

LEGISLATURE

Composition of Legislative council

The maximum size of the legislative council is 1/3rd of the Legislative assembly

- To preserve the dominance of the Legislative Assembly in the legislature of the State

Legislative Council consists of elected and nominated members

- 1/6th members-nominated by Governor (special knowledge and experience in Literature, arts, science, Social Science, and cooperative movements)
- 1/3rd Members are elected by the electorates consisting of Local bodies
- 1/3rd is elected by the electorate by MLAs; People other than MLAs to be chosen by an electorate of MLA
- 1/12th- elected by an electoral college consisting of graduates in the state for more than 3 years(domicile)
- 1/12- by an electoral college consisting of teachers in the state (should not be below secondary level)

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Process of Legislation in states having 2 houses

A Bill other than Money Bill can originate in either House.

In case a Bill originates in the Legislative Assembly and is passed in the Legislative Assembly and sent to the Legislative Council, the Option to Legislative Council will have:

- (i) Pass the bill as it is
- (ii) reject the bill
- (iii) suggest an amendment
- (iv) that they do not do anything on the bills for 3 months

In the case of (ii), (iii), and (iv) the Bill will make a second journey from the Legislative assembly to Legislative Council

Now The Legislative Council should pass the bill within 1 month else in any other situation the bill would be deemed passed on the expiry of 1 month.

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Differences between Powers of Council of States and Legislative Council

- No concept of Joint sitting
- The amendment suggested by the legislative council may or may not be accepted by Legislative Assembly
- A bill originating in the legislative council if rejected by the Legislative assembly comes to an end instantly
- A legislative council is merely a delaying chamber
- In the case of money bills, the powers of Legislative councils are the same as Rajya Sabha (delay the bill by a maximum of 14 days)

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Arguments in favor of retaining the Legislative Councils

- It prevents majoritarianism. Essentially it ensures that the same party does not necessarily dominate the legislative assembly and legislative council.
- It prevents hasty and populist legislation as the legislative assembly is often driven by political considerations.
- It provides representation to grassroots bodies thereby strengthening India's multilevel federalism and efforts of decentralization.
- It provides representation to diverse sections of society including teachers
- It ensures the presence of technical expertise through the nomination route.

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Arguments against the Legislative Council

- It is a superfluous body that serves no special purpose
- It is at best a delaying chamber as it can delay a bill by a maximum of 4 months
- Often politicians rejected by the electorate are provided a representation in the legislative councils
- It is an expensive affair to maintain a legislative council
- Representation of political parties in graduate and teacher constituency defeats the entire purpose of these constituencies.
- Several states including Tamilnadu, Rajasthan, etc have already abolished Legislative councils due to lack of utility.

CENTER STATE RELATIONS

Doctrine of territorial nexus

- The state legislature in general has no authority to create laws for extra-territorial operations. This limitation on the state legislature, though, is subject to one exception, called the doctrine of territorial nexus.
- If it is known that the entity is adequately connected to the territory of the state the laws passed by the state legislature would have an effect beyond the geographical borders of the state.

To invoke this doctrine, 2 conditions must be satisfied:

- 1) Such an entity must have extra-territorial operations in the state.
- 2) The entity and the territory of the state must have a valid nexus

CENTER STATE RELATIONS

Exceptions to the territorial jurisdiction of laws made by the Parliament:

- a. With respect to some of the UTs, such as the Andaman and Nicobar Islands, Lakshadweep, etc (A-240) regulations may be made by the President for the peace, progress and good government and such regulations shall have the same force in these areas as an Act of the Parliament and such regulations may also amend a law made by the Parliament in relation to such territory.
- b. Under schedule 5, the Governor of a state may restrict or modify the application of Parliamentary laws to the scheduled areas.
- c. Under schedule 6, the Governor of Assam by a public notification may declare that an Act of Parliament shall not apply to an autonomous district or region or apply with such modifications as specified in the notification. Similar powers have been vested to President with respect to autonomous districts and regions in Meghalaya, Mizoram and Tripura
- d. Under A-371A and 371G, a law relating to certain matters would be applicable in the State of Nagaland and Mizoram only if approval has been provided by Naga state Assembly and the Mizo State Assembly respectively.

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The doctrine of pith and substance

- **Pith- nature, substance- essential part**
- The doctrine places emphasis on the fact that it is the real subject matter which is to be challenged and not its incidental effects on another field.
- Pith denotes the 'essence of something' or the 'true nature', while substance states 'the most significant or essential part of something'.
- Hence, it can be stated that the very doctrine of pith and substance relates to finding out the true nature of a statute.

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The doctrine of pith and substance

- Situations in which the doctrine is applied— It is applied in the circumstances where the subject matter of list I seem to be conflicting with the subject matter of list II.
- The reason behind adopting the doctrine— The powers of the legislature would be sternly limited if every law is declared invalid on the ground that it encroaches upon another law.
- True nature and character— The doctrine is known to examine the true nature and character of the subject in order to ascertain as to in which list it fits.
- Provision for a degree of flexibility— It takes under consideration the fact as to whether the state has the power to make a law that involves a subject mentioned in the Union List of the constitution.
- The first judgment which upheld the doctrine— It was in the case of **State of Bombay v. F. N Balsara** that the doctrine was first applied.

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Doctrine of colorable legislation

- It is based on the maxim that “what cannot be done directly, cannot also be done indirectly”.
- This doctrine of colorable legislation is applied when a Legislature does not have the right to make law upon a particular subject but indirectly makes one.
- The Court has laid down certain tests for discovering whether any particular Act constitutes colorable legislation.

CENTER STATE RELATIONS

The doctrine of harmonious construction

- This rule is used to avoid any inconsistency and repugnancy within a section or between a section and other parts of a statute.
- The rule follows a very simple premise 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.
- The doctrine follows a settled rule that an interpretation that results in injustice, hardship, inconvenience, and anomaly should be avoided.

CENTER STATE RELATIONS

Issues in legislative relations

- Some States and their supporting political parties have expressed reservation to the existing system of division of legislative powers and sought a fresh look. Over a period of time, they felt, the Union has enriched its powers at the cost of the States.
- States have also expressed concerns over transfer of entries from List II to List III
- Bills reserved for president's considerations
- Misuse of article 253

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Recommendations of Sarkaria Commission:

- Resolve the issues of concurrent jurisdiction with Mutual Consultation.
- On a concurrent subject, the Union should enact only that legislation where they feel that uniformity of policy is required.
- Prior to enacting legislation on the concurrent list, Parliament should consult the States.
- The views of the State and Inter-State council should be expressed when the bill is presented in Parliament.
- Except for matters related to taxation, residuary powers should be placed in the Concurrent List.

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Administrative relations

- Article 162 defines that executive powers are valid to the extent of legislative powers.
- Adequate provisions have been made in the Constitution for the division of executive powers between the centre and the states except in a few cases.
- The executive power of the centre extends primarily to matters with respect to which Parliament has exclusive authority to make laws and to the exercise of rights, authority and the jurisdiction conferred on it by any treaty or agreement.
- Similarly, the executive powers of the states extend to its territory in respect of matters on which the state legislature has the exclusive power of legislation.

CENTER STATE RELATIONS

Administrative relations

- But with regard to the matters which are in the concurrent list where both the Parliament and the state legislature has powers of legislation, the executive power rests with the states, except when a parliamentary law or a Constitutional provision specifically confers it on the centre.
- In this way, a law on a concurrent subject, though enacted by the Parliament is to be executed by the states, except when the Constitution or the Parliament has directed otherwise

CENTER STATE RELATIONS

Directions from Union to States

- Besides the above two cases, the executive power of the union also extends to giving of directions to the states with regard to:
- construction and maintenance of means of communication by the state declared to be of national or military importance;
- measures to be taken for the protection of railways within the states;
- drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state; and
- provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

- Taxes levied by the Union but collected and kept by the States (Article 268).
- Taxes levied and collected by the Union but assigned to the States (Article 269).
- Taxes levied and distributed between the Union and the States (Article 270).
- Grant-in-aid from the Centre to the States (Article 273, Article 275 and Article 282).
- Sharing of proceeds from other taxes.

In giving recommendations with regards to the distribution of funds between the centre and state, the Finance commission mentioned under Article 280 plays a very important role.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Consolidated Fund of India

As per the clause (1) of Article 266, Consolidate fund of India is a fund consisting of all the:

- The revenue received by the Government of India.
- Loans raised by the Government through issuing of treasury bills, advances, recovery of loans etc.
- Exception: It excludes the items of Public funds mentioned in Article 266 and items of Contingency funds contemplated under Article 267 of the Indian constitution. It also does not include certain other provisions of Chapter XII of the constitution of India, which deal with the assignment of the whole or part of the net proceeds of some specific taxes and duties to States.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Essentially speaking it is the Consolidated Fund mentioned under Article 266(1) which is generally called as the budget.

- It includes all the revenues received by the Government, receipts of interests and repayment of the loans given by the Government and all the advances or new loans raised by the Government.
- All the expenditures of the Government are met through the Consolidated Fund except in cases of unforeseen circumstances.
- Further, no amount of money can be taken out of consolidated funds by the Government without the authorisation from the parliament.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Public Fund of India

As per sub-clause (2) of Article 266, public funds shall be constituted of all the other public revenue obtained by the Government of India or the Government of State, or on the behalf of the Government. Such money received as the case may be either included in the public account of India or in the public account of the state.

It basically includes certain specific transactions, such as small saving collections, provident funds, etc. In the case of public funds, the Government is performing the duty similar to a banker as the funds kept in the Public Account does not belong to the Government, and the Government will have to pay back this money in future to the persons and authorities who have deposited it. Therefore, there is no requirement of obtaining any authorisation from the parliament before withdrawing money from the public account.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Contingency Fund of India

As per article 267, the Parliament by the authority of law may constitute a contingent for the purpose of meeting urgent or unforeseen circumstances fund titled as the "Contingency Fund of India".

The fund is in a form of imprest and the Parliament may make law regarding the sum which has to be deposited from time to time in the fund. The fund is under the disposal of the President of India and it does not require any prior sanction or approval from the Parliament. Though afterwards, the expenditure needs to be authorised by the Parliament under Article 115 or Article 116.

Further, with the approval of the parliament, the Government has to replenish the contingency fund by drawing out an equal proportion of sum from the consolidated fund.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 268- Duties levied by the Union but collected and appropriated by the State

Article 268 refers to stamp duties levied by the Union but collected and appropriated by the States. It includes stamp duties on bills of exchange, cheques and promissory notes as levied by the Government of India.

These taxes are not included in the consolidated fund of India and appropriated by the same state in which it was levied thus do not contribute to the Consolidated Fund of India, While in the case of Union territories the fund shall be appropriated to the Government of India.

Further, as per the article, all the decisions regarding levying and appropriation of these duties rest with the central government as it forms a part of the union list.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 269 Taxes levied and collected by the Union but assigned to the States

Article 269(1) includes all the taxes on the “sale or purchase of goods” and “taxes on the consignment of goods” except those included in Article 269 A. These taxes are assigned to States as provided by the law but are collected and levied by the Government of India.

1) The expression “taxes on the sale or purchase of goods” does not imply on all kinds of trade but essentially refers to the taxes that are levied on inter-state sale or purchase of all kinds of goods except newspapers.

2) The expression “taxes on the consignment of goods” refers to tax duty levied on the consignment of goods when happening in the course of Inter-state trade. It includes both the cases even when the consignment is to the person making it or to any other person.

It may include:

- Succession Duty
- Central Sales Tax
- Estate Duty etc

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 270- Taxes levied and distributed between the Union and the States

Clause (1) of Article 270

It lays down the procedure of the appropriation for certain taxes i.e. all the taxes except those mentioned under Article 268, 269 and 269A and any surcharge on taxes and duties mentioned in Article 271 or, any cess levied for a specific purpose, other than these the provision holds true for every other tax.

1. These taxes are levied and collected by the Union.
2. The tax shall be distributed between the States and the Central Government.
3. It may include taxes such as:
 - Excise Duty on Non-GST products
 - Income Tax
 - Basic Customs Duty etc.
4. The manner for this distribution is provided under Article 270(2)

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 271 – Surcharge on certain duties and taxes for purposes of the Union

Article 271 has the following key elements:

1. Parliament has the power to increase any duty or tax anytime by levying a surcharge except in the case of GST mentioned under Article 246A.
2. All the proceeds obtained from the surcharges will be part of the consolidated fund of India.
3. All the amount from such an increase in tax shall be retained by the parliament and it is not shared amongst the states.
4. The Article has its basis to Section 137 and Section 136(1) of the Government of India Act, 1935.
5. Further, no authority has the power to prevent the Parliament from imposing a surcharge

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 275 – Statutory grants

These grants are given by the Parliament to the specific states who are in need of assistance.

1. Under this, different amounts of grants are fixed for different states.
2. The amount is given out of the consolidated fund of India.
3. There are two provisos to clause (1) dealing with the granting of aid to the states for any developmental scheme approved by the government of India for the welfare of scheduled areas and scheduled tribes, with a special focus to Assam.

According to clause (2) of Article 275, any order made by the Parliament regarding the grants-in-aid as provided under clause (1) shall need a prior recommendation of the Finance Commission.

Further, it also lays down that the Finance Commission has the power to make recommendations other than those which are mentioned in provisos to clause (1).

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 282- Discretionary Grants

As per Article 282, the Centre upon its own discretion can grant aid to certain States for the public purpose. These grants are not compulsory in nature. The centre used to make these grants on the recommendations of the planning commission. Further, during the planning commission era, the sum under discretionary grants were even bigger than the statutory grants.

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FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Article 279 A- GST Council

Article 279A empowers the president of India to constitute a Council named Goods and Services Tax Council (GST Council) within 60 days after the commencement of the 101st Constitution Amendment Act, 2016.

Objective

It shall seek to ensure a uniform system of GST to avoid any conflict or confusion, and the development of a harmonized national market for goods and services.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Process of Decision-making

The decision shall be taken by at least three-fourth majority out of which:

The vote of the Central Government will have one-third of the weightage.

The vote of all the State Governments shall account for two-third of weightage.

Process of Ratification

Article 368 of the Indian Constitution has been amended to include Article 279 A within its ambit. It basically implies that to bring any amendments or modification to Article 279 A, ratification by a two-thirds majority of both the houses and half of the state legislatures will be required.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Constitution of Finance Commission

The composition of Finance Commission is mentioned under the Finance Commission Act, 1951 which when read with provisions of Article 280 lays down that the Commission basically consists of five members out of which there will be one Chairman, as appointed by the President of India. The criteria for selection of the Chairman is that he/she should have a special understanding of public affairs while the members shall possess the following qualifications:

1. He/she may be either a judge of a High Court or qualified enough to be appointed so.
2. He/She must have deep knowledge of the finance and accounts of the Government.
3. He/She must be experienced in the field of financial matters and in administration; or
4. He/ She must have a special understanding of economics.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Significance of the Finance Commission

1. Finance Commission has played an imperative role in strengthening and improvising the fiscal federal structure of India. With the setting up of a new Finance Commission after every five years, and each time the recommendations have been made wider.
2. Further, the Union Government has also adopted a liberal attitude and been receptive towards the recommendations of the Finance Commission and accepted them at large.
3. The Commission along with giving recommendations on the subjects already mentioned has also suggested and gave its views regarding various other financial issues such as returns of the public undertakings, debt burdens of the States.
4. It has also settled many complicated financial issues from time to time-related to financial issues between the Union and States. Thus, all in all, the Finance Commission has been successful in bringing dynamic and progressive changes in the financial relations between the Centre and the States as per the changing time.

However, there still have been demands from the states that more resources must be allocated to poor states than rich states in order to level inter-regional financial disparities.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Borrowing power of the Central Government

The Central Government has almost unlimited powers in terms of borrowing. The law imposes no restrictions on the Centre in relation to both national and international borrowing. It is subject to only some restrictions which are to be fixed by the parliament by the law (Article 292).

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FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Borrowing Power of the State Government

In India, the borrowing powers enjoyed by the state government are much less in comparison to the Central Government. As there are various kinds of territorial and other limitations on the borrowing powers of the state.

The Indian States are not allowed to raise loans outside India and only have the option to raise loans either from the Government of India or through public loans. But essentially speaking, it is a very difficult and lengthy process for the State to raise a public loan, as it essentially needs a prior consent of the Government of India which cannot be issued if a part of a loan advanced to the State by the Union government or any guarantee in respect to it is still outstanding.

This leaves the States having no independent borrowing powers. It compels the states to comply with numerous conditions resulting in extreme dependence on the Central Government's permission to obtain loans from the public, financial institutions or from the Centre itself.

Therefore this inequitable distribution in borrowing power is still an issue and a prime concern which needs to be addressed keeping in mind the changing dynamics of the financial relations between the States and the Centre.

Moreover, the Centre is also allowed to run up the deficits by borrowing from the Reserve bank of India (RBI). While in case of states they have to adhere to the overdraft limit laid down by the RBI. Further, the external credits sanctioned for State projects are not entirely allocated to the States on the same terms and conditions.

FINANCIAL RELATIONS BETWEEN CENTER AND STATES

Way Ahead

Undoubtedly we can say that no state can afford to work without the active financial assistance of the central government. It is also an undeniable fact that Indian states do enjoy relatively a lower degree of economical independence as the dependence on the Centre is indeed much greater than any other federations in the world which can also be substantiated by considering the following points:

- First and foremost, that state does not have power under the constitution to obtain any foreign assistance and any foreign assistance which is quite massive is channelised through the central government. So any decision regarding allocation of such assistance rests in the hands of the Union Government.
- Secondly, there is no provision in the constitution which enables the states to sign any agreement with any international agency or organisation.
- Thirdly, the Central Government has the power to bring any subject from the State to the concurrent list thereby depriving the former of many of its financial resources.

“Magic is believing in yourself. If you can make that happen, you can make anything happen.”



THANKS!

Any questions?

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