

## **Polity Class 36**

**21st November, 2023 at 9:00 AM**

### **CENTRE-STATE RELATIONS (CONTINUES) (09:18 AM)**

- **Article 252-** According to this provision, two or more states can request the union to legislate on a specific state subject by passing a resolution to that effect.
- **Post this,** the Union becomes competent to make a law on such subject with respect to those particular states.
- **The other states** may also pass a subsequent resolution and adopt such a law.
- **Such a law** does not come with any expiry date and can be repealed or amended only by a law of Parliament. E.g. The Wildlife Protection Act, The Urban Land Ceiling Act, and The Air Conservation Act were enacted under this provision.
- **Article 253-** The union can legislate on a state subject for the purpose of giving force to India's commitment made at an International forum in the form of an agreement, treaty or convention. For e.g., the Lokpal and the Lokayukta bill 2011 was introduced in the Parliament under this provision.
- **The Anti-highjacking and the Geneva Convention Act** are two other such laws made under this provision.
- **Once enacted,** only the Parliament has the power to repeal or amend such a law.

### **CONFLICT WITH RESPECT TO THE INTERPRETATION OF ENTRIES PROVIDED IN SCHEDULE VII (10:15 AM)**

- **Even though** the constitution makers have tried their best to divide the legislative powers between the union and the states in a clear manner, conflicts may arise with respect to the interpretation of such entries.
- **According to the principle of federal supremacy** enshrined in Article 246, the Union list shall prevail over the concurrent and the State list but giving importance only to the entries given in the Union list would severely restrict the powers of the state legislature.
- **The court** has therefore given the doctrine of harmonious construction. According to this doctrine, in case of a seeming conflict between the entries in various lists, the competing entries should be provided with the broadest possible interpretation and should be interpreted so liberally that both legislatures can enact laws according to their respective entries.
- **The doctrine** follows a simple premise that both laws should be allowed to exist together. This rule is used to avoid any inconsistency and repugnancy within a section or between a section and other parts of a statute. that every statute has a purpose and intent as per law and should be read as a whole.
- **The interpretation** which is consistent with all the provisions and makes the enactment consistent shall prevail.

- When there is a conflict between the Union and the State due to incidental encroachment of a law made up of one legislature over the subject of the other, this doctrine becomes useful.
- According to it, the state and the Union law trespassing into the jurisdiction of the other shall not be struck down automatically.
- The court would examine where the pith and the substance of the law lie to determine whether the encroachment is incidental or not.
- A law should not be declared unconstitutional merely due to incidental encroachment on the subject of the other legislature.
- The Supreme Court laid down this doctrine in *F N Balsara vs the State of Bombay*.
- The doctrine of colourable legislation
- It is based on the maxim what can not be done directly, can not be done indirectly.
- In other words, if the legislature has no power to legislate on a particular matter, it can not be allowed to make a law indirectly on the subject of the other.
- The court applied this doctrine in *K C Gajapati vs the State of Odisha*.

#### **EXECUTIVE RELATIONS BETWEEN THE UNION AND THE STATES (11:12 AM)**

- As per the constitution, the executive powers of the Union and the States are co-terminus with their legislative powers.
- According to Articles 73 and 162, the executive powers of the Union shall extend to all those subjects on which it can make a law and similar provisions exist for states under Article 162.
- On the concurrent list subjects, the executive powers rest with the states unless expressly mentioned in a parliamentary law that the executive powers shall lie with the union.
- The states enjoy more executive powers in India as compared to the Union because of the following reasons:
  - lack of implementation agency with the Union.
  - Proximity of the states to the local areas where the laws have to be executed.
  - Conditions under which the Union may issue executive directions to the states:
    - Article 256: It is the responsibility of the state that the executive powers of the state should comply with a law of the Union. In case the state does not do so, the union can issue directions to the state to comply with such laws of the union.
    - Article 257(1): The states should exercise their executive powers in such a manner that they do not interfere with the exercise of executive powers of the Union.
    - In case, the states do not comply the Union can issue executive directions to them for the same.

- **Article 257(2):** The Union can issue executive direction to the state for the maintenance of means of communication that are of national or military importance.
- **According to Article 257 (3),** the Union can issue executive directions to the state for the protection of Railways within the state.
- **Article 352:** When a proclamation of emergency is in place, the Union can issue executive directions to the states in the exercise of their powers.
- **Article 360:** When the financial emergency is in place, the union can issue executive directions to the states to observe canons of financial propriety.
- **The Union may issue executive directions to the state for the drawing and execution of schemes specified in the directions to be of importance for the welfare of scheduled tribes in the state.**
- **Article 350 A:** The union may issue executive direction to states for providing facilities for education in the mother tongue till primary education for the linguistic minority groups in the state.

#### **COOPERATIVE FEDERALISM (11:45 AM)**

- Refer to the handout for more details.
- **Article 252(1)** provides for the delegation of powers by two or more states to Parliament so as to enable it to legislate with respect to a matter in the State List in relation to such states.
- **The Constitution provides for a scheme of tax sharing between the Centre and the State. This means that the Centre should share some taxes collected with the States.**
- **Need for Cooperative Federalism in the 21st Century**
- **Environmental challenges, such as climate change, are global in nature and do not respect state borders.**
- **Pollution and conservation issues are often a source of tension between different levels of government.**
- **Issues and challenges to cooperative federalism**
- **Certain provisions of the constitutions themselves mitigate the idea of Cooperative Federalism.**
- **The emergence of a strong central government.**

#### **TOPIC OF NEXT CLASS- INTER-STATE COUNCIL, CENTRE-STATE FINANCIAL RELATIONS**