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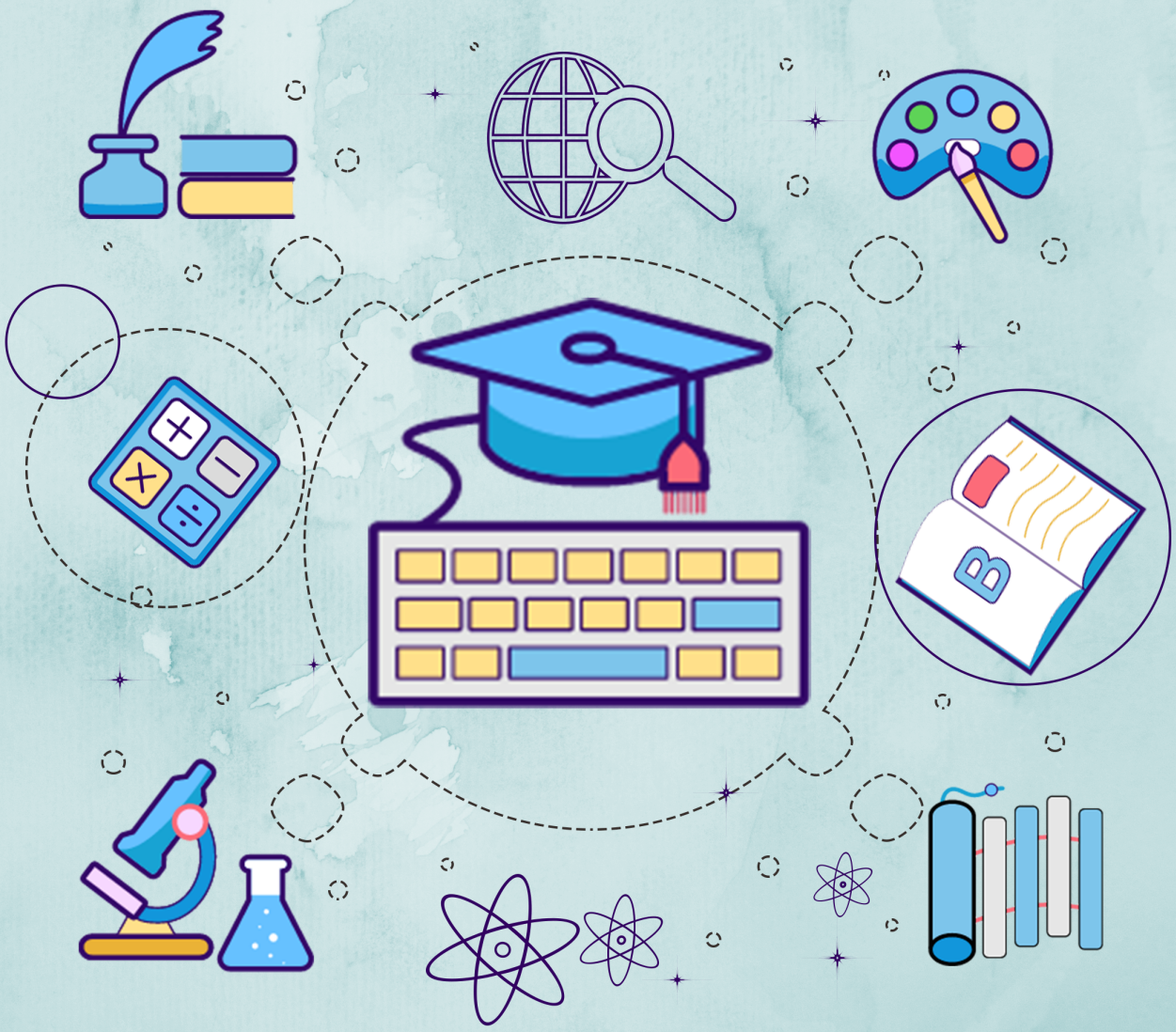

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MODULE 5

Relations between the Union and the States, legislative relation, administrative relation, financial Relations, Inter State council, finance commission.

Emergency provision, freedom of trade commerce and intercourse, comptroller and auditor general of India, public Services, public service commission, administrative Tribunals.

Official language, elections, special provisions relating to certain classes, amendment of the Constitution.

1. Discuss the proclamation of emergency

A Proclamation of Emergency is made usually before the actual outbreak of war or any other invasion or uprising if the President is convinced that it is an imminent danger. An Authorization issued by a subsequent Proclamation can always modify or withdraw the previously approved proclamation.

The Executive, Legislative and Administrative Powers rest with the Union during the Emergency period though the State Council isn't suspended. Article 250 of the Constitution grants the power to the power to the Union Government to administer on all subjects identified in the State List.

There are three grounds on which a Proclamation of Emergency can be issued:

1. War

War means a hostile contention by means of armed forces, carried on between nations, states, or rulers, or between parties in the same nation or state. After the 42nd Amendment Act, the duration of the President's rule in a state was extended from 6 months to 1 year, thus, facilitating the proclamation of national emergency in any part of the territory of India.

2. External Aggression

It includes one-state unilateral aggression against another State of force without a formal declaration of war. As long as the other State refuses to react with equal aggressive actions, external aggression may be considered.

3. Armed Rebellion

A deliberate and organized resistance, by use of force and arms against the laws or operations of the government as committed by a subject, termed as armed rebellion. The word 'armed rebellion' replaced 'internal disturbance under article 352 after the 44th Amendment to the Constitution. This amendment also made it mandatory for the President to enforce a proclamation only on the written order from the cabinet.

When a national emergency is declared on the grounds of 'war' or 'external aggression', it is known as 'External Emergency' and when it is declared on the ground of 'armed rebellion'; it is known as 'Internal Emergency'.

Effects of the proclamation of Emergency:

Suspension of Fundamental rights:

According to Article 358, all the six rights under Article 19 are automatically suspended on the Proclamation of Emergency. No separate notification is required in order to prove their adjournment. The 44th Amendment Act of 1978 restricted the authority of this provision in recollecting that the rights under Article 19 can only be suspended when the emergency is declared on grounds of war or external aggression and not on the declaration on the basis of armed rebellion.

Effect on Centre-State Relations:

Executive power rests totally in the hands of the central government. It can give executive directions to the state on 'any' matter.

The Legislative authority empowers the center to make laws on subjects mentioned in the State List. The decentralization of power is particularly, suspended.

The Financial functions include the reduction or cancellation of transfers from the center to the states. Such reservations continue till the end of the financial year in which the emergency ceases to

Extension of tenure of Lok Sabha and State Assembly:

The usual life of the Lok Sabha which is 5 years can be extended beyond its normal term for a period of one year at a time. However, this extension cannot continue beyond six months after the emergency has ceased to operate. In a similar parallel, the tenure of the State Legislative Assembly can be extended for a period of one year, but not beyond six months after the emergency has ceased to operate

2. Explain the term and removal of Judges in High court.

A judge may be removed from office through a motion adopted by Parliament on grounds of 'proven misbehaviour or incapacity'. While the Constitution does not use the word 'impeachment', it is colloquially used to refer to the proceedings under Article 124 (for the removal of a Supreme Court judge) and Article 218 (for the removal of a High Court judge).

The Constitution provides that a judge can be removed only by an order of the President, based on a motion passed by both Houses of Parliament. The procedure for removal of judges is elaborated in

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the Judges Inquiry Act, 1968. The Act sets out the following steps for removal from office:

- Under the Act, an impeachment motion may originate in either House of Parliament. To initiate proceedings: (i) at least 100 members of Lok Sabha may give a signed notice to the Speaker, or (ii) at least 50 members of Rajya Sabha may give a signed notice to the Chairman. The Speaker or Chairman may consult individuals and examine relevant material related to the notice. Based on this, he or she may decide to either admit the motion or refuse to admit it.
- If the motion is admitted, the Speaker or Chairman (who receives it) will constitute a three-member committee to investigate the complaint. It will comprise: (i) a Supreme Court judge; (ii) Chief Justice of a High Court; and (iii) a distinguished jurist. The committee will frame charges based on which the investigation will be conducted. A copy of the charges will be forwarded to the judge who can present a written defence.
- After concluding its investigation, the Committee will submit its report to the Speaker or Chairman, who will then lay the report before the relevant House of Parliament. If the report records a finding of misbehaviour or incapacity, the motion for removal will be taken up for consideration and debated.
- The motion for removal is required to be adopted by each House of Parliament by: (i) a majority of the total membership of that House; and (ii) a majority of at least two-thirds of the members of that House present and voting. If the motion is adopted by this majority, the motion will be sent to the other House for adoption.
- Once the motion is adopted in both Houses, it is sent to the President, who will issue an order for the removal of the judge.

3. Discuss the duties and powers of comptroller of auditor general.

Functions and Power of CAG

CAG derives its audit mandate from different sources like–

Constitution (Articles 148 to 151)

The Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971

- CAG audits the accounts related to all expenditure from the Consolidated Fund of India, Consolidated Fund of each state and UT's having a legislative assembly.
- He audits all expenditure from the Contingency Fund of India and the Public Account of India as well as the Contingency Fund and Public Account of each state.
- He audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by any department of the Central Government and the state governments.
- He audits the receipts and expenditure of all bodies and authorities substantially financed from the Central or State revenues; government companies; other corporations and bodies, when so required by related laws.
- He audits the accounts of any other authority when requested by the President or Governor e.g. Local bodies.
- He submits his audit reports relating to the accounts of the Centre to the President, who shall, in turn, place them before both the houses of Parliament.
- He submits his audit reports relating to the accounts of a State to the Governor, who shall, in turn, place them before the state legislature.
- CAG also acts as a guide, friend and philosopher of the Public Accounts Committee of the Parliament.

4. Explain the public service commission.

The civil servants occupy an important role in the successful administration of state at different levels. Therefore, their recruitment, training, emoluments, conditions of service, promotion policies, etc. assume importance. For an impartial consideration of these matters relating to civil servants, an independent and expert authority is required which is known as the institution of public service commission.

One of the important features of our Constitution is the inclusion of Public Service Commission at both Union and State levels in the Constitution itself.

The Union Public Service Commission (UPSC) is the central recruiting agency in India.

It is an independent constitutional body.

The provisions regarding the composition of UPSC, appointment and removal of its members and the powers and functions of UPSC are provided in Part XIV of the Indian Constitution under Article 315 to Article 323.

Parallel to the UPSC at the Centre, there is a State Public Service Commission (SPSC) in the state.

The provisions regarding the composition of SPSC, appointment and removal of its members and the powers and functions of SPSC are provided in Part XIV of the Indian Constitution under Article 315 to Article 323.

Functions of UPSC and SPSC

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- Conducting Exams:

It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

- Assistance to SPSC:

It shall be the duty of the UPSC to assist the States upon their request in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

- Consultations with the PSCs:

The UPSC and SPSC shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts.

In making appointments to civil services and posts and in promotions and transfers from one service to another depending upon the suitability of candidates.

On all disciplinary matters affecting a person serving under the Government of India or the Government of a State.

It shall be the duty of a Public Service Commission to advise on any matter referred to them by the President of India or the Governor of the State.

Union Public Service Commission

- Appointment of Members: The Chairman and other members of the UPSC are appointed by the President of India.
- Term of Office: Any member of the UPSC shall hold office for a term of six years or till the age of 65 years, whichever is earlier.
- Reappointment: Any person who has once held the office as a member of a Public Service Commission is ineligible for reappointment to that office.

State Public Service Commission

- **Appointment of Members:** The Chairman and other members of the SPSC are appointed by the Governor of the State.
- **Term of Office:** A member of the SPSC shall hold office for a term of six years or till the age of 62 years, whichever is earlier:
- **Reappointment:** Any person who has once held the office as a member of a Public Service Commission is ineligible for reappointment to that office.

5. What are the functions of the finance commission?

The Finance Commission of India was established on 22nd November, 1951. It was established under Article 280 of the Indian Constitution by the President of India. It was formed to describe the financial relations between the centre and the state.

The Finance Commission has been provided for the Indian constitution as part of the scheme of division of financial resources between the two different sets of governments. Finance Commission also serves as as a constitutional body for the purpose of allocation of certain resources of income between the Union and the State Governments.

- The key role Finance Commission in India is to act as an instrument to divide proceeds of divisible taxes between the states and the Union government or in cases of taxes that are collected by the centre but the proceeds of which are allocated between the states, to determine the principles of such allocation.
- The Finance Commission of India also determines the principles of governing the grants in aids of the revenues of states out of the consolidated fund of India. It is an important function of the Indian Finance Commission. The commission has the responsibility of considering any matter referred to the commission by the President in the interest of sound finance.
- The President under Article 280 lays the recommendations of the finance commission before each House of the Parliament with an explanatory note as to the action to be taken on the recommendations.
- The Finance Commission distributes of proceeds of Income-tax between the union and the states. But taxes on the payments of the central government are attributable only to the union territories.

6. Examine the scope of the financial relations between the union and the states.

Indian Constitution make elaborate provisions regarding the distribution of revenues between the Centre and the States. The financial relations between the Union and the States can be studied under the following heads:

1. Duties levied by the Union but Collected and Appropriated by the States:

Stamp duties and duties of excise on the medical and toilet preparations are levied by the Government of India, but collected and appropriated by the States within which such duties are leviable except in the Union Territories where they are collected by the Union Government. Art. 268

2. Taxes Levied and Collected by the Union but Assigned to the States within which they are leviable:

a. Succession duty in respect of property other than agriculture land

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b. Estate duty in respect of property other than agricultural land
c. Terminal taxes on goods or passengers carried by railways, sea or air
d. Taxes on railway fares and freights
e. Taxes on transactions in stock exchanges
f. Taxes on sale and purchase of newspapers, including advertisements published therein
g. Taxes on the sale and purchase of goods other than newspapers, where such purchase takes place in the course of inter-state trade or commerce. Art. 269

3. Taxes Levied and collected by the Union and distributed between the Union and the States:
Certain taxes are levied as well as collected by the Union, but their proceeds are divided between the Union and the States in a certain proportion in order to effect an equitable distribution of the financial resources. There are:
a. taxes on income other than agricultural income
b. excise duties as are included in the Union List, excepting medicinal and toilet preparations.

4. Surcharge: The Parliament is, however, authorized to levy surcharge on the taxes mentioned at (2) above and on income-tax for the purpose of the Union.

5. Grants-in-Aid: Parliament may make grants-in-aid from the Consolidated Fund of India to such States as are in need of assistance, particularly for the promotion of welfare of tribal areas, including special grant to Assam.

6. Loans: The Union Government may make loan to any State or give guarantees with respect to loans raised by any States.

7. Previous Sanction of the President: No Bill or amendment can be introduced or moved in either House of Parliament without the previous sanction of the President, if:
a. it imposes or varies any tax in which the States are interested; or
b. it varies the meaning of the expression "Agricultural Income" as defined in the Indian Income-Tax Act; or
c. it affects the principles on which money are distributed to the States; or
d. it imposes a surcharge on the State taxes for the purpose of the Union.

8. According to Article 301, freedom of trade, commerce and intercourse throughout the territory of India is guaranteed, but the Parliament has the power to impose restrictions in public interest.

9. Although taxes on income, other than agricultural income, are levied by the Union, yet the State Legislatures can levy taxes on profession, trade, etc. provided that the total amount of such taxes payable in respect of anyone person should not exceed ₹ 2500 per month.

10. Provision has been made for the constitution of a Finance Commission to recommend to the President certain measures for the distribution of financial resources between the Union and the States

7. Explain the function of interstate council
Article 263 of the Indian constitution gives provision for the establishment of an Inter-State Council. This is to enhance the coordination between the Center and States. Inter-State Council is not a permanent constitutional body, which can be created at any time if it seems to the President that the public interest would be served by the establishment of such council.

Members of Inter-State Council

1. Union Ministers of Cabinet rank in the Union
2. Council of Ministers nominated by the Prime Minister.
3. Chief Ministers of all states.
4. Chief Ministers of Union Territories having a Legislative Assembly
5. Administrators of UTs not having a Legislative Assembly.
6. Governors of the states being administered under President's rule.

Functions of Inter-State Council

Inquiring and advising upon disputes which may have emerged between the States:

Investigating and discussing subjects in which the States of the Union has a common interest.

Making suggestions on any such subject, for the better coordination of policy and action with respect to that subject.

8. What are administrative tribunals?
Tribunal is a quasi-judicial institution that is set up to deal with problems such as resolving administrative or tax-related disputes.
Need of Tribunal
To overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes, hereinafter referred to as the Tribunals.
The Tribunals were set up to reduce the workload of courts, to expedite decisions and to provide a forum which would be manned by lawyers and experts in the areas falling under the jurisdiction of the Tribunal.

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The tribunals perform an important and specialised role in justice mechanism. They take a load off the already overburdened courts. They hear disputes related to the environment, armed forces, tax and administrative issues.

The Administrative Tribunals Act, 1985 provides for three types of tribunals:

7. The Central Government establishes an administrative tribunal called the Central Administrative Tribunal (CAT).
8. The Central Government may, upon receipt of a request in this behalf from any State Government, establish an administrative tribunal for such State employees.
9. Two or more States might ask for a joint tribunal, which is called the Joint Administrative Tribunal (JAT), which exercises powers of the administrative tribunals for such States.

There are tribunals for settling various administrative and tax-related disputes, including Central Administrative Tribunal (CAT), Income Tax Appellate Tribunal (ITAT), Customs, Excise and Service Tax Appellate Tribunal (CESTAT), National Green Tribunal (NGT), Competition Appellate Tribunal (COMPAT) and Securities Appellate Tribunal (SAT), among others.

9. Explain trade, commerce and intercourse within the territory of India.

Trade has always been important because no country or state can produce all the products it needs. For this reason, we need regulations and laws governing, managing and facilitating trade. The freedom of trade, commerce, and intercourse is provided under Part XIII of the Indian Constitution in Articles 301 to 307. Article 301 lays down the general principles of trade and commerce whereas Article 302 to 305 enunciates the restrictions which trade is subjected to.

Article 301 talks about the freedom of trade, commerce, and intercourse throughout the country. It states that subject to other provisions under Part XIII, the freedom to carry on these activities shall be free. Freedom here means the right to freedom of movement of persons, property, things that may be tangible or intangible, unobstructed by barriers within the state (intra-scale) or across the states (inter-scale).

Trade

Trade means buying and selling of goods for profit-making purposes. Under Article 301, the word trade means an actual, organized & structured activity with a definite motive or purpose. For the motive of Article 301, the word trade is interchangeably used with business.

Commerce

Commerce means transmission or movement by air, water, telephone, telegraph or any other medium; what is essential for commerce under Article 301 is transportation or transmission and not gain or profit.

Intercourse

It means the movement of goods from one place to another. It includes both commercial and non-commercial movements and dealings. It would include travel and all forms of dealing with others.

Restrictions to trade and commerce

Parliament's power to regulate trade and commerce in the public interest:

Article 302 gives power to the Parliament to impose restrictions on the freedom of trade, commerce or intercourse carried on within a state or across states anywhere in the territory of India. These restrictions can solely be imposed taking into due consideration the interests of the public. The power to decide whether something is in the interest of the public or not is solely given to the Parliament.

States power to regulate trade and commerce

The power of the Parliament in Article 302 is kept in check by Article 303. Article 303(1) states that the Parliament does not have the power to make any law which will keep one State at a more preferable position than the other State, by virtue of any entry in trade and commerce in any one of the lists in 7th Schedule. However, Clause (2) states that the Parliament can do so if it is proclaimed by law that it is essential to make such provisions or regulations, as there is indeed a scarcity of goods in some parts of the country. The power to decide whether there is a scarcity of goods in some parts of the territory or not is vested in the hands of the Parliament.

10. Explain the procedure for amending the constitution

Article 368 of the Indian Constitution mentions two types of amendments to the Indian Constitution.

1. Amendment by simple majority of the Parliament
2. By a special majority of Parliament
3. By a special majority of the Parliament with the ratification by half of the total states

A number of provisions in the Constitution can be amended by a simple majority of the two houses of Parliament outside the scope of Article 368. These provisions include:

- Admission or establishment of new states.
- Formation of new states and alteration of areas, boundaries or names of existing states.
- Abolition or creation of legislative councils in states.

By Special Majority of Parliament

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- The majority of the provisions in the Constitution need to be amended by a special majority of the Parliament, that is, a majority (that is, more than 50 percent) of the total membership of each House and a majority of two-thirds of the members of each House present and voting. The expression 'total membership' means the total number of members comprising the House irrespective of the fact whether there are vacancies or absentees.
- The special majority is required only for voting at the third reading stage of the bill but by way of abundant caution, the requirement for the special majority has been provided for in the rules of the Houses in respect of all the effective stages of the bill.
- The provisions which can be amended by this way include (i) Fundamental Rights; (ii) Directive Principles of State Policy; and (iii) All other provisions which are not covered by the first and third categories.

3. By Special Majority of Parliament and Consent of States

Those provisions of the Constitution which are related to the federal structure of the polity can be amended by a special majority of the Parliament and also with the consent of half of the state legislatures by a simple majority. If one or some or all the remaining states take no action on the bill, it does not matter; the moment half of the states give their consent, the formality is completed. There is no time limit within which the states should give their consent to the bill. The following provisions can be amended in this way:

- Election of the President and its manner.
- Extent of the executive power of the Union and the states.
- Supreme Court and high courts.
- Distribution of legislative powers between the Union and the states.

11. What are the functions of election commission?

Election Commission of India plays a crucial role in organising elections. The most significant role of the Election Commission of India is to ensure free and fair elections as per the norms and the Model Code of Conduct. It is in charge of monitoring the actions and activities of the political parties and candidates and try to ensure free, fair and transparent elections in India.

Functions of Election Commission of India:

- Election Commission of India superintendents, direct and control the entire process of conducting elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India.
- The most important function of the commission is to decide the election schedules for the conduct of periodic and timely elections, whether general or bye-elections.
- It prepares electoral roll, issues Electronic Photo Identity Card (EPIC).
- It decides on the location polling stations, assignment of voters to the polling stations, location of counting centres, arrangements to be made in and around polling stations and counting centres and all allied matters.
- It grants recognition to political parties & allot election symbols to them along with settling disputes related to it.
- The Commission also has advisory jurisdiction in the matter of post-election disqualification of sitting members of Parliament and State Legislatures.
- It issues the Model Code of Conduct in election for political parties and candidates so that the no one indulges in unfair practice or there is no arbitrary abuse of powers by those in power.
- It sets limits of campaign expenditure per candidate to all the political parties, and also monitors the same.

12. Write notes on official language

Part XVII of the Constitution deals with official language under which, Article 343 specifies that the official language of the Union shall be Hindi in Devanagari script along with the international form of the Indian numerals. But, notwithstanding this, English will continue to be used for all official purposes of the Union for a period of fifteen years from the commencement of the Constitution that is till 25th January 1965.

Further, the President has the power to authorise the use of the Hindi language in addition to the English language for the official purposes of the Union. Provided that the parliament may by law provide for the continuing use of the English language after the period of fifteen years, which was added through an amendment in 1967, for the purposes specified by law.

Official Language or Languages of a State

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State: Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

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Official Language for Communication between One State and Another or Between a State and the Union

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union: Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

13. Explain the distribution of Legislative Powers

The Constitution divides the legislative powers between the union and the states in the following 3 lists mentioned in the Seventh Schedule: „

Union List:

It consists of 100 subjects (originally 97 subjects). The subjects mentioned in the Union List are of national importance and include defence, foreign affairs, banking, currency and coinage, union taxes and duties. The Parliament has exclusive power to make laws with respect to any of the matters enumerated in the Union List. „

State List:

It consists of 61 subjects (originally 66 subjects). These are of local importance such as, local government, public order and police, agriculture, forest, public health and sanitation, fisheries, education, State taxes and duties. The states under normal circumstances have exclusive power to make laws on subjects mentioned in the State List.

Concurrent List: It consists of 52 subjects (originally 47 subjects) at present. Both the Parliament and the state legislature can make laws on the subjects mentioned in the Concurrent List. If there is a conflict between the central and the state law on Concurrent subjects, the Central law will prevail. Some of the subjects under this list include population control and family planning, electricity, labour welfare, economic and social planning, marriage and divorce, drugs, newspapers, books and printing press and others. Parliament is conferred with the power to make laws with respect to residuary subjects.

14. Examine the powers of parliament to legislate on state subjects.

The Constitution also empowers the Parliament to legislate on state subjects under the following extraordinary circumstances: „

- When Rajya Sabha passes a resolution to that effect

Under Article 249, if the Rajya Sabha passes a resolution supported by 2/3rd of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated within the State List, then the Parliament becomes competent to make laws on that matter.

Such a resolution normally lasts for one year at a time. It may be renewed any number of times, but not exceeding one year at a time.

These laws of Parliament will, however, cease to have effect on the expiration of the period of 6 months after resolution has ceased to operate.

- During a National Emergency

Under Article 250, Parliament has the power to make laws with respect to all matters in the State List while the proclamation of national emergency is in operation.

Such a law, however, shall cease to have effect on the expiration of 6 months after the proclamation of emergency has ceased to operate. In both the above mentioned cases, the state legislature has the power to make laws on the same matter. However, the parliamentary law will prevail in case of repugnancy between a state and parliamentary law.

- When states make a request

As per Article 252, if the legislature of two or more states passes a resolution to the effect that it is desirable to have a law passed by the Parliament on any matters in the State List, then the Parliament can make laws for regulating that matter.

A law so enacted applies only to those states which have passed the resolutions.

Any other State may adopt such a law by passing a resolution to that effect in its legislature.

Such a law can only be amended or repealed by an Act of Parliament and not by the concerned state legislatures.

In the provision mentioned above, the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. „

- To implement international agreements

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

In other words, the normal distribution of powers will not stand in the way of Parliament to pass a law for giving effect to an international obligation even though such law relates to any of the subjects in the State List. „

- During President's Rule

Under Article 256, the Parliament is empowered to make laws with respect to all matters in the State List when the President's Rule is imposed in the concerned state. A law made so by the Parliament continues to be operative even after the President's Rule ceases to operate. However, such a law can be altered or repealed or re-enacted by the state legislature concerned.

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