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**PART X - THE SCHEDULED AND TRIBAL AREAS**

**Introduction**

Part 10 of the Constitution of India deals with the provisions regarding the scheduled areas. Before we move ahead, we need to know, **what exactly is a scheduled area?**

A scheduled area is an area which is demarcated for some special purpose in relation to its administration, development etc.

- ✍ In India, the scheduled areas **can be declared by President by order**. This means that **just to declare a scheduled area**, there is **no need of any legislation**.
- ✍ The President at any time can order that the whole or part of a schedule area ceases to be a scheduled area.

The above two points make it clear that President may declare an area as scheduled area and also the president can declare a scheduled area to be ceased to be known as scheduled area.

The President can also by order **alter the boundaries** of the scheduled areas. However, **to change the boundary of a scheduled area**, the **president is required to consult the Governor of the state** in which the area is located. Kindly note this point.

The next question is that - **Why we need scheduled areas?**

I remember one quote about Indian agriculture by British Economist Joan Robinson. He once said that “if you write something about Indian Agriculture and write just opposite of it, both will be true”. The situation still is there in India. For example, in Punjab we have farmers who produce 10 tons of food grains per hectare but at the same time we have farmers in north east India, who produce 500 kilograms of food grains per hectare that too by indulging into shifting cultivation and doing all sorts of contribution to soil and gene erosion.

The same is true about the overall development of the country. India is a vast country and some areas are not as developed as others. Further, people of different areas have their distinctive social and cultural traits.

To make sure that the people of different areas have their say in the administration of their affairs and they may also maintain their social and cultural identity, the Part X of the constitution was enshrined with some provisions for the administration of Scheduled and Tribal Areas which have their elaborate expression in V and VI Schedules of Constitution of India.

- ✍ These areas "are **treated differently** from other areas in the country, because they are inhabited by aboriginals' who are socially and economically rather backward and special efforts are required to improve their conditions of life.
- ✍ Therefore, the whole of the administrative machinery operating in a State is not extended the Scheduled Areas, and the **Central Government has somewhat greater responsibility** for these Areas.

The next question is –**what are the criteria to decide a scheduled area?**

The **criteria followed for declaring** an area as Scheduled Area are preponderance of tribal population; compactness and reasonable size of the area; under-developed nature of the area; and marked disparity in economic standard of the people.

Please note that these **criteria are NOT spelt out in the Constitution** of India but have become well established by custom. They embody principles followed in declaring "Excluded" and 'Partially-Excluded Areas' under the **Government of India Act 1935**, Schedule 'B' of recommendations of the Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and the Scheduled Areas and Scheduled Tribes Commission 1961.

### Basics of 5<sup>th</sup> and 6<sup>th</sup> Schedule

After the above preliminary study, we need to look at the 5<sup>th</sup> and 6<sup>th</sup> schedule of Constitution of India.

- ✍ The 5<sup>th</sup> schedule comprises the Provisions as to the Administration and Control of **Scheduled Areas** and Tribal Areas of **all other states** than Assam, Meghalaya, Tripura and Mizoram.
- ✍ The 6<sup>th</sup> schedule comprises the Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram.

**These 4 states make a difference.** The Constitution of India makes special provisions for the administration of the Scheduled areas in two ways as follows:

- ✍ 4 states viz. Assam, Meghalaya, Tripura and Mizoram in one way, this is as per the 6<sup>th</sup> schedule
- ✍ Other states in other way, this is as per the 5<sup>th</sup> schedule.

We first study, how the scheduled areas in other states are administered as per schedule 5:

### Schedule 5 (Article 244(1))

- ✍ The Fifth schedule says that the **Governor of the state** in question will **annually** or whenever so required by the President, **make a report to the President** regarding the administration of the Scheduled Areas in that State.
- ✍ Here, it has been made clear that the executive power of the **Union** shall extend to the **giving of directions to the State** as to the administration of the said areas.
- ✍ To take care of the welfare of the scheduled tribes, a **Tribal Advisory Council** will be constituted in each state with a scheduled area.

- ✍ This **Tribal Advisory Council** will be made of **maximum 20 members** out of which the 3/4th will be representatives of the Scheduled Tribes in the **Legislative Assembly** of the State.
- ✍ This Tribal advisory council will advise on matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the **Governor**.
- ✍ Here we have to make a note that “the number of members of this council, mode of their appointment, appointment of the chairman of this council, officers and servants of this council, conduct of its meeting and general business are **controlled by the Governor** of the state in question”.
- ✍ Not only this, please note that **Governor also can make a notification that that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State.**
- ✍ **Governor can also make rules for the better management of peace and good governance in such areas.**

### 6<sup>th</sup> Schedule (Articles 244(2) and 275(1))

Now, we need to have a look at the 4 states viz. Assam, Meghalaya, Tripura and Mizoram. These states contain the **Tribal Areas** which are **technically different from the Scheduled Areas**. Though these areas fall within the executive authority of the state, provision has been made for the creation of the **District Councils and regional councils** for the exercise of the certain **legislative and judicial** powers. Each district is an **autonomous district** and **Governor can modify / divide the boundaries of the said Tribal areas by notification**.

- ✍ The these districts of these 4 states, there will be constitution of District Councils and Regional Councils consisting of not more than thirty members, of whom not more than **four persons** shall be **nominated** by the Governor and the rest shall be elected on the basis of adult suffrage.
- ✍ Further, there shall be a **separate Regional Council for each area constituted an autonomous region**.
- ✍ Here we should make a note that each District Council and each Regional Council shall be a body corporate by the name respectively of “the District Council of (name of district)” and “the Regional Council of (name of region)”, shall have perpetual succession and a common seal and shall by the said name sue and be sued.

But here is an **exception**, which we all must note. One of the **Constitution amendments in 2003** made the provision that the **Bodoland Territorial Council** shall consist of not more than **forty-six members** of whom forty shall be elected on the basis of adult suffrage, of whom thirty shall be reserved for the Scheduled Tribes, five for non-tribal communities, five open for all communities and the remaining six shall be nominated by the Governor having same rights and privileges as other members, **including voting rights**, from amongst the un-represented communities of the Bodoland Territorial Areas District, of which at least two shall be women.

Some more points:

- ✍ Governor of the state makes rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organizations within the autonomous districts or regions concerned.
- ✍ **Governor will decide** the **composition** of the District Councils and Regional Councils and the allocation of seats therein, delimitation of territorial constituencies for the purpose of elections to those Councils; the qualifications for voting at such elections and the preparation of electoral rolls

therefor; the qualifications for being elected at such elections as members of such Councils; the term of office of members of Regional Councils and any other matter.

- ✍ The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council.

## PART XI: RELATIONS BETWEEN THE UNION AND THE STATES

### Chapter I: Legislative Relations: Article 245-255

In India, the form of the constitution is quasi-federal. It establishes a dual polity with the Union at the Centre and States at the periphery, each endowed with sovereign powers to be exercised in the field assigned to them respectively by the constitution. In India, the Union is NOT a league of states, that are united in a loose relationship. Nor the states are created by the constitution. Both Union and States derive their respective authority from the constitution. One is not subordinate to the other in its own field. The authority of one is co-ordinate with the other.

#### 7<sup>th</sup> Schedule

The most common feature of United States and many of the other federal constitutions is to enumerate a list of subjects or legislative powers and assign them to the union and leave the remaining (residue) to states. However, in Canada, there are two lists of legislative powers, one for the union and other for the provinces. The Constitution of India follows the Canadian System but is also ahead of it. The framers of Constitution of India **followed the Australian Constitution which also has a concurrent list**. The 7<sup>th</sup> Schedule of the Constitution of India thus embodies three lists viz. **Union List** or List I, **State List** or List II and **Concurrent List** or List III.

#### Union List

The Union List which consists of 97 items is longest of the three. It includes the items such as Defense, Armed Forces, Arms and Ammunition, Atomic Energy, Foreign Affairs, Diplomatic Representations, United Nations, Treaties, War and peace, Citizenship, Extradition, Railways, Shipping & Navigation, Airways, Posts and Telecommunications, Wireless and Broadcasting, Currency and Coinage, Foreign Loans and Forex Reserves, Foreign Trade, Banking, Bills of exchange, Insurance, stock exchanges, patents, standards, control of industries, regulation of mines and minerals etc. etc.

These items are reproduced from Constitution of India follows, Please don't cram them but pay attention to those which have been marked bold by me:

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilisation.
2. Naval, military and air forces; any other armed forces of the Union.
- 2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.
3. **Delimitation of cantonment areas**, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.
4. Naval, military and air force works.
5. Arms, firearms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Central Bureau of Intelligence and Investigation.
9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.
12. United Nations Organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.
15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, naturalisation and aliens.
18. Extradition.
19. Admission into, and emigration and expulsion from, India; passports and visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
22. Railways.
23. Highways declared by or under law made by Parliament to be national highways.
24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.
25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
26. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
27. **Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.**
28. **Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.**
29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.
31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.
32. Property of the Union and the revenue therefrom, but as regards property situated in a State subject to legislation by the State, save in so far as Parliament by law otherwise provides.  
(Entry 33 Omitted)
34. Courts of wards for the estates of Rulers of Indian States
35. Public debt of the Union.
36. Currency, coinage and legal tender; foreign exchange.
37. Foreign loans.
38. Reserve Bank of India.
39. Post Office Savings Bank.
40. Lotteries organised by the Government of India or the Government of a State.
41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
42. Inter-State trade and commerce.
43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including co-operative societies.
44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.
45. Banking.
46. Bills of exchange, cheques, promissory notes and other like instruments.
47. Insurance.
48. Stock exchanges and futures markets.
49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.
50. Establishment of standards of weight and measure.
51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies; regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale for export, of opium.



60. Sanctioning of cinematograph films for exhibition.
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
63. The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371E, any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for— (a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.
66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
67. Ancient and historical monuments and records, and archaeological sites and remains, declared by or under law made by Parliament to be of national importance.
68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.
69. Census.
70. Union Public Service; All-India Services; Union Public Service Commission.
71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.
72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.
73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.
74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.
75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor- General.
76. Audit of the accounts of the Union and of the States.
77. **Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.**
78. **Constitution and organisation including vacations of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.**
79. **Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.**
80. **Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.**
81. **Inter-State migration; inter-State quarantine.**
82. **Taxes on income other than agricultural income.**
83. **Duties of customs including export duties.**
84. **Duties of excise on tobacco and other goods manufactured or produced in India except— (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.**
85. Corporation tax.
86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.
87. Estate duty in respect of property other than agricultural land.
88. Duties in respect of succession to property other than agricultural land.
89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.
90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.
91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.
92. Taxes on the sale or purchase of newspapers and on advertisements published therein.
- 92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.
- 92B. Taxes on the consignments of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.
- 92C. Taxes on services.
93. Offences against laws with respect to any of the matters in this List.
94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.
95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.
96. Fees in respect of any of the matters in this List, but not including fees taken in any court.
97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

## State List

The state list or List II of the Constitution of India comprises 66 items (including omitted). By looking on the subjects of these items we can easily make out that the selection of these items is made on the basis of the local interest and it envisages the possibility of diversity in treatment with respect to different items in the different states of the country.

The items of the list II have been reproduced from Constitution as follows:

### List II—State List

1. Public order (but not including [the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).
2. Police (including railway and village police) subject to the provisions of entry 2A of List I
3. Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.
5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self government or village administration.
6. Public health and sanitation; hospitals and dispensaries.
7. Pilgrimages, other than pilgrimages to places outside India.
8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.
9. Relief of the disabled and unemployable.
10. Burials and burial grounds; cremations and cremation grounds.
11. Omitted
12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.
13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.
14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.
15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.
16. Pounds and the prevention of cattle trespass.
17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.
18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.
19. Omitted
20. Omitted
21. Fisheries.
22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.
23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
24. Industries subject to the provisions of 2[entries 7 and 52] of List I.
25. Gas and gas-works.
26. Trade and commerce within the State subject to the provisions of entry 33 of List III.
27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
28. **Markets and fairs.**
29. Omitted
30. Money-lending and money-lenders; relief of agricultural indebtedness.
31. Inns and inn-keepers.
32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.
34. Betting and gambling.
35. Works, lands and buildings vested in or in the possession of the State.
36. Omitted
37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.

38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.
40. Salaries and allowances of Ministers for the State.
41. State public services; State Public Service Commission.
42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
43. Public debt of the State.
44. **Treasure trove.**
45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
46. **Taxes on agricultural income.**
47. Duties in respect of succession to agricultural land.
48. Estate duty in respect of agricultural land.
49. Taxes on lands and buildings.
50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.
51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:— (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
52. Taxes on the entry of goods into a local area for consumption, use or sale therein.
53. Taxes on the consumption or sale of electricity.
54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.]
55. Taxes on advertisements other than advertisements published in the newspapers 2[and advertisements broadcast by radio or television].
56. Taxes on goods and passengers carried by road or on inland waterways.
57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.
58. Taxes on animals and boats.
59. Tolls.
60. Taxes on professions, trades, callings and employments.
61. Capitation taxes.
62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
64. Offences against laws with respect to any of the matters in this List.
65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

### Concurrent List

The concurrent list consists of 47 items including the omitted and inserted sub-items. These are the items with respect to which the uniformity of the legislation throughout the Union is desired but not essentially required.

These items are placed under the jurisdiction of both Union and States. The items of the Concurrent List or List III are reproduced as follows:

1. Criminal law, including all matters included in the **Indian Penal Code** at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.
2. Criminal procedure, including all matters included in the **Code of Criminal Procedure** at the commencement of this Constitution.
3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.
4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.
5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.
6. Transfer of property other than agricultural land; registration of deeds and documents.
7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
8. **Actionable wrongs.**

-: About this document:-



9. Bankruptcy and insolvency.
10. Trust and Trustees.
11. Administrators-general and official trustees.
  - 11A. Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.
12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.
14. Contempt of court, but not including contempt of the Supreme Court.
15. Vagrancy; nomadic and migratory tribes.
16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
17. Prevention of cruelty to animals.
  - 17A. Forests.
  - 17B. Protection of wild animals and birds.
18. Adulteration of foodstuffs and other goods.
19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.
20. **Economic and social planning.**
  - 20A. Population control and family planning.
21. Commercial and industrial monopolies, combines and trusts.
22. **Trade unions;** industrial and labour disputes.
23. Social security and social insurance; employment and unemployment.
24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.
25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.
26. **Legal, medical and other professions.**
27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.
28. **Charities and charitable institutions,** charitable and religious endowments and religious institutions.
29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Vital statistics including registration of births and deaths.
31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
33. Trade and commerce in, and the production, supply and distribution of,— (a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products; (b) foodstuffs, including edible oilseeds and oils; (c) cattle fodder, including oilcakes and other concentrates; (d) raw cotton, whether ginned or unginned, and cotton seed; and (e) raw jute.
  - 33A. Weights and measures except establishment of standards.
34. Price control.
35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.
36. Factories.
37. Boilers.
38. Electricity.
39. Newspapers, books and printing presses.
40. Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.
41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
42. Acquisition and requisitioning of property.
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

## Article 245

This article says that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State. No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

### Article 246

- ✍ This article says that parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule or the Union List.
- ✍ The Legislature of State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule or State List.
- ✍ Similarly, the Parliament as well as Legislature of any State have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule or Concurrent List.
- ✍ This article gives a **clarification on residue subjects**. It says that Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List.

### Article 247

If it is required, the parliament may establish additional courts, tribunals etc. for better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List.

### Article 248

Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List. Such power shall include **the power of making any law imposing a tax not mentioned in either of those Lists**. Kindly note this. If there is a need to impose a tax on matters that is NOT mentioned in state list and the concurrent list, the Parliament will have power to make laws to impose such taxes.

### Article 249: Important

In the above description we have studied that States have exclusive power of legislation over every item in the state list. But there are two exceptions to this, which are discussed in Article 249 and Article 250. Article 249 says that If the Council of States (Rajya Sabha) declares by **Resolution** supported by 2/3<sup>rd</sup> of the members present and voting (special majority) , that **it is necessary to expedient in the national interest that Parliament should make laws with respect any matter enumerated in the State List then, Parliament is competent to make laws on such matters for whole or part of India**. This is very important feature which makes the importance of Rajya Sabha in keeping the balance of law making powers between Union and States. However, here you must note it that **such a resolution** passed by Rajya Sabha is **valid for ONLY 1 Year**. But if the circumstances under which the above resolution was passed prevail even after one year, then, the same kind of resolution with same special majority is needed to be passed again. **In absence** of such a resolution, the law passed by the parliament with ceases to remain **valid within 6 months** after passing of a year.

### Article 250

This article says that **parliament is empowered to make laws** on any item that is included in the State List for the whole or part of India, **while a Proclamation of emergency is in operation**. Such a law passed by parliament on items of state list **shall be in force for the period of emergency** and 6 months beyond that period.

### Article 251

This article says that a Legislature of a State is competent to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is inconsistent to any provision of a law made by Parliament, then the **law passed by the parliament shall prevail**, and the law made by the Legislature of the State be inoperative, to the extent of the inconsistency.


### Article 252

The above articles 249 and 250 have discussed the two occasions when the Union, on its own initiative, extends its legislative powers to embrace that of the states. However, the makers of the Constitution were aware that there could be a third occasion when the action on the part of two or more states will enable the parliament to make laws on any item included in the state list. This has been enshrined in the article 252. Article 252 says that – if the **legislatures of the two or more states** pass resolutions to the effect that it is desirable to have a parliamentary law regulating any of the matters included in the state list, then it is lawful for parliament to make laws on regulation of such matter.

Here we need to note that **such laws can be extended to other states as well, which have not passed such resolution earlier, but passes a resolution thereafter.**

This provision is very important. Here the parliamentary action is basically a result of the **states initiatives where the state have the common interest but are unable to act individually.** Here we must note that the states have been given the **power to** amend / repeal such act when it no longer serves the purpose for which it was originally legislated. Provided the same procedure is followed 😊

### Article 253

This article says that Parliament has power to make any law for the whole or any part of the territory of India for implementing any international treaty, agreement or convention. 

### Article 254

This article says that if there is any inconsistency of a law made by the Legislature of a State with any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail.

## Chapter II: Administrative Relations: Article 256-263

Adjustment of the administrative relations between the Union and the States is one of the most difficult problems in a federal system. The framers of the Indian Constitution had included **detailed provisions so that the clashes between the states and Union are avoided as far as possible.** However, in the administrative field akin to the legislative field, the union government occupies a superior position, insofar as its executive authority extends over a larger number of subjects. Further, the states are expected to comply with the laws of parliament and not impede the exercise of the executive powers of the union. In this regard the union government can issue necessary directives to the states.

### Article 256:

As per article 256, the executive power of every state is to be exercised in such a way as to ensure compliance with the laws made by the parliament. The Union Executive is empowered to give such directions to a state as may appear to the Government of India be necessary for the purpose.

### Article 257

Not satisfied with the general power of the Union to give directions to states, the constitution goes one step ahead and calls upon every state under article 257 to not to impede or prejudice the executive power of the Union in the state. If any Union agency is difficult to function within a state, the Union Executive is empowered to issue appropriate directions to the State Government to remove all the obstacles. The Union's power of giving directions in this regard includes certain specific matters such as giving directions regarding the constructions and maintenance of means of communications of national or military importance. It can also give instructions to state governments for the protection of railways. Expenses incurred by the states on this account are reimbursed by the union government.

### Article 258 & 258 A

As per this article, the president can entrust to officers of the states certain functions of the union, but the extra costs have to be met by the union government. The members of the all-India services who occupy key positions in the state administration and give the centre indirect control over the states. Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends

### Article 260

Under article 260, the Government of India may undertake any executive legislative or judicial functions in a foreign territory on the basis of an agreement with the Government of that territory. The provisions of such agreement are governed by the laws relating to the exercise of foreign jurisdiction and as such they will not come within the scope of the provisions dealing with the normal administrative relationship between the state and the Union.

The necessity of this provision is obvious in the context of the territories belonging to foreign powers with the geographical boundaries of the Indian Union.

### Article 261

Another provision that facilitates the smooth transaction of administrative business is enshrined in the article 261 of the Constitution of India. According to this article, full faith and credit shall be given to the public assets, records and judicial proceedings of the Union in the States in all parts of the Indian territory. The manner in which these acts and records will be proved and their effect determined will be provided by the Parliamentary enactments. Provision is also made for the execution of the final judgments for orders delivered or passed by civil courts in any parts of India.

### Article 262

Article 262 deals with disputes related to water. The Constitution has an important provision embodied in the article 262 dealing with the riparian states. Aware of the unending Inter-state disputes over the

subject, the framers of the constitution of India placed this subject under the **exclusive powers of the parliament.**

As per this article the parliament by law can provide for the adjudication of the any dispute or complaint with respect to the use, distribution or control of the waters of any interstate river or river valley.

Parliament may also provide that neither the Supreme Court nor the any other court shall exercise any jurisdiction in respect of the dispute. Thus, **all disputes between states regarding the use, distribution or control of water are decided by the centre.**

### Article 263: Interstate Council

Finally, to facilitate the smooth working of the administrative machinery of the country as a whole as well as to ensure the better coordination of policy and action between the states and Union, the Constitution empowers the **president to appoint an Interstate Council**, whenever the necessity is felt. Such a council was constituted by the president in May, 1990.

The Council is charged with the following three specific duties:

1. **To enquire into and advice upon disputes which may have arisen** between the states.
2. To investigate and discuss subjects in which the **states and Union have common interests.**
3. To make recommendations upon these subjects and make recommendations for the **better coordination policy and action with respect to these subjects.**

## PART XII: FINANCE, PROPERTY, CONTRACTS AND SUITS

No other federal Constitution has made such elaborate provisions as Constitution of India with respect to the relationships between the Union and States in the financial field. By making a provision of establishing a Finance Commission for the purpose of allocating and adjusting the receipts from certain sources, the Constitution has made an original contribution in this complicated aspect of Union-State relationships. The **basic principles** that guide the allocation of resources between the Union and States has been the **efficiency, adequacy and suitability.** Constitution has attempted to make a suitable balance and accordingly the subject of allocation of resources is divided into two parts as follows:

1. Allocation of revenues between the union and states
2. Distribution of the grant in aids.

Before we move ahead let's look at the Union Sources and State Sources of revenue.

### Union Sources of Revenue

1. Corporation Tax
2. Currency, Coinage, legal tender, Foreign Exchange
3. Duties and Customs Except the Export Duties
4. Duties of excise on tobacco and certain goods manufactured and produced in India
5. Estate Duty in respect to property other than agricultural land.
6. Fees in respect of any of the matters in the Union List but **not including any fees taken in any court**
7. Foreign Loans
8. **Lotteries** organized by the **Government of India** as well as **Governments of States**
9. Post Office Savings bank



10. Posts, Telegraphs, Telephones, Wireless Broadcasting, other forms of communication
11. Property of the Union
12. Public Debt of the Union
13. Railways
14. Rates of stamp duty in respect of the Bills of Exchange, Cheques, Promissory notes etc.
15. Reserve Bank of India
16. Taxes on income other than agricultural income
17. Taxes on Capital value of the assets, exclusive of the agricultural land of individuals and businesses.
18. Taxes other than stamp duties on transactions in stock exchanges and future markets
19. Taxes on the sale and purchase of newspapers and advertisements published therein.
20. Terminal Taxes on Goods and passengers, carried by Railways and sea or air.

### State Sources of Revenue

1. Capitation Taxes
2. Duties in respect to succession to the agricultural land
3. **Duties of excise** on certain goods produced or manufactured in the States such as alcoholic liquors, Opium etc.
4. Estate Duty in respect to the agricultural land
5. Fees in respect of any of the matters in the State List but NOT included the fees taken in any Court
6. **Land Revenue**
7. Rates of Stamp duties in respect of documents other than those specified in the Union List
8. Taxes on agricultural income
9. Taxes on Lands and Buildings
10. **Taxes on mineral rights** subject to limitations imposed by the parliament related to mineral development
11. Taxes on the consumption or sale of electricity
12. Taxes on the entry of the goods into local area for consumption and use if sale therein.
13. Taxes on sale and purchase of the goods other than newspapers
14. Taxes on advertisements other than those published in newspapers
15. Taxes on goods and passengers carried by road or on inland waterways
16. Taxes on vehicles
17. Taxes on animals and boats
18. Taxes on professions, trades, callings, employments
19. Taxes on luxuries, including the taxes on entertainments, amusements, betting and gambling.
20. Toll Taxes.

### Article 264

Article 264 says that a Finance Commission means a Finance Commission as stipulated in Article 280

### Article 265

Article 265 says that **No tax will be levied or collected except by authority of law.** This is very important article. The authority to levy a tax is **derived from the Constitution** of India which allocates the power to levy various taxes between the Centre and the State. Article 265 of the Constitution puts an important restriction on this power by making a provision that "No tax shall be levied or collected except by the authority of

law."Therefore each tax levied or collected has to be backed by an accompanying law, passed either by the Parliament or the State Legislature.

**Article 266: Consolidated Fund, Public Account**

This article says that the following revenues will make the **Consolidated Fund of India**:

1. All revenues received by the Government of India,
2. All loans raised by that Government by the issue of treasury bills, loans or ways and means advances
3. All moneys received by that Government in repayment of loans

The following revenues will make the **Consolidated Fund of State**:

1. All revenues received by the Government of a State,
2. All loans raised by that Government by the issue of treasury bills, loans or ways and means advances

All moneys received by that Government in repayment of loans shall All other public moneys received by or on behalf of the Government of India or the Government of a State shall be credited to the **public account of India or the public account of the State**, as the case may be.

This article also says that no moneys out of the Consolidated Fund of India or the Consolidated Fund of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

**Article 267: Contingency Fund**

Article 267 says that **Parliament may by law** establish Contingency Fund of India into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the **disposal of the President** to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by Parliament by law under article 115 or article 116. Legislature of a State may also by law establish Contingency Fund of the State into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Governor of the State to enable advances to be made by him out of such Fund for the purposes of meeting unforeseen expenditure pending authorization of such expenditure by the Legislature of the State by law under article 205 or article 206.

**CONSOLIDATED FUND OF INDIA**

- ✍ All revenues received by the Government by way of **taxes** like Income Tax, Central Excise, Customs and other receipts flowing to the Government in connection with the conduct of Government business i.e. **Non-Tax Revenues** are credited into the Consolidated Fund constituted under Article 266 (1) of the Constitution of India.
- ✍ Similarly, all loans raised by the Government by issue of Public notifications, treasury bills (internal debt) and loans obtained from foreign governments and international institutions (external debt) are credited into this fund.
- ✍ All expenditure of the government is incurred from this fund and no amount can be withdrawn from the Fund without authorization from the Parliament.

**CONTINGENCY FUND OF INDIA**

- ✍ The Contingency Fund of India records the transactions connected with Contingency Fund set by the Government of India under Article 267 of the Constitution of India.
- ✍ The corpus of this fund is Rs. 50 Crores. However, please note that in 2005, after the tsunami experience, the Central government has revised an archaic limit on its own imprest money, by raising it from Rs 50 crore to Rs 500 crore.
- ✍ Advances from the fund are made for the purposes of meeting unforeseen expenditure which are resumed to the Fund to the full extent as soon as Parliament authorizes additional expenditure.
- ✍ Thus, this fund acts more or less like an imprest account of Government of India and is **held on behalf of President by the Secretary to the Government of India, Ministry of Finance, Department of Economic Affairs.**

**PUBLIC ACCOUNT**

- ✍ In the Public Account constituted under Article 266 (2) of the Constitution, the transactions relate to debt other than those included in the Consolidated Fund of India.
- ✍ The transactions under Debt, Deposits and Advances in this part are those in respect of which Government incurs a **liability** to repay the money received or has a claim to recover the amounts paid.
- ✍ The transactions relating to 'Remittance' and 'Suspense' shall embrace all adjusting heads. The initial debits or credits to these heads will be cleared eventually by corresponding receipts or payments.
- ✍ The receipts under Public Account **do not constitute normal receipts** of Government. **Parliamentary authorization for payments from the Public Account is therefore not required.**

-: About this document:-

**Article 268: Duties levied by the Union but collected and appropriated by the states**

As per this article, the stamp duties and duties of excise on the medicinal and toilet preparations (those mentioned in the Union List) shall be levied by the Government of India BUT shall be collected as follows:

1. In the case where such duties are leviable within any union territory by the Government of India.
2. In other cases, by the states within which such duties are respectively leviable.

**Article 269: Taxes leviable and Collected by the Union and Assigned to the States**

The following taxes are collected by the Union and assigned to the states

1. Duties in respect of succession to the property other than agricultural land
2. Estate Duty in respect of property other than agricultural land
3. Taxes on Railways Fares and Freights
4. Taxes on other stamp duties on transactions in stock exchanges and the future markets
5. Taxes on the sale or purchase of newspapers and advertisements therein.
6. Terminal Taxes on goods and passengers carried by the Railway, sea and air.
7. Taxes on the sale and purchase of the goods other than newspapers where such sale or purchase takes place in the course of interstate trade on commerce.

**Article 270: Taxes which are levied and collected by the Union but which may be distributed between the Union and the States**

The following taxes are levied and collected by the Union but which may be distributed between the Union and the States.

1. Taxes on Income other than agricultural income
2. Union Duties of excise other than such duties of excise on medicinal and toilet preparations as mentioned in the Union List and collected by the Government of India.

Here, please make a note that "taxes on income" does not include the corporation tax. The distribution of income tax proceeds between the Union and States is made on the basis of recommendations of the Finance Commission.

**Article 271: surcharges**

Please also note that despite of article 269 and 270 making provisions for the collection of the taxes by the Union either to be assigned to states or to be shared between the Union and the states, the parliament of India is Under article 271, authorized to impose a surcharge for the purpose of Union on all items on taxes included in these two articles viz. 269 and 270. **Please note that surcharges make a part of Consolidated Fund of India.**

Article 272 Repealed

**Article 273**

This article makes provisions for the development of Jute Production and Exports. Its worth note that Jute is the only commodity for which Constitution of India has very detailed provisions. This article says that there shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal, in lieu of assignment of any share of the net proceeds in each year

of export duty on jute and jute products to those States, such sums as may be prescribed. The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of this Constitution whichever is earlier. The First Two Finance Commission made recommendations as per the provisions of this article.

### Article 274

In the case of all bills relating to taxation in which the states are interested, the Constitution requires the prior recommendation of the President. Thus, when a Bill which affects the meaning and scope of the term "agricultural income" as applied to Indian Income Tax is to be introduced in the Lok Sabha, the President's prior recommendation is necessary. The idea behind such recommendation by the President is to safeguard the interests of the States by making it obligatory for the Centre to consult them via President.

### Article 274, 275: Grants-in-aid

We all understand that a federation can not only be the unifying force but also a leveling up force. The States are not equally developed in India. Some states are advanced while some states are underdeveloped and backward. One of the results expected from the Union of States is to provide support to socially and economically backward units to better their status. Article 275 of the Constitution of India has used this opportunity and makes provisions of Union grants to the needy states. The parliament can pay, out of the Consolidated fund of India, certain sums every year as grants in aid of the revenues of such states, to the extent that such assistance is adjudged as necessary.



- ✍ **The grants fixed are based upon the recommendations of the Finance Commission.**
- ✍ Please note that It is **NOT necessary** that every state should get a grant in aid. If in opinion of the Finance Commission, a state does not need grants-in-aid, the Parliament may leave it also.
- ✍ However, the Constitution makes it obligatory for the Union Government to pay such grants-in-aid to cover the schemes of the development taken by state with the approval of the Union for the purpose of the **welfare of the Scheduled Tribes** of the state or for the **raising the level of administration** of the Scheduled areas.

### Article 276, 277: Taxes on Professions, Trades etc.

Though the imposition and collection of income tax are within the jurisdiction of the Union, the states are permitted to impose a tax on professions, trades, callings, employments etc. Such a tax will not be invalid on the ground that it related to a tax on income. **Taxes on the professions, etc. are generally made use of for the benefit of the local institutions such as municipalities, local boards, etc.** If such taxes are not allowed, an important source of income of these bodies would have come to an end. Article 277 made a provision that any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body would continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament by law.

### Article 278: repealed

### Article 279: Net Proceeds

Article 279 defines the Net Proceeds and says that “net proceeds” means in relation to any tax or duty the proceeds minus cost of collection. It will be certified by the Comptroller and Auditor-General of India, whose certificate shall be final.

### Article 280, 281: Finance Commission

Please note that Constitutional requirement for setting up a Finance Commission was an **original idea, not borrowed by anywhere**. Article 280 says that President should, within two years of commencement of the Constitution and thereafter on expiry of every 5<sup>th</sup> year, or at such intervals as he/ she thinks necessary, would constitute a Finance Commission. This Finance Commission would consist of a Chairman and 4 other members who are all will be **appointed by the President**. Since the commission has to be constituted at regular intervals, a **certain measure of continuity** in the work of these commissions is ensured. Each commission benefits by the work of previous commission.

Finance commission has to make recommendations to the President on two specific matters and on any other matter referred to the commission by the president in the interest of Sound Finance. The two specific matters are as follows:

1. **Distribution** between the Union and States of the **net proceeds of taxes** which are to be or may be divided between them and **allocation of resources** between the states of respective shares of such proceeds.
2. The **principles** which should govern the **grants-in-aid** of the revenues of the State out of the Consolidated Fund of India.

The President, after considering the recommendations of the Finance Commission with regard to income tax, prescribes by order the percentages and the manner of distribution. Please note that parliament is not directly concerned with the assignment and distribution of the income tax.

The importance of the Finance Commission as a Constitutional instrument is **capable of settling many complicated financial problems** that affect the relations of the Union and States. This is evident from the recommendations of the last 13 finance Commissions appointed so far. Article 281 says that President shall cause every recommendation made by the Finance Commission under the provisions of this Constitution **together with an explanatory memorandum** as to the action taken thereon to be laid before each House of Parliament.

### Article 282

Union or a State may make any grants for any public purposes out of its revenues.

### Article 283

The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of India, their payment into the public account of India and the withdrawal of moneys from such account and all other matters connected with shall be **under the law** made by **parliament or the President** until such law is enacted.



The custody of the Consolidated Fund of State and the Contingency Fund of State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Funds received by or on behalf of the Government of State, their payment into the public account of state and the withdrawal of moneys from such account and all other matters connected with shall be under the law made by **legislature of State or the Governor** until such law is enacted.

#### Article 284

Custody of suitors' deposits and other moneys received by public servants and courts **shall be in the Public Account of India.**

#### Article 285

The property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State.

#### Article 286: Taxes on Interstate Sales and Purchases

Please note that the Constitutional provisions that deal with the taxes on the purchases and sale of goods were not enshrined in the original draft constitution but were introduced by Dr. Ambedkar in the form of amendments. It was felt at that time that an important source of revenue should be left to the states by allowing them to tax the purchase and sale of goods, it was also realized at the same time that states should not be allowed to affect prejudicially the freedom of Interstate trade and commerce. The article 286 makes a provision that NO state can impose a tax on the sale or purchase of goods if such a sale or purchase takes place 1. Outside the state 2. In the course of import of goods into or export of good out of territory of India. The sale or purchase of the goods is deemed to be have taken place in a state if the goods have been actually delivered as a direct result of sale or purchase for the purpose of consumption in the state. The same article 286 makes a provision that No state shall be able to impose a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of Interstate Trade or commerce. The legislature of States are also **prohibited from imposing a tax** on the sale or purchase of any goods declared by the parliament as **essential to life of the community**, unless assent to such laws are given by the president.

#### Article 287: Exemption from taxes on electricity

Unless parliament by law provides otherwise, No State shall impose, or authorize the imposition of, a tax on the consumption or sale of electricity which is consumed by the Government of India, or sold to the Government of India for consumption by that Government; or consumed in the construction, maintenance or operation of any railway by the Government of India or a railway company operating that railway, or sold to that Government or any such railway.

#### Article 288: Exemption from taxes on electricity on some matters

No state can tax in respect of water or electricity in certain cases such as regulating or developing any inter-State river or river-valley, unless President may by order otherwise provide.

#### Article 289

The property and income of a State shall be exempt from Union taxation.

### Article 290

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Article 290 makes a Provision that where under the provisions of this Constitution the expenses of any court or Commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India or after such commencement in connection with the affairs of the Union or of a State, are charged on the Consolidated Fund of India or the Consolidated Fund of a State, then the same shall be charged on and paid out of the Consolidated Fund of the State or, as the case may be, the Consolidated Fund of India or the Consolidated Fund of the other State, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

### Article 290 A

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This article has made a provision of Rs. 46,50,000 shall be charged on, and paid out of, the Consolidated Fund of the State of Kerala every year to the Travancore Devaswom Fund; and a sum of Rs. 13,50,000 shall be charged on, and paid out of, the Consolidated Fund of the State of Tamil Nadu every year to the Devaswom Fund established in that State for the maintenance of Hindu temples and shrines in the territories transferred to that State on the 1st day of November, 1956, from the State of Travancore- Cochin.

Article 291: Repealed

### Article 292:

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This article says that the Union can borrow upon the security of the Consolidated Fund of India within such limits that may be fixed by Parliament by law.

### Article 293

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This articles provides that executive power of a State extends to borrowing within the territory of India upon the security of the Consolidated Fund of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law.

Article 293-299 seem to be somewhat lesser important from the examination point of view.

### Article 300

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Article 300 says that Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State. If at the commencement of this Constitution any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

### Article 300A

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Article 300 A is known as the Right to property. This article says that No person shall be deprived of his property save by authority of law. The article was previously a fundamental right but after the Constitution (Forty-fourth Amendment) Act, 1978, it has become a legal right.

**PART XIII: TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA**

One of the primary purposes of the federal Union was the establishment of freedom of commerce. It was the freedom of commerce that made United States a united nation. The inadequate provisions in respect to the commerce between the federal units may cause unending conflicts and that is why Indian Constitution enshrines detailed provisions with respect to the inter-state trade and commerce. The article 301-307 deal with Trade, commerce and intercourse within the territories of India. While framing these articles, utmost care has been taken to take into account the largest interests of India as a whole as well as the interest of the states in question.

- ⇒ Article 301 is in general and says that “subject to the other provisions of this part, the trade, commerce and intercourse within the territory of India will be free”
- ⇒ As per article 302, the parliament may impose restrictions in any part of the territory of India in public interest. The idea behind this provision was to enable the Government of India to restrict the movement of goods so as to safeguard a well balanced economy and the proper organization and ordering of goods and services.
- ⇒ Article 303 says that though, parliament is empowered to restrict the free movement of articles of trade and commerce, normally the laws passed by parliament in this context ought to be non-discriminatory in character. However, if the country is suffering from scarcity of goods, the parliament is empowered to make even the discriminatory laws.
- ⇒ Article 304 says that a State legislature may impose goods imported from other states any tax if similar goods produced in that state are also taxed in the state in question. The state legislature is also authorized to impose reasonable restrictions on the freedom of trade and commerce with or within that state as required in public interest.
- ⇒ As per article 305, tax laws existing at the time of commencement of Constitution of India were safeguarded even if they violated the freedom of interstate trade and commerce and the power of parliament to regulate it.
- ⇒ As per article 307, Parliament is empowered to appoint such authority as it considers appropriate for carrying out the purposes of article 301-304.

**REFORMS IN CENTRE-STATE RELATIONS**

Till 1967, the relations between centre and states continued to be quite smooth because congress was in power both at the centre and most of the states. After that strains appeared because Congress lost power in many states and many coalition Governments were formed in India by the opposition parties. In 1977, the congress lost power at centre and the Janata party formed a government. Soon after assumption of power the janata government dismissed congress ministries in nine states. But in 1980 congress again returned to power at the centre and dismissed Janata ministries in nine states. A vociferous demand for reforms in centre-state relations was made by West Bengal, Jammu and Kashmir, Punjab, Maharashtra, Kerala, Tamil nadu, Andhra Pradesh etc. states of India.

A number of committee were appointed to examine how far the centre had encroached upon the field of the states and suggest how the states could be granted genuine autonomy. These committees made several recommendations. Similarly the administrative reforms commission also recommended withdrawal of centre from the areas reserved for the states. It also recommended formulation of certain guidelines for the exercise of discretionary powers by the governor.

### Rajamannar Committee

A Centre-State Relations Inquiry Committee was set up by the then DMK Government of Tamil Nadu on 2nd September, 1969 under the Chairmanship of Dr. P.V. Rajamannar to consider the entire question regarding relationship that should subsist between the Centre and the States in a federal set up. The Committee in its report recommended that "the **Inter-State Council** should be constituted immediately" and that "no decision of national importance or which may affect one or more States should be taken by the Union Government except after consultation with the Inter-State Council".

The Committee further recommended that "every Bill of national importance or which is likely to affect the interests of one or more States should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of introduction of the Bill".

It recommended a curb on the use of article 356 of the Constitution and suggested that article 356 should be used only in the event of complete breakdown of law and order in a state. The committee favored the vesting of residuary power of legislation and taxation in the state legislature. However the above recommended were completely ignored by the union government.

### Sarkaria commission

In view of the growing pressure for the greater autonomy, in June 1983 the union government appointed a commission under the chairmanship of Justice R.S. Sarkaria to review the question of centre state relations. The commission submitted its report to the then prime minister Rajiv Gandhi on 27 October 1987.

Sarkaria Commission went at considerable length into the **justification for establishing a permanent Inter-State Council as an independent national forum** for consultation with a mandate well defined in accordance with article 263.

The Commission recommended that for coordination of policies and implementation in a dual polity especially in view of large areas of common interest and shared action **requires a sustained process of contact, consultation and interaction, for which a proper forum is necessary.**

The Commission observed that executive powers of the Union and States overlap in many areas and as such division of matters in Union List and State List is not absolute. Several entries overlap.

Then in implementation of its laws and policy Union is largely dependent on State administrations. Union and States can entrust their executive functions to each other. States are dependent on Union for fiscal resources and in many administrative matters.

Interdependence is indispensable in a diverse and developing society. **Institutionalized and sustained consultation is indispensable in view of this interdependence.** The Commission recommended setting up of a Council under article 263 of the Constitution for this purpose.

Commission observed that there has been a pervasive trend **towards greater centralization of powers over the years** and narrow personal interests have been given priority over larger national interest. It did not favour limiting of the powers of the union or transfer of various subjects to state or concurrent lists. However, it recommended a **process of consultation by the centre on all concurrent subjects**, which is not being done at present. The important recommendations of the commission included :

1. Formation of an inter-governmental council consisting of the prime minister and chief ministers of states to decide collectively on various aspects of governance that cause friction between centre and states.
2. Sparing use of article 356 of the constitution should be made and all possibilities of formation of an alternative government must be explored before imposing presidential rule in the state. the state assembly should not be dissolved unless the proclamation is approved by the parliament.
3. It rejected the demand for the abolition of office of governor as well as his selection from a panel of names given by the state governments. However, it suggested that active politicians should not be appointed governors. When the state and the centre are ruled by different political parties, the governor should not belong to the ruling party at the centre. Further, the retiring governors should be debarred from accepting any office of profit.
4. The judges of high courts should not be transferred without their consent.
5. The three-language formula should be implement in its true spirit in all the states in the interest of unity and integrity of the country.
6. The work of the union and the state governments, which directly affects the local people must be carried out in the local language.
7. Central control over radio and television should be relaxed and the individual Kendra's should be free to decide about the timing for the relay of national hook-up programmes.
8. It favored amendments for sharing certain taxes between the centre and the states, even though it generally opposed the curtailment of the center's powers.
9. In the financial sphere it did not favor any drastic changes in the basic scheme of division of taxes but favored sharing of corporation tax and levy of consignment tax.
10. It did not favor disbanding of all-India services in the interest of the country's integrity. Instead, it favored new all-India services.
11. It made a strong case for inter-state councils but insisted that these should be used only for the purpose mentioned in article 263 of the constitution.
12. It favored retention of the national development council and suggested activation of the zonal councils.
13. It found the present division of functions between the finance commission and the planning commission as reasonable and favored continuance of this arrangement.
14. It favoured determination of terms of reference of the finance commission in consultation with the state governments. It also suggested setting up of similar expert bodies at the state level.

We can see that Sarkaria Commission did not suggest any drastic changes in the existing scheme. However, it favored several constitutional and functional changes to remove irritants in the centre-state relations. Neither the congress (I) government under Rajiv Gandhi, nor the national front government under V.P. Singh, accepted the recommendations of the sarkaria commission.

The Government under P.V. Narasimha Rao decided to implement some recommendations but the United Front government under H D Deva Gowda, soon after assumption of power in June 1996, announced its intention to fully implement the sarkaria commission. Accordingly, it activated the inter-state council after a gap of six years, and decide to set up a panel to examine in depth the contentious issues relating to centre-state relations. To promote healthy centre-state relations, the united front government favored a system of decisions-making. This policy was also continued by the BJP led coalition government. In January 1999, the inter-state council decided to accept 124 recommendations of the sarkaria commission. In 2001 the interstate council decided that the governor, after demitting office, would be banned from returning to



active politics that chief ministers on the appointment of governors, the governor can, however, become vice-president or president.

The inter-state council covered 59 recommendations of the sarkaria commission, which touched upon the role of the governors, legislative relations, inter-governmental council, mines and minerals, all-India services, mass media and languages.

Further it was decided that :

- ⇒ Taxation power, which were so far in the union list, should be shifted to the concurrent list in view of the need for states to mobilize more resources.
- ⇒ For all legislations in respect of subject on the concurrent list, there should be active consultation with the state government, except in emergent cases.
- ⇒ States should be allowed to impose local or municipal taxes on industrial or commercial properties owned by the centre.
- ⇒ Regarding institution of a commission of inquiry against a minister in a state, it was decided to build appropriate safeguards in the commission of inquiry act to prevent its misuse by centre.

The issue of centre-state relations again came up for consideration before the inter-state council at its meeting held at Sri Nagar in august 2003. The council insisted on incorporation of certain safeguards in the constitution so that president's rule could not be imposed in the state under article 356 it insisted that article 356 should be used only as a last resort.

### MM Punchhi Commission

In April 2007, a new commission was set up to re-examine centre-state relations. The commission headed by the former chief justice of India M.M. Punchhi has three members. The commission would examine the possibility of giving sweeping powers to the union government to deploy central forces in the states and the investigation of crimes affecting national security. The relations, including taxes and linking of rivers etc. the commission is expected to submit its recommendations in two years.