BLOGS

Distribution of Power between Centre and State

Harshita Gulati · 06 Oct 2021

Dr. B.R. Ambedkar quoted, 'The States are as sovereign in the field which is left to them by the Constitution as the Centre in the field which is assigned to it.
The legislative competence to enact law is an attribute of sovereignty. This attribute is divided into two parallel sets of power namely Centre and State.

Article 245 defines the territorial limits of Legislative powers vested in the Parliament and State legislatures. Article 246 defines the respective jurisdiction of the Union and State legislatures pertaining to the topics of legislation.



The Plenary Power of the legislature

It is an absolute power to enact laws subject only to its legislative competence and other constitutional limitations. The principle to interpret the entries (in lists) so as to make the legislative power of parliament and state legislatures ‘plenary’ is that the entries should not be read in a narrow or restricted sense. Each general word in an entry should be construed to include all ancillary or subsidiary matters which can fairly and reasonably be said to comprehend it.

Territorial Legislative Jurisdiction or Doctrine of territorial nexus

Parliament may make laws for whole or any part of the territory of India, and a state legislature for the territory of that state and no law made by the parliament would be invalid on the ground that it would have extra-territorial operation i.e. takes effect outside the territory of India.

In Tata Iron & Steel Company v. Bihar State, The State of Bihar passed a Sales Tax Act for levy of sales tax whether the sale was concluded within the state or outside if the goods were produced, found, and manufactured in the state.

The court held there was sufficient territorial nexus and upheld the Act as valid. Whether there is sufficient nexus between the law and the object sought to be taxed will depend upon the facts and circumstances of a particular case.

The Doctrine of Colorable Legislation

“Colorable legislation” simply means legislation which, while transgressing constitutional limitation, is made to appear as if it were quite constitutional. If the law enacted by the legislature is found in substance and reality beyond the competence of the legislature enacting it, it will be ultra vires and void, even though it apparently purports to be within the competence of the legislature enacting it.

It is the substance of the act that is material and not merely the form or outward appearance. This doctrine is based on the maxim that ‘what one cannot do directly, that cannot be done indirectly.’

Inconsistency or Repugnancy between union and state laws (Article 254)

‘Repugnancy’ between two pieces of legislation, generally speaking, means that conflicting results are produced when both the laws of the state as well as union legislature with respect to a concurrent list are applied to the same facts. The expression ‘existing law’ refers to laws made

before the commencement of the constitution by any legislature, authority, etc. for example criminal law, civil procedure, evidence, contract, etc.

The Doctrine of Pith and Substance

The rule of pith and substance means that where the law in reality and substance falls within items on which the legislature has the competence to legislate then such law shall not become invalid merely because it incidentally touches a matter outside the competence of legislature in a federal constitution.

This doctrine comes into the picture when there is a conflict between the different subjects in different lists. There is an interpretation of List 1 and List 2 of the Constitution of India. There can be a situation when a subject of one list touches the subject of another List. Hence this doctrine is applied then. Pith and Substance mean the true nature of law. The real subject matter is challenged and not its incidental effect on another field.

In the case of State of Bombay v. F N Balsara, The Bombay Prohibition Act, 1949 which prohibited sale & possession of liquors in the State, was challenged on the ground that it incidentally encroached upon Imports & Exports of liquors across custom frontier – a Central subject. It was contended that the prohibition, purchase, use, possession, and sale of liquor will affect its import. The court held that act valid because the pith & substance fell under Entry 8 of State List and not under Entry 41 of Union List.

Doctrine of Eclipse

The doctrine states that if any law becomes contradictory to the fundamental rights, then it does not permanently die but becomes inactive. As soon as that fundamental right is omitted from the Constitution, the inactive law becomes revived.

When a court strikes a part of the law, it becomes unenforceable. Hence, an ‘eclipse’ is said to be cast on it. The law just becomes invalid but continues to exist. The eclipse is removed when another (probably a higher level court) makes the law valid again or an amendment is brought to it by way of legislation.

The Doctrine of Incidental or Ancillary Powers

This principle is an addition to the doctrine of Pith and Substance. It states that the power to legislate on a subject also includes the power to legislate on ancillary matters that are reasonably connected to that subject. For example, the power to impose tax would include the power to search and seizure to prevent the evasion of that tax.

However, power relating to banking cannot be extended to include power relating to non-banking entities. However, if a subject is explicitly mentioned in a State or Union list, it cannot be said to be an ancillary matter. For example, the power to tax is mentioned in specific entries in the lists and so the power to tax cannot be claimed as ancillary to the power relating to any other entry of the lists.

Doctrine of Severability

According to this doctrine, if there is any offending part in a statute, then, only the offending part is declared void and not the entire statute. Article 13 states that the invalid portion should be struck off and not the entire one.

The valid part can be kept. However, it should be kept in mind that even after separation; the remaining part should not become ambiguous. If the remaining part becomes ambiguous, then the whole statute would be declared void and of no use.

In the case of AK Gopalan v. The State of Madras, the Supreme Court said that in case of repugnancy to the Constitution, only the repugnant provision of the impugned Act will be void and not the whole of it, and every attempt should be made to save as much as possible of the Act.

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