

Centre State Relations in India

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Week 02: Administrative Relations: Distribution of the Subjects; Obligation of the Centre and the States

Lecture 04: Administrative Relations between Centre and State

Welcome learner. So, now we have moved to Module 2, where we will be discussing administrative relations and in now we will be discussing administrative relations that how Centre State is been engaging on the subject matters which relates to administration. There are detailed provisions in the Constitution which decides on the relationship on the administrative front on the administrative matters. So, we will be discussing that in this Module. So, this is what is the topics what we would be covering in this lecture. So, we will try to give you a kind of overview that how the administrative relation is developed over a period of time, what are the methods of control by Union, then we will discuss the directions which Union can give to the States, what is the nature and scope of such directions.

We will also discuss what are the consequences of non-compliance by the State and then delegation of power by the Union and delegation of power by the State. So, when we talk about the federal Constitution, we know very well that federal Constitution has this attribute of making the Centre and the States interdependent and independent at the same time. And when we say independent obviously, exclusive powers have been given to the Centre and the States to exercise the executive power in their exclusive domain. So, that is how we look at the administrative relations in India.

Now, under the Indian Constitution you would find that the administrative relation has been discussed in such a detail where things are being clearly spelled out that what would be the domain of the Centre and what would be the domain of the States. And in addition to that how on

the matter of the Union Law the Union government can pass on the instructions to the State, these are all the issues which are there in the administrative relations between the Centre and the State. So, the Indian Constitution has devised a kind of clear mechanism of dealing on the subject matters and particularly because the responsibility is there of the Centre to see that the Constitution is it been followed by the provincial units by the constituent units. And therefore, instances are being clearly spelled out where necessary instructions can be given by the Centre to the State that is what we will be also studying in this provision. Now, when you look at the administrative power of the Centre and the State the position is very clear the executive power of the State is there on all the subject matter on which the Central government can propose a law and Parliament can enact a law on such subject matters.

So, one can very well say that the executive power of the Centre is concurrent with the legislative power of the Parliament and same is the case with the same is the case with the State executive where the power of the State executive is concurrent with the legislative power of the Assembly that is what is given under Article 162. On the Concurrent List matter there is a unique methodology which has been designed under the Indian Constitution where it says that executive power of the State is subjected to and limited by the executive power of the Union and any law made by Parliament there too. So, generally the power rests with the State and unless and until the Centre makes a law where in Centre either vests the power on itself generally the administrative power or the executive power on the matter related to Concurrent List is there with the State government and apart from that you would find that on the on the on the matter where in the certain emergency provisions are there where in you would find that unitary form is being attained at the instance of imposition of the central rule at the State then certainly it is the Centre which controls the administrative power of the States that is what we find when we read the provisions like Article 356 which is talk which talks about the Presidential rule or the provisions which are there where law is been made by the Parliament on the consent of the States or law is made by the Parliament to give a treaty which the Central government signs in compliance with international obligations. So, all these matters again what you find is that the prerogative is there with the Centre to either confer the executive power upon the State or retain the power to the Central government that is how is the scheme which goes. So, when you look at the scheme when Union makes a law it can have a following scheme which it can follow it can

leave the matter on the on administering the law upon the States or it can take the administrative power by making express provision in the law or on the matter of concurrent area it can take the concurrent power it can take the executive power in its own hand or it can share with the States.

For example, when you look at Labour Code on Industrial Relations which is been enacted very recently in 2020 where you would find that the law is been enacted in in consideration with Entry 22 of List II where you would find that the administrative power rest with the Union and the State that is how when you read the definition of the appropriate government you would find appropriate government is been defined in relation to both the Central government as well as the State government. And also you have another example from the Forest Conservation Act 1980 where you would find that Union has assumed the entire responsibility for administration of the Act. So, you can very well find that the on the matter of administrative relation there are different models which have been implemented and which have been kind of invoke on based on the requirement of the law based on the nature of the law that either it goes with the States or it goes with the Centre or it is a kind of shared responsibility. Now, these are the methods of control which you would find which is there under the Constitution where Union exercise the control over the State. For example, Union gives the direction to the State, Union delegates the functions to the State under Article 248 and then you have all India Services then we have a grant in aid provisions like loans are there where again the control is there with the Centre.

Then we have an Inter-State Council then Inter-State Commerce Commission which is Article 307 obviously this has not been given effect and then we have a kind of extra constitutional agencies where there can be a kind of Union can have a kind of control over the States. Now, some of these topics some of these pointers will be discussed in detail at the later point of time. Now, directions to the State when you look at it there are three provisions which are very categorical on it Article 256, Article 257 and Article 257A wherein you would find that there is a power which has been given where executive power of the Union to give directions to the State to ensure compliance of the law made by the Parliament or law applicable to the State. You can very well visualize the relevance of this provision under the Constitution because whenever the Centre makes a law obviously that law has to be respected, honoured and executed in its entirety and with its full spirit in every part of this country and therefore, Article 256 plays a very important role where it provides a necessary power to the Union where Union government can

issue a necessary instruction direction to the State for the compliance of the law made by the Parliament. In the absence of this kind of provisions you can very well visualize the scenario where a State can be reluctant in giving effect to the Central Law and that would lead to a kind of non-functional situation that could lead to a kind of chaos situation and Constitution will be in jeopardy.

That is why Article 256 becomes very important and this is something which has got influence from the reading of Section 126 of the Government of India Act 1935 and this when this was discussed it was discussed as a Draft Article 233. Obviously there was nothing much which was discussed because this is one provision which very much fits into the scheme of federal Constitution particularly in a scenario when the framers of the Constitution decided not to have a parallel bureaucracy of the Centre at the State level to implement the Central Law. Now Article 257 is another important provision where it says that executive power of the State shall be exercised not to impede or prejudice the exercise of the executive power of the Union. So, there is a clear obligation which has been imposed upon the State government that State government shall not do anything we shall cause obstruction to the implementation of the Union Law we shall cause any kind of impediment to the implementation of the executive power of the Union that is what clearly is spelled out in the Constitution and all these provisions as I said becomes very significant because of the absence of parallel bureaucracy in India because of having a kind of well-structured bureaucracy where you find either we have a State bureaucracy, central bureaucracy or all India Services. Now obviously all India Services will be discussing in detail at the latter part of our course.

Article 257 relates to the control of a State by Union on certain matters when you look at the matters which are there you would find that particularly the matters which relates to unity of the country which relates to the strategic aspect of maintaining serenity of the country those subject matters are there particular for example safety of properties of railways or communications those provisions are clearly been spelled out under Article 257 where the responsibility is given to the State to do the necessary undertake the necessary measures for protecting the property of railways or communication channels or communication gadgets whatever is there that has to be maintained. So, when you look at the very significance of Article 257 you would find that Article 257 says that there is a responsibility upon the state to maintain those strategic assets of the

Centre which is important for maintaining national integrity which is important for maintaining sovereignty and the Constitution also says that whatever cost is been incurred by the State on maintaining such a strategic assets if there is any dispute which comes with regard to the reimbursement of such cost from the Centre then Chief Justice can appoint an arbitrator and that arbitrator will decide about the quantum amount which is to be reimbursed to the State towards maintaining so such a strategic assets on communication or the railways. Now that is what very categorically when you read the language of Article 257 it says for that purpose implies that the power of the Union is limited to the situations where the State executive actions impedes or obstructs the Union's executive power and very rightly Sarkaria Commission which has been constituted under the chairmanship of a former judge of the Supreme Court Justice Sarkaria very appropriately acknowledge the very fact that this Article 256 and Article 257 fits into the constitutional scheme because in case of any conflict between the Center and the State on the administrative matter it is the supremacy of the Union which shall be maintained because we studied when we study federal structure and federal Constitution we know very well that supremacy of the Constitution is an important attribute of federal Constitution and the Union government shall have the necessary responsibility to maintain the supremacy of the Constitution and that is why this provision becomes very significant. In a case relating to industrial disputes Jay Engineering v. State of West Bengal, Calcutta High Court speaking on the matter of Article 256 says that Article 256 is a is mandatory in nature. So, these are the matters on which Union can give the directions to ensure due compliance with Union laws and existing law to ensure that the exercise of the executive power of the State does not interfere with the exercise of the executive power of the Union to ensure construction and maintenance of communication or of military importance by the State as I stated to ensure protection of railways within the State for the development of the Hindi language to observe canons of financial propriety as may be specified in the directions during proclamation of financial emergency for the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of the Union including the judges of the Supreme Court or the High Courts during a proclamation of financial emergency or for the drawing up and execution of schemes specified in the directions to be essential for the welfare of the Scheduled Tribes in the States.

So, these are the subject matters where a specific power has been entrusted upon the Union government to give necessary instructions to the State. Now, what if the State fails to fulfill the obligations instructions there is a clear provision given under Article 365 which says that if the State fails to fulfill the compliance order if a State fails to not to follow the instructions given by the Centre then in such a situation President shall be competent to make a proclamation under Article 356. So, Article 356 empowers the President to take over the administration of the State government and the State government then after taking over the power by the President runs by the Central government. So, that is what is the kind of consequence if the instruction of the Centre is not followed which is given under Article 256 or Article 257. So, this provision makes it very clear that on the matter of compliance it is full of strength and full of consequences State cannot take the instructions lightly and State cannot be reluctant or unwilling to follow the instructions issued by the Centre.

Now, apart from issuing the instructions for the compliance of the Union Law, Constitution also describes a situation where it says that that Union government can request the Centre to help the Centre in implementing the Union Law that is what Article 258 refers to delegation of power by a maybe conditionally or unconditionally to one or more States can be given by the Center under Article 258 that delegation can happen either through the agreement or through legislation. So, you can very well visualize the situation when there is a reference of delegation through agreement then consent is required of the State government and when it is happening through legislation then consent is not required if the Parliament wishes to delegate the power upon the State government on an any matter then it can do it through the through the legislative process. Now, Article 258 mandates that delegation of power which can be extended to the Central government which can be extended to the or which can be imposed upon the State government that is what it says and Article 258 does not authorize the President to start the powers and functions which is entrusted upon the President by the Constitution. So, what we need to understand here is that delegation is possible of such functions which is imposed upon the President in the capacity of executive head of the Central government, but not which is constitutionally entrusted upon the President as a President by the Constitution that is something which cannot be delegated. So, that distinction we need to understand that what is possible to delegate is only what is entrusted upon the President or the Union government through a law.

The powers and functions which are entrusted upon the Central government which are entrusted upon the President that is something which cannot be delegated. For example, the power of the President to decide on the proclamation of emergency that cannot be delegated to the State government that is what it says and that is how the Court in this Jayantilal Amrat Lal Case explains it by saying that we need to make a distinction on the functions vested in the Union and functions which are entrusted upon the President as the President under the constitutional scheme and what can be delegated is something which is vested in the Union to be exercised by the President and not functions which are entrusted in the President that cannot be delegated by invoking Article 258. Delegation of power by the Union which may happen by law as I said delegation of power to the State is traced under Article 154(2) (b) read with Article 258(2) whereas I said that when the delegation is happening through a legislative process through law consent is not required that can be simply done by passing a law in the Parliament. So, Article 258(2) is a *sui generis* provision and it has nothing to do with Article 258(2) which talks about the delegation of power by the Union to the State through agreement that is something which is not required. So, Central Law enacted under List I or List III may confer power and impose duties on the States either through the legislation or through the agreement that is what it says.

For example, these are the examples which you find Mines and Minerals (Development Regulation) Act of 1957 where the Union has the power to regulate all the mines on the issues of miner minerals the power has been the executive power has been left on the State government. Similarly on the matter of essential commodities power is there on the Union government to regulate various aspects of supply production storage and further it provides for the delegation of this power to the State under Section 5 of the Act. Similarly when you look at Census Act it empower the Central government under Section 7G to delegate the power under Section 7A to Section 7F to any officers. So, these are the instances where you find the delegation has been done by the Union through a legislative process a law passed by the Parliament. Article 258 a is an interesting provision where you would find that a possibility is there where power can be delegated by the State upon the Union government.

This provision was not there in the original Constitution it has been inserted only in the year 1956 through 7th Constitution Amendment Act and which says that the Governor of a State may with the consent of the Government of India interest either conditionally or unconditionally to

that government or to its officers functions in relation to any matter which the executive power of the State extends to. So, whatever we have studied under Article 258 or Article 257 you would find that this is something which is a kind of corollary where the State can also delegate its power to the Centre, but then it can be done only with the consent of the Union government. Literature indicates that the need of such constitutional provision arises because of the construction of Hirakud Dam which is there in Odisha that when the construction was going on it was realized that there is a no provision which can make the State government to delegate the power of the State government to the Union and on such realization it was appropriately thought that let there be an amendment done in the Constitution wherein State government can be also entrusted with the power to delegate its executive power upon the Union. These are the references for this Module. Thank you.