

## **Centre State Relations in India**

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### **Week 05: Legislative Relations: Interpretation of Lists, Pith and Substance, Territorial Nexus and Related Areas**

#### **Lecture 20: Legislative Relations during Emergency**

Greetings to all of you. We are discussing legislative relation and in that we have discussed that how subject matter jurisdiction has been given between the Centre and the States, how territorial jurisdiction operates in India. We have also discussed that the situation where Parliament gets the necessary authority to make a law on the State subject. Today we will also discuss on legislative relation a similar area, but slightly different. Under the Indian Constitution you find that Parliament has been empowered to make law on the State subject and such empowerment is there with the Parliament in both emergency situation as well as normal situation. In earlier slide we have read that how during normal situation the power has been given to Parliament to make a law under Articles 249, 240, 250, 253 particularly Articles 249 and 252 where Parliament can make a law in a case where the Upper House or the Council of States passes a resolution in the national interest and through that resolution ask the Parliament to make a law on the State subject or where two or more States request the Parliament to make a law on the State.

That is what you are talking about during normal situation when Parliament is making law on the State subject either with the direct consent of the Centre or indirect consent of the Centre. In today's session we will be discussing two important points. One legislative relations during emergency and second we have experienced extraordinary health emergency during COVID time. How federal relation during that COVID time has also been discussed and it how it has operated because that is also an emergency which was not visualized or contemplated while making of the Constitution. So, we will also discuss that reason because we are discussing legislative relations during emergency we thought of discussing it at this lecture.

Now, we have already discussed the power of Parliament to govern States when presidential rule gets imposed under Article 356. So, we will not be repeating it here. Here we will be discussing the power of

Parliament only in relation to proclamation of national emergency which is imposed under Article 353. How legislative relation during such proclamation takes place? So, under normal circumstances legislative matter gets dealt under Articles 245 and 246 where Centre makes a law on the Union List, State makes a law on the State List, both Centre and the State makes law on the Concurrent List.

Now, this proclamation of emergency which is done under Article 353 either in the matter of war or external aggression or armed rebellion in such situation legislative relation between the Centre and the States completely get transformed. It completely gets transformed and the Constitution under Article 250 empowers the Parliament to make a law on the state subject. And one of the rational given for empowering the Centre to make a law on the State subject during emergency is the necessity, the emergent situation where urgent remedial action is desirable and that is possible only when the authorization is given to the Parliament. So, the character of federal structure changes centralized tendency of the law making takes over during emergency. That is what you find the reference of Article 353 read with Article 250.

Article 353 deals with proclamation of emergency on administrative relations whereas Article 250 deals with legislative relation where says that the Parliament shall have the necessary power to make law on the State List if proclamation of emergency is in operation. Now, this provision of Article 250 has its connect with the Government of India Act 1935 where you find that Section 102 of the Government of India Act 1935 provides for a similar power similar power of the Federal government to make a law on the Provincial Legislative List during the emergency. Where says that the Parliament can make a law on subject matters given to the provinces to make law. And further it says that Provincial Legislature continues to enjoy the power to make the law it is not that the entire law making power of the province is been taken away. Provincial Legislature continues to make the law, but then if such law comes in conflict the Federal law it is a federal law we shall prevail the idea of federal supremacy.

Under 1935 Act the Governor General has been given necessary discretion necessary discretion for invoking the law making power by the Provinces during proclamation of emergency. It says that no Bill can be introduced without the previous sanction of the Governor General and the Governor General shall not give a sanction unless he satisfied that the provisions proposed to be made is a proper provision in view of the nature of emergency. So, provinces continue to enjoy legislative power, but then exercise of that legislative power is conditioned upon the necessary approval from the Governor General that was the scenario under 1935 Act. Now, it was been debated in the Constitutional Assembly. It was debated in the Constitutional Assembly because emergency one situation where members wanted quick redressal, members wanted emergent action and speedier action.

Therefore, the question was that whether Section 102 addresses the same. Now, some of the members were of the opinion that instead of conferring this power on the Parliament let the President be the right authority to intervene during emergency and make the laws. It was suggested by Mr. KT Shah that the President do it with the consent of the State Legislature. A prominent member of the Constitutional Assembly, Mr. Alladi Krishnaswami Ayyar said that Federal Constitution must be given the power to make laws on any matters which is exclusive domain of the State Legislature. He said that let there be no limitation on it. Mr. Syama Prasad Mookerjee suggested that let the President on the advice of the Union Cabinet should have the power to suspend or annul the law made by the Provincial government. Mr. Gopaldaswami Ayyanagar he says that there is a need of provision in the Union Constitution wherein Central government should be given necessary power to intervene in the in during emergency, but he said that power should be wasted either with the President or the Parliament. So, what you find when you look at this prominent voices that there was sort of anonymity that authorization either to the President or the Parliament was agreed upon.

That Parliament should not or the Central government should not be constrained to handle the situation because of limitations laid down under Article 246. So, it was debated Draft Article 276 was debated. It was suggested that let this Articles 250 and 353 deals on the matter of proclamation of emergency in sweeping manner and that is why the suggestion of Dr. Ambedkar to add this notwithstanding clause with Article 353 was accepted because here Parliament has been allowed to make a law contrary to the scheme of the Constitution to be made applicable during ordinary time and that is why it was categorically suggested that let the Parliament get the authority to make the law on the subject. Now with GST Act coming into picture we know very well that necessary amendment has been done also through 101<sup>st</sup> constitutional amendment where again parliament has been given the power to legislate on goods and services during an emergency. Now, Article 353 which talks about proclamation of emergency we find that Article 353 says Parliament has a power to make laws with respect to any matter.

So, power is given to Parliament in such a way so that Parliament shall take all necessary steps to address that emergency. So, power given to Parliament under Article 353 is not limited only on the matter of the Union List. A proviso has been added in 1976 through 42<sup>nd</sup> amendment where it says that the power of the Parliament to make law extends to more than one States if the situation arises. Now, Article 250 applies only in cases of emergency and as it starts with notwithstanding clause one can very well make out that the applicability of Article 250 is not subject to the design of legislative competence given under Articles 245 or 246. It gives sweeping power unbridled power on the Parliament to make laws for whole or any part of the territory. However, it says that that the law made in pursuant to Article 250 shall be operational only up to 6 month from the completion of the proclamation of emergency

So, timeline has been given under Article 250(2). So, this is what Article 251 says. One may divide it into two connotations positive and negative. Positive connotation what it says that a State Legislatures are empowered to make laws for the State List even during the operation of emergency as I said that is not that State has been refrained there is a complete embargo on the law making power of the State during the emergency State continues to make so. But then if the Parliament decides to make law on such subject and if such law has been made then it is the parliamentary legislation which shall prevail and not the state law which shall prevail. So, that is the effect which is given under Article 251.

Now, what you find on the Centre State relation during emergency you find that centralized power is vested in the center, a structural change happens and the federal structure becomes unitary structure where legislative power of the State gets transferred to the Union including on the matter of finances that is what is the effect on emergency. Now, we decided to discuss also COVID-19 because COVID-19 has also struck as an emergency of a different kind never visualize never heard not contemplated under the Constitution and it was much debated that how federal relation, how the Centre State relation shall get governed in such kind of emergencies if it again arises in future. We pray that it should not happen. Now, when you look at the relevant Entries in the different lists you find references of Entry 81 of List I which deals with inter-State migration or inter-State quarantine. We know very well that during pandemic severe restrictions were imposed on inter-State migration workers were not allowed to migrate to come back to their State of origin they were being advised to stay back at the State where they are working. Then Entries 1, 2 and 6 of the State List gives necessary legislative power to the State to make a law on public order on police and notably on the matter of public health and sanitation hospitals and dispensaries.

And then you have Entries 23 and 29 of the Concurrent List which allocates shared responsibility of making law between the Centre and the States on the subject matter of social security and social insurance; employment and unemployment and prevention of the extension from one State to another of infectious and contagious disease or pests affecting main animals or plants. So, these are the relevant Entries which appear to be talking about subject matters on which either the Center or the States can make a law to contain pandemic to manage health emergency. If you look at the subject matters apparently it appears that a larger responsibility may be on the State government because the State government deals with public health, deals with public order. However, it is important to bring it to your information that while debating on the List it was suggested that the matter of health should be there in the Concurrent List. So, that both the Centre and the State should be part of responsible regime it should not be only with the State.

Now, what precisely has happened when you look at the COVID pandemic, obviously, it is not an

emergency as it is envisaged under Article 352. It is not about war, external aggression and armed rebellion. So, obviously, Article 352 will have no applicability, but one may infer that it is a disaster and necessary legislative authorization is there with the Centre by bringing in the subsidiary power which we have discussed under Article 248 read with Entry 97 of List I. That is one way of looking at the federal relation. By invoking that Centre can regulate such kind of disaster. In fact, two existing laws played instrumental role in regulating the conduct of individuals managing situations on the ground. One is Disaster Management Act where in Union government has notified COVID-19 as a disaster and started regulating with a quarantine regulation, with inter-State migration issues, with supply of PPE kit.

And the other one Epidemic Disease Act 1897 where in State is started making regulations. Epidemic Diseases Act was also amended through an Ordinance in 2020 that was done by the Central government to detain inspect and regulate the issues related to pandemic. You see that the States have made the regulation in pursuant to that Epidemic Act, for example Telangana has made the regulation the Telangana Epidemic Disease (COVID-19) Regulation 2020, Karnataka has made the Karnataka Epidemic Diseases, COVID-19 Regulations, 2020, and Delhi has made the Delhi Epidemic Diseases, COVID-19, Regulations, 2020 to name a few.

So, State governments have taken recourse to Epidemic Act whereas, the Central government has invoked the Disaster Management Act for intervening on the issue of COVID-19. In this regard when you look at Disaster Management Act it was suggested that under Disaster Management Act it is the Ministry of Home Affairs which is the nodal agency or nodal ministry and that gets a kind of sweeping authority to deal with the situation during disaster and that is how notifications were being issued.

But if this kind of emergency again recurs possibly the involvement of third-tier government which also falls under the federal structuring can play an important role and that was experienced during COVID-19. For example Odisha government experimented by empowering Municipality and Panchayat to bring in necessary regulation and same in the State of Kerala and which had shown a very meaningful result. So, third-tier government in such kind of emergency may be empowered and to give the necessary power to interfere. Other important point to take note is that, in this kind of scenario or crisis this kind of emergency, it is utmost importance that there should be a better coordination between the Centre and the States. For such coordination and bridging of the gap or for establishing a communication channel institutions like Inter-State Council should be utilized.

So that better and effective coordination can be ensured between the Centre and the States for the welfare of the people. This is what in this session.