

LL.B. (Hons.) IIIth Semester
Paper-VI
CONSTITUTIONAL LAW – I
UNIT-II

Syllabus	Legislative Powers, Administrative Powers, Financial Powers, Legislative Powers: Doctrine of Territorial Nexus, Doctrine of Harmonious Construction, Doctrine of Pith and Substance, Doctrine of Repugnancy, Doctrine of Colourable Legislation
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Lecture – I	Legislative Relations: Distribution of Legislative Powers & Doctrine of Territorial Nexus
Lecture – II	Legislative Relations: Doctrine of Harmonious Construction, Doctrine of Pith and Substance & Doctrine of Colourable Legislation
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Lecture – IV	Legislative Relations: Parliament's power to legislate on the State subject
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Lecture- 1: Legislative Relations: Distribution of Legislative Powers & Doctrine of Territorial Nexus

Previous year Questions

1. Discuss the scheme of distribution of legislative powers between the Union and States. (2012) (2013) (2014) (2015) (2017) (2021)
2. Write a short note on doctrine of territorial nexus. (2014) (2017)

NOTES:

The Distribution of Legislative Powers can be done in two ways: -

1. With respect to Territory
2. With respect to subject matter

Territorial Relation

- Article 245(1) provides that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- Article 245(2) provides that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

Theory of territorial Nexus

- The state legislature cannot make extra-territorial laws except when there is sufficient connection between the State and the subject matter of legislation.

Case: A.H. Wadia v. Commissioner of Income Tax

- The Supreme Court in **State of Bombay v. R.M.D.C.**(1957) held that extra- territorial legislation can be upheld only when there is a sufficient nexus between the object sought to be achieved and the State seeking to achieve them.

Subject matter relation

- Article 246 is related to the subject matter of law making power of the parliament and state legislature. Following points are important with respect to subject matter relation.
 - Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (“Union List”).
 - The Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule (“State List”).
 - Parliament and State Legislature both have powers to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (“Concurrent List”).
- In **Javed v. State of Haryana** (2003), Supreme Court held that the Constitution gives autonomy to the Centre and the States within their respective fields.
- Article 248 provides for residuary powers of legislation. It lays down that subject to Article 246A, parliament has exclusive power to make law with respect to any matter not enumerated in the Concurrent List or State list.

ASSIGNMENT QUESTIONS

1. The distribution of the scheme of legislative powers has been in how many ways?
 - a. With respect to territory
 - b. with respect to subject matter
 - c. both a and b
2. provides that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
3. Write in brief the theory of territorial nexus.
Ans.
4. How many lists are there in Seventh Schedule of the Indian Constitution? Name them.
Ans.
5. deals with residuary powers of legislation.

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Lecture- 2: Legislative Relations: Doctrine of Harmonious Construction, Doctrine of Pith and Substance & Doctrine of Colourable Legislation

Previous year Questions

1. Write a short note on Doctrine of Harmonious Construction. (2012) (2017)
2. Write a short note on Doctrine of Pith and Substance. (2012) (2013) (2017) (2018)
3. Write a short note on Doctrine of Colorable Legislation. (2016) (2018)

NOTES:

Doctrine of Harmonious Construction

- The Doctrine states that whenever there is a case of conflict between two or more Statutes or between two or more parts or provisions of a Statute, then the Statute has to be interpreted upon harmonious construction.
- It signifies that in case of inconsistencies, proper harmonization is to be done between the conflicting parts so that one part does not defeat the purpose of another.
- The doctrine of harmonious construction came into existence as a result of many varied court interpretations of different statutes in a variety of cases.
- In the case of C. P. and Berar Act (1939), the court resolved the inconsistency between an entry of List I, and an entry of List II in the Indian Constitution and interpreted them harmoniously.
- In the landmark judgement of Sri Shankari Prasad Singh Deo v. Union of India (1951), the Supreme Court gave preference to both and said that the Fundamental Rights and Directive Principles of State Policy are two sides of the same coin, and it is beneficial that they must work together.

Doctrine of Pith and Substance

- If the law passed by one legislature encroaches upon the field assigned to other, then the Court will apply the doctrine of pith and substance to determine whether the legislature was competent to make it or not.
- Pith and substance of legislation means true object and scope of legislation.
- If the pith and substance of law related to the matters within the competence of legislature then the enactment will be held to be intra vires.

- In **Prafulla Kumar v. Bank of Commerce, Khulna** (1947), the court held that a clear cut distinction is not possible between the legislative powers of the Union and the State Legislatures because they are bound to overlap.
- In ascertaining the pith and substance of the Act the court must consider the object of the Act, the scope of the Act and the effect as a whole.
- In **State of Bombay v. F.N. Balsara** (1951), the court held that the Bombay Prohibition Act, as valid because the pith and substance of the Act fell in State List even though it incidentally encroached upon the Union List.

Doctrine of Colourable Legislation

- It means that though apparently the legislature passing the statute purported to act within the limits of the powers yet in substance it transgressed these powers. The transgression is covert or indirect. (**K.C.G. Narayana Deo v. State of Orissa**, AIR 1953 SC 375).
- It is based on the maxim 'what cannot be done directly, cannot also be done indirectly'.
- Colourability is bound up with incompetency and not with bad faith or evil motive.
- **State of Bihar v. Kameshwar Singh**, AIR 1952 SC 252, is the only case where the law has been declared invalid on the ground of colourable legislation.

ASSIGNMENT QUESTIONS

1. Whenever there is a case of conflict between two or more Statutes or between two or more parts or provisions of a Statute, then the Statute has to be interpreted as per
2. In the case of C. P. and Berar Act, the court resolved the between an entry of List I, and an entry of List II in the Indian Constitution and interpreted them
3. In which case, the Supreme Court said that the Fundamental Rights and Directive Principles of State Policy are two sides of the same coin?
Ans.
4. What is the meaning of pith and substance?
Ans.
5. In ascertaining the pith and substance of the Act the court must consider the of the Act, the of the Act and the as a whole.
6. Doctrine of Colorable legislation is based on the maxim

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Lecture- 3: Legislative Relations: Doctrine of Repugnancy

Previous year Questions

1. Write a short note on Doctrine of Repugnancy. (2012) (2013) (2014) (2015) (2017)

NOTES:

- Article 254(1) provides that if any provision of a law made by the Legislature of the State is repugnant to any provision of a law made by Parliament with respect to one of the matters of the Concurrent List then the law made by parliament shall prevail. This provision is subject to Article 254(2).
- Article 254(1) is applied when there is inconsistency between State law and the Union law with respect to the Concurrent List.
- Article 254(2) envisages a situation where the State law will prevail over Union law.
- It provides that if the State law is repugnant to any law made by parliament on the Concurrent List but the State law has been reserved for the assent of the President and has received the assent of the President then the State law will prevail over the law made by the Parliament.
- However, Parliament can still override such law by subsequently making a law on the same matter.
- The Court in the case of *Deep Chand v. State of Uttar Pradesh* observed that repugnancy between two enactments can be identified with the help of the following three tests:
 - Whether there is a direct conflict between the two conflicting provisions;
 - Whether the Parliament intended to lay down an exhaustive enactment on the subject-matter and to replace the law made by the State legislature; and
 - Whether the law made by the Parliament and that made by the State legislature occupies the same field.

Important cases: -

- **M Karunanidhi v. Union of India**, AIR 1979 SC 898
This landmark judgment laid down that for the legislations to be repugnant to each other, it should not only be inconsistent but also be irreconcilable, meaning that the similar legislation passed are not repugnant unless and until they encroach on each other.
- **Zaverbhai v. State of Bombay**, AIR 1954 SC 752

The Supreme Court held that both the laws occupied the same field and cannot be split up. Hence, the State laws were held to be void and the Central law prevailed as per the doctrine of repugnancy.

- **Deep Chand v. State of U.P.**, AIR 1959 SC 648

The Supreme Court, in this case, held that the U.P. Transport Service Act is void to the extent of repugnancy.

- **Hoechst Pharma ltd. v. State of Bihar**, AIR 1983 SC 1019

The Supreme Court was of the view that the Essential Commodities Act and the Drugs (Price Control) Order function in two different areas of law. Therefore, there is no conflict between the two legislations. The question of repugnancy does not arise and they can coexist.

ASSIGNMENT QUESTIONS

1. Which provision provides for Doctrine of repugnancy?

Ans.

2. Article 254(1) is applied when there is inconsistency between and the with respect to the Concurrent List.

3. Mention two landmark judgments on Doctrine of repugnancy.

Ans.

4. provides that the State law has been reserved for the assent of the President and has received the assent of the President then the State law will prevail over the law made by the Parliament.

5. Mention the tests which were observed in the case of Deep Chand v. State of U.P.

Ans.

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Lecture- 4: Legislative Relations: Parliament's power to legislate on the State subject

Previous year Questions

1. Explain the circumstances in which Parliament can legislate the law on the matters in State List. (2016) (2021)
2. Discuss in detail about the division of legislative powers between Centre and State. What are the circumstances in which Parliament may make a law over State List? Explain. (2018)

NOTES:

- In the following circumstances the parliament gets the authority to legislate on the matters enumerated in the State list: -
- **National Interest (Article 249)**
 - Article 249 provides that if Rajya Sabha passes a resolution supported by 2/3 of the members present and voting that it is necessary and expedient in the national interest that the parliament should make laws with respect to goods and service tax or any other entry in state List then it shall be lawful for the Parliament to make laws for whole or any part of the country so long as the resolution remains in force.
 - Such resolution passes by the Rajya Sabha remains valid for a year but it can be renewed multiple time but not exceeding one year each time.
 - The law made by Parliament shall cease to have effect after expiration of six months after resolution ceases to operate.
- **During proclamation of emergency (Article 250)**
 - Article 250 provides that while a Proclamation of Emergency is in operation, Parliament shall have the power to make laws for the whole or any part of the country with respect to goods and service tax and other matters specified in the State List.
 - Such law will cease to have effect after expiry of six months from the date when emergency ceases to operate.
- **Consent of States (Article 252)**
 - Article 252 provides that if the Legislatures of two or more States pass a resolution to the effect that it is desirable to have a law passed by the Parliament on any matter in the State List then it shall be lawful for the parliament to make laws on that subject matter.
- **To give effect to Treaties and International agreements (Article 253)**

Article 253 empowers the parliament to make law for the whole or any part of India for implementing treaties and international agreements and conventions.

- **Failure of Constitutional Machinery in State (Article 256)**

Article 256 provides that Parliament is empowered to make laws with respect to all matters in the State list in case of State emergency.

ASSIGNMENT QUESTIONS

1. Mention any two matters enumerated in State List on which Parliament gets the authority to legislate.

Ans.

2. Under Article 249 and 250, the law made by Parliament shall cease to have effect after expiration of after resolution or emergency ceases to operate.
 - a. Three months
 - b. six months
3. empowers the parliament to make law for the whole or any part of India for implementing treaties and international agreements and conventions.
 - a. Article 253
 - b. Article 252
4. The resolution passes by the Rajya Sabha under Article 249 remains valid for a year but it can be renewed multiple time but not exceeding each time.
 - a. One year
 - b. six months
5. Which provision deals with Failure of Constitutional Machinery in State?
 - a. Article 255
 - b. Article 256

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Lecture- 5: Administrative Relations (Article 256-263)

Previous year Questions

1. Analyse the provisions of the Constitution of India regarding the administrative relations between the union and states. (2011) (2013) (2017) (2018)

NOTES:

- Article 256 provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- Article 261 provides that full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
- Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

Adjudication of water disputes

- Article 262(1) provides that Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter State river or river valley.
- Parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint.
- Parliament has enacted Inter-State Water Disputes Act, 1956 under Article 262.

Inter-State Council

- Article 263 provides for the establishment of an Inter-State Council to effect coordination between the states and between Centre and States.
- The President can establish such a council if at any time it appears to him that the public interest would be served by its establishment.
- He can define the nature of duties to be performed by such a council and its organization and procedure.
- Article 263 specifies the duties that can be assigned to it in the following manner:
 - inquiring into and advising upon disputes which may have arisen between States;

- investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- Making recommendations upon any such subject and particularly for the better co-ordination of policy and action on it.
- The Sarkaria Commission on Centre-State relations (1983-87) made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution.
- In pursuance of the above recommendations of the Sarkaria Commission, Government established the Inter- state Council in 1990.

ASSIGNMENT QUESTIONS

1. Which provision deals with the administrative relations between union and states?

Ans.

2. Article 261 provides that and shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
3. Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution according to law.
4. provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament.
 - a. Article 256
 - b. Article 257
5. Parliament has enacted Inter-State Water Disputes Act, 1956 under
 - a. Article 262
 - b. Article 263
6. provides for the establishment of an Inter-State Council to effect coordination between the states and between Centre and States.
 - a. Article 262
 - b. Article 263
7. In pursuance of the recommendations of the Commission, Government established the in 1990.

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Lecture- 6: Financial Relations (Article 264-291)

Previous year Questions

1. Explain the financial relation between union and states. (2021)

NOTES:

- Article 265 provides that no tax shall be levied or collected except by the authority of law.

Consolidated fund of India and of the States

- Article 266 provides for Consolidated Fund of India and of States and public accounts of India and of State.
- These provisions shall be subject to Article 267 (Contingency Fund) and to the provisions relating to the assignment of the whole or part of the net proceeds.
- All other public moneys received by or on behalf of the government of India or the Government of the State shall be credited to the public account of India or the public account of the state.

Contingency fund of India and of the States

- Article 267(1) provides for the Contingency Fund of India and Article 267(2) provides for the Contingency Fund of the State.
- Article 267(1) provides that the Parliament may by law establish a Contingency Fund of India and such sums shall be paid into it as may be determined by such law.
- Such 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 authorization of such expenditure by Parliament by law under Article 115 or Article 116.
- On the similar lines, Contingency Fund of the State shall be established by the State Government by law.

Goods and Service tax (GST)

- Provisions related to GST have been introduced by 101st Constitutional Amendment Act, 2016.
- Article 269A provides that Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India.

1. provides that no tax shall be levied or collected except by the authority of law.
 - a. Article 264
 - b. Article 265
2. Article 266 provides for Fund of India and of States.
 - a. Contingency
 - b. Consolidated
3. Article 267 provides for Fund of India and of States.
 - b. Contingency
 - b. Consolidated
4. Provisions related to GST have been introduced by Constitutional Amendment Act, 2016.
 - a. 101st
 - b. 100th
5. Article 279A (Inserted by 101st Constitutional Amendment, 2016) constitute a Council to be called the
6. provides for the composition of the GST Council.
 - a. Article 279A(2)
 - b. Article 279A(3)
7. GST Council shall be constituted by the president within from the commencement of the Constitution (One Hundred and First Amendment) Act, 2016.
 - a. Sixty days
 - b. thirty days