

UNIT - II

Administrative Relations [Article (256 - 263)]

SUBJECT - Constitution Law of India - I

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INTRODUCTION

In order to ensure smooth and proper functioning of the administrative machinery at the two levels, the Constitution embodies provisions for meeting all types of eventualities resulting from the working of federal system and also for protecting and maintaining peace and order in the country. The constitution provides for a flexible, permissive and not rigid, scheme of allocation of administrative responsibilities between Centre and States.

The scheme of allocating the administrative responsibilities is drawn for the purpose of:

- 1) The administration of law,
- 2) Achieving coordination between the Centre and States,
- 3) The settlement of disputes between Centre and States inter se; and
- 4) For the purposes of Article 355 (Duty of the Union to protect states against external aggression and internal disturbance).

DIVISION OF ADMINISTRATIVE POWERS

Adequate provisions have been made in the Constitution for the division of executive powers between that Centre and the states, like the division of the legislative powers between Centre and states. Subject to few exceptions, the executive powers has been declared as co-extensive with the legislative power of both the governments.

Article 73 provides that subject to the provisions of the Constitution, the executive power of the Union shall extend –

- a) To the matters with respect to which parliament has power to make laws; and
- b) To the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

Article 162 provides that subject to provisions of the Constitution, the executive power of a state shall extend to matters with respect to which the legislature of the state has power to make laws. Provided in case of **Concurrent List** –

- a) The Union shall exercise executive power only if the Constitution so expressly provides or any law made by the parliament so confers the powers expressly on the Centre.
- b) The States shall have the executive powers only if the Constitution or a Parliamentary law has not conferred such power expressly on the Union.

Deployment of Military and Para-military Forces:

These can be deployed in a state by the Union, if situation warrants, even against the wishes of the state government.

TECHNIQUES OF CO-ORDINATION BETWEEN CENTRE AND STATE

The administrative relations between the union and the states may well be studied as under:

- (i) Normal circumstances and
- (ii) Emergency conditions.

The constitution has devised several techniques of control to be exercised over the states by the Union government under normal circumstances. The states shall not interfere with the legislative and executive policies of the Union government.

Even in normal times, the Indian Constitution has devised techniques of control over the states by the Union to ensure that the state governments do not interfere with the legislative and executive policies of the union and also to ensure the efficiency and strength of each individual unit which is essential for the strength of the union. Some of these avenues of

control arise out of the executive and legislative powers vested in the President, in relation to states. For instance, the President of India has power to appoint and dismiss the Governor, [Article (155-156)] and other dignitaries in the state, if they were found guilty.

The President has also got some powers relating to the legislation.

- ✓ Article 304 - His previous sanction to introduce legislation in the state legislature.
- ✓ Article 31A - Assent to specified legislation which must be reserved for his consideration.
- ✓ Article 213 - Instruction of President is required for the Governor to make ordinances relating to specified matters.
- ✓ Article 200 - Veto power in respect of other State bills reserved by the Governor.

The framers of Indian Constitution, in order to safeguard the infant democracy of India provided several means to control administrative affairs of the states. They are:

1) Centre's direction to the State Governments [Article (256 & 257)]

The Union Government is competent to give directions to a state government and to secure compliance with such directions. President's rule can be imposed, in case the State government fails to comply with any directions issued by the union government in the exercise of its executive powers.

- ✓ **Article 256** - The objective is that central laws should be properly executed in the states. It is incumbent upon the State government to act in accordance with the directions given by the central government.
- ✓ **Article 257 (1)** - The executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to giving of such directions to state as may appear to the Government of India to be necessary for that purpose.
- ✓ **Article 257 (2) & (3)** - Centre can give directions to State in two specific manners:
 - a) In respect of construction or maintenance of means of communications of national or military importance.
 - b) For the protection of railways within the State.

“**Communications**” is a state subject. But clause (2) of this Article empowers the Union to direct a State to construct and maintain means of communications which may be declared to be of national or military importance.

“**Railways**” is Union subject. But police, including Railway police, is a state subject. Under clause (3) the Union executive can give directions to a State as to the measures to be taken for the protection of railways within the state.

2) **Inter-governmental delegation of Administrative functions [Article (258 & 258A)]**

The Constitution has enabled the Union and the State governments to exchange their respective administrative functions. For example, the President with the consent of the State government may entrust any executive function of the union to the states while legislating on a Union Subject, Parliament may delegate powers to the state governments and their officers in so far as the statute is applicable in respective states. Conversely, a State government may, with the consent of the Government of India, confer administrative functions upon the latter relating to State Subjects.

- ✓ **Article 258 (1) - By agreement** - While delegating its functions, the Centre may impose conditions and what conditions are to be imposed, is for the Union to decide. Usually, while entrusting its functions, the Centre reserves to itself power to issue directions to delegate states for the exercise of powers so delegated. The delegation of the functions has to be with the consent of the concerned state government.
- ✓ **Article 258 (2) - By legislation** - empowers the Parliament to make laws authorizing the delegation by the Central government of its powers and functions to the states or officers and authorities in the States. Such a law may relate to matter to with respect to which the Legislature of the State has no power to make laws.
- ✓ **Article 258A - Entrustment of State’s powers to the Centre** - When the functions are entrusted by a State Government to the Government of India, the latter does not become “an agent” of the former Government.

The Supreme Court in **Jayantilal Amrit Lal v. F.N Rana [AIR 1964 SC 648]** distinguished between the functions exercisable by the President on behalf of the Union and functions

conferred on the President under express provision of the Constitution. Only the former functions can be delegated under Article 258(1) and not the latter functions. It must also be noticed that only executive function can be delegated under clause (1) of Article 258, and not a quasi-judicial function. However in **Shamsher Singh v. State of Punjab [AIR 1974 SC 2192]** it was clarified that the distinction made by the Supreme Court in Jayantilal Amritlal case between the executive functions of the Union and the executive functions of the President does not lead to the conclusion that the President is not the constitutional head of Government. Moreover, all the functions exercised of President are to be exercised with the aid and advice of the Council of Ministers [Article 74(1)].

3) All India Services [Article 312]

Besides central and state services, the Constitution provides for the creation of additional "All-India services" common to both the Union and States. The state has the authority to suspend the officials of All India Services. The power of appointment and taking disciplinary action against them vests only with the President of India. The idea of having an integrated "All India Services" is to manage important and crucial sectors of administration in the country which was the legacy of the past was incorporated in our Constitution. Their recruitment, training, promotion disciplinary matters are determined by the central government. The object is to ensure greater inter-state co-ordination and implementation of the policies of the Union Government through the members of these services. It also facilitates the execution of the Union laws in the States.

4) Grants-in-Aid [Article 275]

The Constitution of India has given the Parliament the power to make such grants as it may deem necessary to give financial assistance to any state which is in need of such assistance. It serves two purposes: (1) CG exercises a strict control over the states because grants are subject to certain conditions. If any state does not agree to the condition, the CG may withdraw the grant. (2) It generates a Centre – State coordination and cooperation if State want to develop welfare schemes for the people. The Union government also provides for specific grants for welfare of Scheduled Tribes and development of tribal areas.

5) Inter State Council [Article 263]

The Constitution visualizes the establishment of Zonal Councils and Inter-State Council for achieving Inter governmental consultation and co-operation mainly in Socio-economic fields. The setting of Inter-State Council was suggested by Rajamannar Committee (1969). The body was formed by a presidential order dated 28 May, 1990 on recommendation of Sarkaria Commission (1983).

The Inter-State council may be established by the President by order, if it appears to the President that public interest would be served by the establishment of the council. The President may further define the nature of the duties to be performed by the council, along with its organisation and procedure to be followed by it.

The President has constituted the Central Council of Health and the Central Council of Local Self-Government in the exercise of his power under his Article.

Composition of Inter-State Council:

- 1) Prime Minister (as the Chairman).
- 2) Chief Ministers of State & Union Territories having a Legislative Assembly.
- 3) Administrators of Union Territories without Legislative Assembly.
- 4) 6 Union Cabinet Ministers including Home Minister to be nominated by Prime Minister.

Duties of Inter-State Council:

- a) Inquiring into and advising upon disputes which may have arisen between States:
- b) 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
- c) Making recommendations upon any subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

Procedure:

- 1) Council shall adopt guidelines for identifying and selecting issues.
- 2) Meet at least 3 times in a year.
- 3) Meeting to be hold in Camera.
- 4) Quorum (including Chairman) is to be formed.

- 5) Decision given by consensus.
- 6) Observe procedure with approval of central government.

Five Zonal Councils were set up under the State Re-Organisation Act, 1956. These are Northern Council, Eastern Council, Western Council, Southern Council, and the Central Council. Each Zonal Council consists of the Union Home Minister, The Chief Ministers of the member States and two other Ministers appointed by the Governor of the States concerned. The Union Home Minister also acts as the ex-officio Chairman of these councils. These councils have been set up as instruments of inter- governmental consultation and cooperation and, also to arrest the growth of controversies among the States.

6) Inter State Water Dispute [Article 262]

In case of disputes relating to waters:

Art. 262 (1) - 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.

Art. 262 (2) - 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 as mentioned above.

In the exercise of power conferred by Article 262, Parliament has passed the River Board Act, 1956 and Interstate River Water Disputes Act, 1956. The former provides for the regulation and development of Inter-States rivers and river valleys whereas the latter empowers the Union government to set up a Tribunal for the adjudication of disputes relating to waters of Inter-State rivers or river valleys.

The Interstate River Water Disputes Act, 1956 was amended in 2002, to include the major recommendations of the Sarkaria Commission. The amendments mandated a one year time frame to setup the water disputes tribunal and also a 3 year time frame to give a decision.

In **T.N. Cauvery Sangam v. Union of India [AIR 1990 SC 1316]** the Supreme Court HELD that if Central government failed to make reference of dispute, the court under Article 32, issue mandamus to Central Government to carry out Statutory obligations.

In **State of Andhra Pradesh v. State of Karnataka [AIR 2001 SC 1560]** the Supreme Court HELD that a dispute between Riparian States located in inter-state river basin, relating to non-implementation of binding awards of water dispute tribunal, constituted under Inter water dispute Act, 1956, was not a water-dispute within the meaning of Section 2(c) of the Act. Similarly held in **State of Haryana v. State of Punjab [AIR 2002 SC 685]**.

MISCELLANEOUS PROVISIONS

Article 261 - Public Acts, Records and Judicial Proceedings

Federal government involves dual government. It is therefore necessary to provide for the acceptance of public acts of both governments to avoid inter-governmental conflict. In the functioning of federation, a state refusing to recognize acts and records of another state may give rise to confusion and inconvenience. To eliminate such a possibility, the Constitution of India provides the '**full faith and credit clause**'. Article 261(1) of the Constitution stipulates that full credit and faith shall be given throughout India to public acts, records, and judicial proceedings of the union and all the states. The term 'public acts' relates to not only statutes but to all other legislative and executive acts of the Union and the States. This clause serves a very important purpose of eliminating any possible hindrance to the normal transaction of administrative activities in the Indian Federation.

Article 260 - Jurisdiction of Union in relation to territories outside India

The government of India may by agreement with the government of any territory not being part of territory of India undertake any executive, legislature or judicial functions vested in the Government of such territory, but every such agreement shall be subjected to, and governed by, any law relating to the exercise of foreign jurisdiction for the time being in force.