC 1061], the question involved was whether parliament had legislative competence to pass Wealth-tax Act imposing wealth tax on the assets of a person in agricultural land. The Court held that in case of a central Legislation the proper test was to inquire the matter fell in List II (State List) or List III (Concurrent List). Once it is found that matter does not fall under List II, Parliament will be competent to legislate on it under its residuary power in Entry 97 of List I. in such a case it becomes immaterial whether it falls under Entries I-96 of List or not.

Thus the distribution of legislative powers by the constitution is heavily tilted towards the centre.

6. Doctrine of Repugnancy

It is Article 254 of the Constitution of India that firmly entrenches the Doctrine of Repugnancy in India. According to Black's Law Dictionary, Repugnancy could be defined as

"an inconsistency or contradiction between two or more parts of a legal instrument (such as a statute or a contract)".

Article 245 states that Parliament may make laws for whole or any part of India and the Legislature of a State may make laws for whole or any part of the State. It further states that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Article 246 also talks about Legislative power of the Parliament and the Legislature of a State. It states that:

1. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I or the Union List in the Seventh Schedule.
2. The Legislature of any State has exclusive power to make laws for such state with respect to any of the matters enumerated in List II or the State List in the Seventh Schedule.
3. The Parliament and the Legislature of any State have power to make laws with respect to any of the matters enumerated in the List III or Concurrent List in the Seventh Schedule.
4. Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

The Legislative Scheme in our Constitution is both complex and lengthy. In the present post, I will confine myself only to Repugnancy and its niceties. I will not deal not with any other provisions relating to the Legislative Scheme of our Constitution. The only articles that I will be touching in this respect are article 245, article 246 and article 254.

Supreme Court's Interpretation of Doctrine of Repugnancy

Article 254 has been beautifully summarized by the Supreme Court in *M. Karunanidhi v. Union of India* [(1979) 3 SCC 431]. The court said that:

> "1. Where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy.
>
> 2. Where however a law passed by the State comes into collision with a law passed by Parliament on an Entry in the Concurrent List, the State Act shall prevail to the extent of the repugnancy and the provisions of the Central Act would become void provided the State Act has been passed in accordance with clause (2) of Article 254.
>
> 3. Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List entrenches upon any of the Entries in the Central List, the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential.

4. Where, however, a law made by the State Legislature on a subject covered by the Concurrent List is inconsistent with and repugnant to a previous law made by Parliament, then such a law can be protected by obtaining the assent of the President under Article 254(2) of the Constitution. The result of obtaining the assent of the President would be that so far as the State Act is concerned, it will prevail in the State and overrule the provisions of the Central Act in their applicability to the State only.

Such a state of affairs will exist only until Parliament may at any time make a law adding to, or amending, varying or repealing the law made by the State Legislature under the proviso to Article 254.

Now, the conditions which must be satisfied before any repugnancy could arise are as follows:

1. That there is a clear and direct inconsistency between the Central Act and the State Act.

2. That such an inconsistency is absolutely irreconcilable.

3. That the inconsistency between the provisions of the two Acts is of such nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without disobeying the other."

Thereafter, the court laid down following propositions in this respect:

"1. That in order to decide the question of repugnancy it must be shown that the two enactments contain inconsistent and irreconcilable provisions, so that they cannot stand together or operate in the same field.

2. That there can be no repeal by implication unless the inconsistency appears on the face of the two statutes.

3. That where the two statutes occupy a particular field, but there is room or possibility of both the statutes operating in the same field without coming into collision with each other, no repugnancy results.

4. That where there is no inconsistency but a statute occupying the same field seeks to create distinct and separate offences, no question of repugnancy arises and both the statutes continue to operate in the same field."

Further in the case of *Govt. of A.P. v. J.B. Educational Society* [(2005) 3 SCC 212], the court held that:

"1. There is no doubt that both Parliament and the State Legislature are supreme in their respective assigned fields. It is the duty of the court to interpret the legislations made by Parliament and the State Legislature in such a manner as to avoid any conflict. However, if the conflict is unavoidable, and the two enactments are irreconcilable, then by the force of the non obstante clause in clause (1) of Article 246, the parliamentary

> legislation would prevail notwithstanding the exclusive power of the State Legislature to make a law with respect to a matter enumerated in the State List.
>
> 2. With respect to matters enumerated in List III (Concurrent List), both Parliament and the State Legislature have equal competence to legislate. Here again, the courts are charged with the duty of interpreting the enactments of Parliament and the State Legislature in such manner as to avoid a conflict. If the conflict becomes unavoidable, then Article 245 indicates the manner of resolution of such a conflict."

The Court also said that:

> 1. Where the legislations, though enacted with respect to matters in their allotted sphere, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, parliamentary legislation will predominate, in the first, by virtue of the non obstante clause in Article 246(1), in the second, by reason of Article 254(1).
>
> 2. Clause (2) of Article 254 deals with a situation where the State legislation having been reserved and having obtained President's assent, prevails in that State; this again is subject to the proviso that Parliament can again bring a legislation to override even such State legislation.

In the case of *National Engg. Industries Ltd. v. Shri Kishan Bhageria* [(1988) Supp. SCC 82], it was held that "the best test of repugnancy is that if one prevails, the other cannot prevail". All the above mentioned cases have been upheld by the Supreme Court in *Zameer Ahmed Latifur Rehman Sheikh v. State of Maharashtra* [C IVIL APPEAL NO. 1975 OF 2008].

Thus, we see that Doctrine of Repugnancy is firmly entrenched in our constitutional scheme and is here to stay for a long time to come. In the subsequent posts, I will try to discuss doctrines like Pith and Substance, Colourable Legislation, Legislative Competence, Doctrine of Eclipse etc.

7. Overview of Panchayati Raj Provisions

Panchayati Raj is a system of rural local self-government in India.

It has been established in all the states of India by the acts of the state legislature to build democracy at the grass root level. It is entrusted with rural development and was constitutionalized through the 73rd Constitutional Amendment Act of 1992.

Evolution of Panchayati Raj in India

Panchayati Raj was not a new concept to India. Indian villages had Panchayats (council of five persons) from very ancient time, which were having both executive and judicial powers and

used to handle various issues (land distribution, tax collection etc.) or disputes arising in the village area.

Gandhiji also held the opinion of empowerment of Panchayats for the development of rural areas. Thus, recognizing their importance our Constitution makers included a provision for Panchayats in part IV of our constitution (directive principles of state policy).

Art. 40 confers the responsibility upon State to take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. But it does not give guidelines for organising village panchayats.

Thus, its formal organisation and structure was firstly recommended by Balwant Rai committee,1957 (Committee to examine the Community Development Programme,1952).

The Committee, in its report in November 1957, recommended the establishment of the scheme of 'democratic decentralisation', which ultimately came to be known as Panchayati Raj. It recommended for a three tier system at village, block and district level and it also recommended for direct election of village level panchayat. Rajasthan was the first state to establish Panchayati Raj at it started from Nagaur district on October 2, 1959.

After this, Ashok Mehta Committee on Panchayati Raj was appointed in December 1977 and in August 1978 submitted its report with various recommendations to revive and strengthen the declining Panchayati Raj system in the country.

Its major recommendation were two tier system of panchayat, regular social audit, representation of political parties at all level of panchayat elections, provisions for regular election, reservation to SCs/STs in panchayats and a minister for panchayati raj in state council of ministers.

Further, G V K Rao Committee appointed in 1985 again recommended some measures to strengthen Panchayati Raj institutions.

LM Singhvi Committee appointed in 1986 first time recommended for the constitutional status of Panchayati Raj institutions and it also suggested for constitutional provisions to ensure regular, free and fair elections to the Panchayati Raj Bodies.

In response to the recommendations of LM Singhvi committee, a bill was introduced in the Lok Sabha by Rajiv Gandhi's government in July 1989 to constitutionalize Panchayati Raj Institutions, but the bill was not passed in Rajya Sabha.

The V P Singh government also brought a bill, but fall of the government resulted in lapse of the bill. After this P V Narashima Rao's government introduced a bill for this purpose in Lok Sabha in September, 1991 and the bill finally emerged as the 73rd Constitutional Amendment Act, 1992 and came into force on 24th April, 1993.

Features of 73rd Amendment Act 1992

The 73rd Amendment to the Constitution enacted in 1992 added a new part-IX to the Constitution. It also added a new XI schedule containing list of 29 functional items for Panchyats and made statutory provisions for the establishment, empowerment and functioning

of Panchayati Raj institutions. Some provisions of this amendment are binding on the States, while others have been left to be decided by respective State Legislatures at their discretion. The salient features of this amendment are as follows:

1. Organization of Gram Sabhas;
2. Creation of a three-tier Panchayati Raj Structure at the District (Zila), Block and Village levels;
3. Almost all posts, at all levels to be filled by direct elections;
4. Minimum age for contesting elections to the Panchayati Raj institutions be twenty one years;
5. The post of Chairman at the District and Block levels should be filled by indirect election;
6. There should be reservation of seats for Scheduled Castes/ Scheduled Tribes in Panchayats, in proportion to their population, and for women in Panchayats up to one-third seats;
7. State Election Commission to be set up in each State to conduct elections to Panchayati Raj institutions;
8. The tenure of Panchayati Raj institutions is five years, if dissolved earlier, fresh elections to be held within six months; and
9. A State Finance Commission is to be set up in each State every five years.

Some of the provisions, which are not binding on the States, but are only guidelines:

1. Giving representation to the members of the Central and State legislatures in these bodies;
2. Providing reservation for backward classes; and
3. The Panchayati Raj institutions should be given financial powers in relation to taxes, levy fees etc. and efforts shall be made to make Panchayats autonomous bodies.

Composition of Panchayats

The Panchayati Raj system, as established in accordance with the 73rd Amendment, is a three-tier structure based on direct elections at all the three tiers: village, intermediate and district. Exemption from the intermediate tier is given to the small States having less than 20 lakhs population. It means that they have freedom not to have the middle level of panchayat.

All members in a panchayat are directly elected. However, if a State so decides, members of the State Legislature and Parliament may also be represented in a district and middle-level panchayats.

The middle-level panchayats are generally known as Panchayat Samitis. Provisions have been made for the inclusion of the chairpersons of the village panchayats in the block and district level panchayats.

The provision regarding reservation of seats for Scheduled Castes/Scheduled Tribes has already been mentioned earlier. However it should also be noted here that one-third of total

seats are reserved for women, and one-third for women out of the Quota fixed for Scheduled Castes/Tribes.

Reservation is also provided for offices of Chairpersons. The reserved seats are allotted by rotation to different constituencies in a panchayat area. State Legislatures can provide for further reservation for other backward classes (OBC) in panchayats.

Term of a Panchayat

The Amendment provides for the continuous existence of Panchayats. The normal term of a Panchayat is five years. If a Panchayat is dissolved earlier, elections are held within six months. There is a provision for State Election Commission, for superintendence, direction, and control of the preparation of electoral rolls and conduct of elections to Panchayats.

Powers and Responsibilities of Panchayats

State Legislatures may endow Panchayats with such powers and authority as may be necessary to enable the Panchayats to become institutions of self-government at the grassroots level.

Responsibility may be given to them to prepare plans for economic development and social justice. Schemes of economic development and social justice with regard to 29 important matters mentioned in XI schedule such as agriculture, primary and secondary education, health and sanitation, drinking water, rural housing, the welfare of weaker sections, social forestry and so forth may be made by them.

Three-tier Structure of Panchayati Raj

Panchayat Samiti

The second or middle tier of the Panchayati Raj is Panchayat Samiti, which provides a link between Gram Panchayat and a Zila Parishad.

The strength of a Panchayat Samiti also depends on the population in a Samiti area. In Panchayat Samiti, some members are directly elected. Sarpanchs of Gram Panchayats

Sarpanchs of Gram Panchayats are ex-officio members of Panchayat Samitis. However, all the Sarpanchs of Gram Panchayats are not members of Panchayat Samitis at the same time.

The number varies from State to State and is rotated annually. It means that only chairpersons of some Gram Panchayats in a Samiti area are members of Panchayat Samiti at a time.

In some panchayats, members of Legislative Assemblies and Legislative Councils, as well as members of Parliament who belong to the Samiti area, are co-opted as its members. Chairpersons of Panchayat Samitis are, elected indirectly- by and from amongst the elected members thereof.

Zila Parishad

Zila Parishad or district Panchayat is the uppermost tier of the Panchayati Raj system.

This institution has some directly elected members whose number differs from State to State as it is also based on population. Chairpersons of Panchayat Samitis are ex-officio members of Zila Parishads.

Members of Parliament, Legislative Assemblies and Councils belonging to the districts are also nominated members of Zila Parishads.

The chairperson of a Zila Parishad, called Adhyaksha or President is elected indirectly- by and from amongst the elected members thereof. The vice-chairperson is also elected similarly.Zila Parishad meetings are conducted once a month. Special meetings can also be convened to discuss special matters. Subject committees are also formed.

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Functions of Panchayat

1. All Panchayati Raj Institutions perform such functions as are specified in state laws relating to panchayati raj. Some States distinguish between obligatory (compulsory) and optional functions of Gram Panchayats while other States do not make this distinction.
2. The civic functions relating to sanitation, cleaning of public roads, minor irrigation, public toilets and lavatories, primary health care, vaccination, the supply of drinking water, constructing public wells, rural electrification, social health and primary and adult education, etc. are obligatory functions of village panchayats.
3. The optional functions depend on the resources of the panchayats. They may or may not perform such functions as tree plantation on roadsides, setting up of breeding centers for cattle, organizing child and maternity welfare, promotion of agriculture, etc.
4. After the 73rd Amendment, the scope of functions of Gram Panchayat was widened. Such important functions like preparation of annual development plan of panchayat area, annual budget, relief in natural calamities, removal of encroachment on public lands and implementation and monitoring of poverty alleviation programmes are now expected to be performed by panchayats.
5. Selection of beneficiaries through Gram Sabhas, public distribution system, non-conventional energy source, improved Chullahs, biogas plants have also been given to Gram Panchayats in some states.

Functions of Panchayat Samiti

1. Panchayat Samitis are at the hub of developmental activities.
2. They are headed by Block Development Officers (B.D.Os).
3. Some functions are entrusted to them like agriculture, land improvement, watershed development, social and farm forestry, technical and vocational education, etc.
4. The second type of functions relates to the implementation of some specific plans, schemes or programmes to which funds are earmarked. It means that a Panchayat

Samiti has to spend money only on that specific project. The choice of location or beneficiaries is, however, available to the Panchayat Samiti.

Functions of Zila Parishad

I. Zila Parishad links Panchayat Samitis within the district.
II. It coordinates their activities and supervises their functioning.
III. It prepares district plans and integrates Samiti plans into district plans for submission to the State Government.
IV. Zila Parishad looks after development works in the entire district.
V. It undertakes schemes to improve agricultural production, exploit ground water resources, extend rural electrification and distribution and initiate employment generating activities, construct roads and other public works.
VI. It also performs welfare functions like relief during natural calamities and scarcity, the establishment of orphanages and poor homes, night shelters, the welfare of women and children, etc.
VII. In addition, Zila Parishads perform functions entrusted to them under the Central and State Government sponsored programmes. For example, Jawahar Rozgar Yojna is a big centrally sponsored scheme for which money is directly given to the districts to undertake employment-generating activities.

8. Freedom of Trade & Commerce

In all Federations an attempt is made through constitutional provisions to create and preserve a national economic fabric to remove and prevent local barriers to economic activity, to remove impediments in the way of inter-State trade and commerce and thus to make the country as one single economic unit so that economic resources of all the various units may be utilized to the common advantage of all.

The framers of the Indian Constitution were fully conscious of the importance of maintaining the economic unity of the Union of India. Free movement and exchange of goods throughout the territory of India was essential for the economic unity of the country which alone could sustain the progress of the country. Free flow of trade, commerce and intercourse within and across inter-State borders is an important pre-requisite for ensuring economic unity, stability and prosperity of a country having a two-tier polity.

Most federal constitutions contain special provisions to protect this freedom. The Indian Constitution also contains provisions guaranteeing freedom of commerce, trade and intercourse throughout the territory of India. However, no freedom can be absolute.

Limitations for the common good are inherent in such freedom. That is why, legitimate regulatory measures are not considered to constitute restrictions on this freedom. Economic unity is one of the constitutional aspirations and safeguarding its attainment and maintenance of that unity are objectives of the Indian Constitution.

In the case of *Atiabari Tea Co. Ltd. V. State of Assam* [AIR 1961 SC 232], the Supreme Court explained in detail the motivations and aspirations of the framers of the Constitution in drafting the Article under Trade, Commerce and intercourse in Indian territory in the following words:

> *"In drafting the relevant Articles [Arts. 301-305] the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal polity which had been adopted by the Constitution for the governance of the country. Political freedom had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. Local or regional fears or apprehensions raised by local or regional problems may persuade the State legislatures to adopt remedial measures intended solely for the protection of regional interests without due regard to their effect on the economy. The object of the Constitution-makers was to avoid such possibility. Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the Country."*

Article 301

Article 301: Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

The main provision framed is Art. 301. According to this article "trade, commerce and intercourse throughout the territory of India shall be free." This constitutional provision imposes a general limitation on the exercise of legislative power, whether of the Centre or of the States, to secure unhampered free flow of trade, commerce & intercourse form one part of the territory to another. The purpose underlying Art. 301 is to promote economic unity of India and that there should not be any regional or territorial economic barriers.

Scope and object Art. 301.

I. Article 301 imposes a limitation upon the exercise of legislative power, whether by the Union or by a State.
II. The object of the freedom declared by this Article is to ensure that the economic unity of India may not be broken up by internal barriers.
III. Article 301 states that subject to the other provisions of Part XIII, trade, commerce and intercourse throughout India shall be free. It is not freedom from all laws but freedom from such laws which restrict or affect activities of trade and commerce amongst the States.

Article 301 of the Indian Constitution is modelled on section 92 of the Australian Constitution. The origins of Art 301 may be traced directly to sec. 92 of the Australian Constitution, but there are some significant differences between the two provisions like Coverage under Art. 301 is broader than that of Sec. 92 of the Australian Constitution. The freedom in India is wider than that in Australia under Section 92. While Section 92 refers to inter- State trade only, Article 301 includes both inter-State and intra-State Trade Activities. The restrictions in Australia were spelled out by the Court whereas in India the Constitution itself lays down restrictions on Article 301 which are contained in Articles 302 to 305.

Although Article 301 is positively worded, in effect, it is negative as freedom correspondingly creates general limitation on all legislative power to ensure that trade, commerce and intercourse throughout India shall be free.

Arts. 19(1) (g) and Article 301

Article 19(1)(g) in Part III guarantees to every Indian citizen a fundamental right to carry on trade and business, subject to such reasonable restrictions as may be imposed in the interests of the general public. Also Articles 301 to 307 of Part XIII of the Constitution are provisions relating to trade, commerce and intercourse within the territory of India. Article 301 guarantees that trade; commerce and intercourse shall be free throughout the territory of India. It imposes a general limitation on the exercise of legislative power, whether of the Union or of the States, to secure unobstructed flow of trade, commerce and intercourse from one part of the territory of India to another.

Prima face, it seems that there is some overlapping between Art. 19(1)(g) and Art. 301, because both aim at the freedom of trade or business, and if either of the provisions is infringed, the aggrieved individual can seek his remedy from the Court against the offending legislative or executive action.

There are two distinction:

a. While Art. 19(1)(g) confers a fundamental right, Art. 301 confers a justiciable right but it is not fundamental right.
b. While Art. 19(1)(g) is confined to citizens, Art. 301 extends to all individuals.

In case of emergency, Art 19(1)(g) remains suspended and so the Courts can take recourse to Art. 301, to adjudge the validity of a restriction on trade, commerce and intercourse.

In some other situations, both provisions may be applicable and it may be possible to invoke both. Economic situations and conditions being unpredictable, it is not necessary to evolve any conceptualistic differentiation between the two Articles. Art. 301 is mandatory provision and any law contravening the same is ultra vires, but it is not a fundamental right and hence is not enforceable under Art. 32.

The scope and content of Art. 301 depends on the interpretation of these three expressions used therein, viz., Trade-Commerce-Intercourse/ Free/ Throughout Territory Of India.

I. Trade, Commerce and Intercourse

The words trade and commerce have been broadly interpreted. In most cases the accent has been given on the movement aspect.

Trade, commerce – Though the word 'business' is ordinarily more comprehensive than the word 'trade', they are synonymous with the other. So used, trade or business would mean some real, substantial and systematic or organized course of activity or conduct with a set purpose.

'Intercourse' – This word is used to give the freedom declared by Art. 301 the largest import. It thus includes the freedom to import things for personal or commercial use.

II. Free

'Shall be free' 'Freedom' in this Article does not mean absolute freedom but freedom for all restrictions except those which are provided in other articles of Part XIII, as well as regulatory and compensatory measures. The power of the Union of the State to exercise legitimate regulatory control is independent of the restrictions imposed by Arts. 302-305. On the other hand, 'restriction' would not be valid if it does not come under Arts. 302-305. Now, since restrictions under the latter provisions can be imposed only by law the freedom under Art. 301 cannot be taken away by mere executive action.

The word 'free' in Art. 301 cannot mean absolute freedom or that each and every restriction on trade and commerce is invalid. The Supreme Court has held in Atiabari that freedom of trade and commerce guaranteed by Art. 301 is freedom from such restrictions as directly and immediately restrict or impede the free flow or movement of trade.

In the matter of *Amrit Banaspati Co. Ltd. V. Union of India* [AIR 1995 SC 925], the Supreme Court observed that:

> *"Suffice it to say that it is only when the intra-state or inter-state movement of the persons or goods are impeded directly and immediately as distinct from creating some indirect or consequential impediment, by any legislative or executive action, infringement of the freedom envisaged by Art. 301 can arise. Without anything more, a tax law, per se may not impair such freedom. At the same time, it should be stated that a fiscal measure is not outside the purview of Art. 301 of the Constitution."*

III. Throughout The Territory Of India

'Throughout the territory of India', these words extend the freedom not only to inter-State but also in intra-State transactions and movements.

As according to *State of Bombay v. R.M.D.C.* [AIR 1957 SC 699], Art. 302 and 304 state the words "territory of India" in Art. 301 removes all inter-State or intra-State barriers, and brings out the idea that for the purpose of the freedom of trade and commerce, the whole country is one unit. Trade cannot be free throughout India if barriers exist in any part of India, be it inter-State or intra-State.

Remedies for infringement of Art. 301

1. Not being a fundamental right, the infringement of Art. 301 cannot be challenged by a petition under Art. 32. This does not mean, however, that the individual has no remedy if Art. 301 if infringed. Either an individual or a State can challenge any legislative or executive action which offends against this Article, by other proceedings e.g. under Art. 226.
2. The doctrine of severability applies where a statutory provision or order violate the provision of Art. 301 or 304.

Restrictions upon the Freedom

1. The limitation imposed upon inter-State freedom of trade, commerce and intercourse, by the other provisions of Part XIII are:
    a. It is subject to non-discriminatory restrictions imposed by Parliament, in the public interest (Art. 302).
    b. Even discriminatory or preferential provisions may be made by Parliament, for the purpose of dealing with a scarcity of goods arising in any part of India (Art. 302(2)).
    c. Non-discriminatory taxes may be imposed by States on imported goods similarly as in intra-State goods. (Art. 304(a))
    d. Reasonable restriction may be imposed by a State in the public interest (Art. 304(b)).
    e. Restrictions imposed by existing law to continue except insofar as provided otherwise by order of the President [Art. 305]. Existing laws relating to any matter referred to in Art. 19(6) (ii) are also protected.
2. The freedom cannot be restricted by mere executive order.

Power of Parliament to impose restrictions on trade, commerce and intercourse. Parliamentary Power To Regulate Trade & Commerce:

Article 302: Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

Therefore, Art. 302 empowers Parliament to impose by law such restrictions on the freedom of trade, commerce and intercourse between one state and another, or within any part of the territory of India, as may be required in the public interest.

By virtue of Art. 302, Parliament is, notwithstanding the protection conferred by Art. 301, authorized to impose restrictions on the freedom of trade, commerce and intercourse in the public interest. Thus, Art. 302 relax the restriction imposed by Art. 301 in favour of Parliament.

Limitations on Power of Parliament—Article 303 (1) and (2): This guarantee of freedom is expressly subject to the other provisions of Part XIII (Articles 302 to 305) of the Constitution. Article 302 enables Parliament to impose restrictions, by law, on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India as may be required in public interest. But, this power to place restrictions cannot be used by Parliament to make any law which discriminates between one State and another or gives preference to one State over another, "by virtue of any Entry in the Seventh Schedule relating to trade and commerce" [Article 303(1)]. Clause (2) of the Article engrafts an exception to the limitation contained in clause (1), in as much as it permits Parliament to make a law giving preference, or making discrimination between one State and another, if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

Regulation and Restriction

1. It is now established that even apart from the specific provisions in Arts. 302 -305, the Union as well as State Legislatures have the power to exercise legitimate regulatory control over the freedom of trade and commerce, which does not amounts to a restriction. In fact, legitimate regulation does not infringe the freedom declared by Art. 301.

   It is therefore necessary to distinguish a regulation from restriction, which term is used in Arts. 302, 304(b): While restrictions obstruct the freedom of movement of inter-State transactions, regulations promote it.

   The following measures have thus been held to be regulatory:
   a. Police regulations, such as provisions for lighting, rules of the road, etc., which facilitate the movement rather than retard it.
   b. Licensing provisions with compensatory fees.
   c. Provision for necessary services to enable the free movement, whether charged for or not.

   On the other hand, the following have been held to be restriction rather than regulation:
   a. A rule which totally prohibits movement of certain goods during a specified period.
   b. Anything which directly hinders the free flow of trade, commerce and intercourse between any two parts of India, constitutes a restriction within the meaning of Arts. 302, 304.

2. A restriction may be valid only if it conforms to the terms of Art. 302 or 304(b), as the case may be.
3. In determining whether a State Act imposing tax amounts to restriction on trade, commerce and inter-course among the States, the Court should examine whether the impugned provisions amounted to a restriction directly or indirectly on the movement of trade and commerce.

Public Interest

1. This means that even where a restriction imposed by law imposes a direct burden on the freedom of trade under Art. 301, it may be constitutionally valid, if it is required in the public interest, e.g., to prevent evasion of tax, to canalize inter State trade through registered or licensed dealers.
2. Article 302 is, however, subject to the condition in Art. 303 that such Union law should not be discriminatory as between different States except where it is necessary for dealing with a situation of scarcity of goods [Art. 303(2)].
3. In order to be protected by Art. 302, the nexus of the law with public interest must be reasonable, even though that word is not used in Art. 30239. This does not, however, imply any quasi-judicial obligation or compliance with the rules of natural justice.
4. If the condition of public interest is satisfied, Art. 302 would authorize both inter-State or intra-State restriction.

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