

# **E-Content-1**

## **LL.B- II (SEM)**

### **Subject- Constitution Law of India**

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### **Q-1-Distribution of Legislative Powers between Centre and State under the Constitution of India?**

**Ans:-**

#### **INTRODUCTION:-**

The Constitution of India establishes a federal structure to the Indian government, declaring it to be a “Union of States” Part XI of the Indian Constitution specifies the distribution of legislative, administration and financial powers, between the union government and states of India. It is embedded from the Canadian model of federalism.

The Indian Constitution, based on the principal of federalism, has a scheme of two fold distribution of legislative powers with respect to territory and with respect to subject matter. The Constitutional provisions are spread out over Article (245-255). Article 245 talks about distribution of legislative powers between union and state with respect to territory.

#### **FEDERAL FEATURES OF INDIAN CONSTITUTION:-**

A unitary Government is one in which all the powers are vested in the national and regional government. The federal government is one in which all the powers are divided between centre and state. The essential elements of federal constitution is division of powers between centre and state. All the powers are distributed among the legislative, administrative and financial powers between the centre and state. Our constitution is the supreme law of the land provides the basic meaning of federalism that is the division of powers.

The relation between centre and state are divided as:-

1. Legislative relations
2. Administrative relations
3. Financial relations

The constitution makes a twofold distribution of legislative powers:-

1. With respect to territory under Article-245
2. With respect to the subject matter of legislation under Article-246

## **1-With Respect to Territory under Article-245:-**

Article-245 defines the territorial legislative jurisdiction. Subject to the provision, parliament may make laws for whole or any part of the territorial of India and a state legislature for the territory of that state and no law made by parliament would be invalid on the ground that it would have extra territorial operation takes effect outside the territory of India.

## **Doctrine of Territorial Nexus and the State**

### **Legislature:-**

Doctrine of territorial Nexus says that laws made by a state legislature are not applicable outside the state except when there is a sufficient nexus between the state and object. This doctrine can be invoked under the following situation:-

- I. Whether a particular state has extra territorial operation.
- II. If there is a territorial Nexus between the subject matter of the act and the state making of the law. E.g. A state may levy a tax on a person, property, object or transaction not only when it is situated with in its territorial limits but also when it has a sufficient and real territorial connection with it.

## **State of Bombay V/S RMDC AIR-1957 SC:-**

In this case the respondent was not residing in Bombay but he conducted competitions with prize money through newspaper printed and published from Bangalore having a wide circulation in Bombay. All essential activities like filling up of the forms, entry fees etc. for competition to place in Bombay. The state government sought to levy tax the respondent for caring on business in the state. In this case it was held that all the activities which the competition is ordinary. Expected to undertake took place most if not in entirely within Bombay. These situation constitute a sufficient territorial Nexus which the entitled state of Bombay to impose a tax on the respondent.

## **State of Bihar V/S Charusila Dasi AIR-1950 SC:-**

In this case the state of Bihar pass a legislation which dealt with the motive to safeguard the properties relating to the Hindu religious trusts. This act consists of all the trusts with in the territorial limits of Bihar so that respondent Medea trust deed several of her properties in situated in Bihar and Culcutta and the trust was inside the territorial limits of Bihar. Several questions were raise about the scope of this act. In this case it was held that the act passed by the state of Bihar could have the effect over the property situated outside the territorial limits of Bihar keeping in mind that the trust must be situated within the limits of the state and their exist the sufficient nexus.

Thus we can say that the scope of the territorial nexus is wide and can be applied outside the territorial limits of India. The doctrine of territorial nexus allowed the effect of law out the territorial limit of a nation.

## **2-With Respect to the Subject Matter of Legislation under Article-246:-**

Article 246 the VII Schedule of the Constitution contains three Lists:-

**The Union List**: - Consists of 100 Items (earlier 97) on which parliament has exclusive power to legislate in the union list.

**State List**: - Consists of 61 Items (earlier 66). The state legislature has exclusive power to make laws on state list.

**Concurrent List**:- Consists of 52 Items(earlier 47) with respect to which both union parliament and state legislature have a concurrent power of legislation.

## **Distribution of Legislative Subjects:-**

Article-246 provides that parliament has exclusive power to make laws with respect to any matters enumerated in the union list. Parliament and state legislature also have power to make laws with respect to any matters enumerated in the concurrent list and state legislature has exclusive power to make laws in the state list.

There are three list namely:-

1. The Union List
2. State List
3. Concurrent List

**1-The Union List:-** Consists of 100 Items (earlier 97) on which parliament has exclusive power to legislate in the union list. Basically includes the defence, foreign affairs, railway, banking among others under which parliament may make the laws.

**2-State List:-** Consists of 61 Items (earlier 66). The state legislature has exclusive power to make laws on state list. Such as subject are public order, police, public health and sanitation, hospitals, dispensaries, betting and gambling.

**3-Concurrent List:-** Consists of 52 Items(earlier 47) with respect to which both union parliament and state legislature have a concurrent power of legislation. It includes subject like education, population, family planning, criminal law, prevention of cruelty to animals, protection of wild life and animals, forest etc.

Through 42 Constitution Amendment Act-1976 transfer of five subjects took from the state list to concurrent list.

There are-

1. Education
2. Forests
3. Weight and Measures
4. Protection of wild Animals and Birds
5. Administration of Justice

## **The Supremacy of the Union Over the Concurrent List:-**

The Constitution of India itself provide federal supremacy to the parliament on concurrent list items. Provided in case of a conflict, central law will override state law.