Subject Name: Constitution Law
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Article 246

Article 246 states that despite the provisions in clauses (2) and (3), Parliament holds exclusive authority to enact laws concerning any of the matters listed in List I (Union List).

Additionally, notwithstanding the provisions in clause (3), both Parliament and, subject to clause (1), the State legislature possess the power to legislate on matters listed in List III (Concurrent List).

Subject to clauses (1) and (2), the State legislature enjoys exclusive jurisdiction to enact laws for the respective state concerning matters listed in List II (State List).

Parliament retains the authority to legislate on any matter pertaining to any part of Indian territory not covered by a State, even if such matters are listed in the State List.

Thus, Article 246 stipulates that Parliament exclusively legislates on Union List matters, the State legislature on State List matters, and both Parliament and the State legislature on Concurrent List matters. However, as will become apparent later, the Union Parliament predominantly influences legislative decision-making.

Autonomy to the Center and the States

In the case of **Javed v State of Haryana [JT 2003 (6) SC 283],** the Supreme Court affirmed the constitutional validity of specific provisions within the Haryana Panchayati Raj Act, 1994. These provisions rendered an individual ineligible to hold the position of Sarpanch or Panch of a Gram Panchayat if they had more than two living children, despite the absence of a similar provision enacted by the Parliament or other State Legislatures.

The apex court dismissed the argument that individuals aspiring to engage in governance within the Panchayati Raj system in Haryana were being unfairly targeted and subjected to hostile

discrimination. It noted that both the Union Parliament and each State Legislature possess the authority to legislate on matters falling within their respective jurisdictions under Article 246 read with the Seventh Schedule of the Constitution.

The Constitution grants autonomy to both the Center and the States within their designated spheres. Therefore, legislation enacted by one State cannot be deemed discriminatory or prejudiced against its citizens simply because the Parliament or Legislatures of other States have not enacted similar laws. The court emphasised that comparing legislation enacted by a State within its own legislative competence with provisions of another law, even if they are similar in nature, enacted by Parliament or another State Legislature, is impermissible.

In the case of the State of **M.P. v G.C. Mandawar (AIR 1954 SC 493),** it was established that two laws enacted by distinct governments and Legislatures cannot be construed together or compared to determine if they are discriminatory.

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Plenary Power of the Legislature

The plenary power of the legislature is an absolute authority to enact laws, unfettered by any previous understandings or guarantees made by the State, except for its legislative competence and other constitutional restrictions. This power extends to acquiring property, as affirmed in **State of W.B. v Union of India (AIR 1963 SC 1241) and R. v Burah (1878) 3 AC 889**, without any inherent limitations based on legislative practice or legitimate expectations **(Sri Srinivasa Theatre v. Govt. of T.N. AIR 1992 SC 999).**

The guiding principle in interpreting entries in legislative lists is to give full effect to the plenary powers of Parliament and State legislatures. Entries should not be narrowly construed but should encompass all related matters reasonably falling within their ambit (State of W. B. v Union of India).

Several key points elucidate the nature of plenary power:

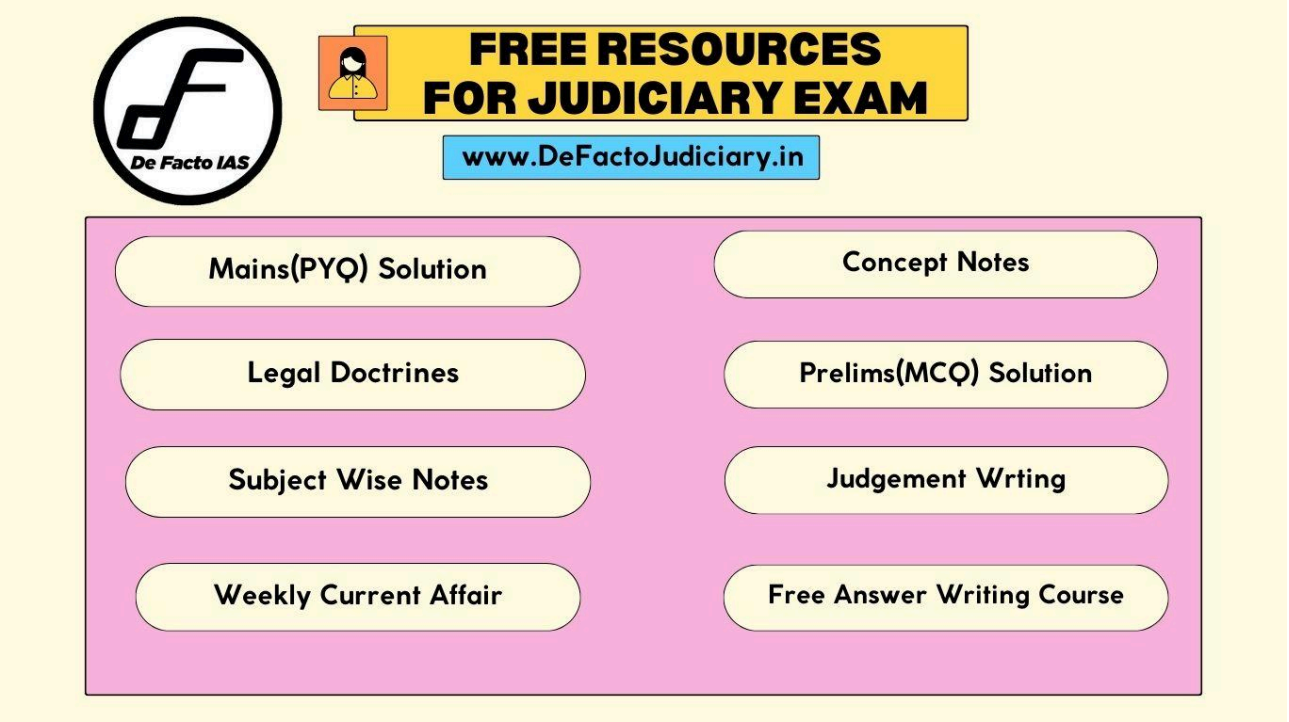
1. The power to enact laws includes the authority to make them effective either prospectively or retrospectively **(Rai Ramkrishna v State of Bihar AIR 1963 SC 1667).**

2. Validation Acts serve to rectify defects in previous actions or proceedings. For such acts to be valid, the legislature must have competence over the subject matter and must address the identified defects **(Shri Prithvi Cotton Mills v Broach Borough Municipality AIR 1970 SC 192).**

3. If a State legislature passes an Act beyond its jurisdiction, even Parliament cannot validate it, as this would extend the State's authority beyond its rightful scope.

4. Retrospective application of law to rectify previous judicial decisions does not impinge upon judicial power. However, the legislature cannot merely reverse or override a judicial decision without further action **(State of T.N. v N Shyam Sunder AIR 2011 SC 3470).**

5. Legislatures lack the authority to enact provisions that overturn individual decisions and alter the rights and liabilities established by those decisions. Such acts would encroach upon the judiciary's power **(L.N. Saxena v State of M.P. AIR 1976 SC 2250).**



Liberal and Harmonious Construction

In the Indian Constitution, the distribution of legislative powers differs from that of other federal constitutions as there is no precise delineation between Union and State powers. Consequently, when conflicts arise, the judiciary is tasked with reconciling the conflicting entries (In Re C.P & Berar Sales of Motor Spirits & Lubricants Taxation Act, 1938).

While the Union list generally holds precedence, entries across the various lists should be construed liberally. This broad interpretation is intrinsic to the plenary power of the legislature. However, it falls upon the courts to determine the jurisdictional authority of each legislature and

define the limits of their powers in specific cases. Entries serve as mere legislative headings and are inherently enabling.

In **Calcutta Gas Co. v State of West Bengal (AIR 1962 SC 1044**), the Supreme Court deliberated on whether 'gas works' fell under the category of 'industry'. Through a harmonious interpretation of entries 24 and 25 of list II, the Court concluded that 'gas works', being a specific entry, did not fall under the general entry 24. Interpreting 'industry' in entry 24 to include 'gas and gas works' would render entry 25 redundant. Consequently, 'gas industry' would not align with entry 52 of list I, as the term 'industry' in entries 52 and 24 should be uniformly interpreted.

The Supreme Court emphasised granting the "widest amplitude" to entry language, recognizing that some entries in different lists may overlap or conflict directly. In such instances, it is incumbent upon the court to reconcile these entries and foster harmony between them. Entries from two lists must be read in conjunction, with one entry's language potentially influencing or modifying that of another. This may entail interpreting an entry in a more restricted sense to avoid overlap, even if a broader interpretation theoretically exists.

Ancillary or Incidental Powers

It is firmly established that the authority to legislate on a particular subject matter inherently encompasses the authority to legislate on ancillary matters reasonably connected to the given power. For instance, the power to legislate regarding land includes the authority over mortgages of land as a subsidiary aspect. Similarly, the power to enact laws retrospectively is implicit in the power to legislate on a subject. Likewise, the power to impose taxes inherently includes the authority to enact provisions to prevent tax evasion or grant tax remission.

In the realm of labour welfare legislation, the state is justified in appropriating and utilising, for the benefit of workers as a collective, unclaimed accumulations belonging to employees.

In **R.D. Joshi v Ajit Mills (AIR 1977 SC 2279),** the Court affirmed that punitive measures aimed at enforcing social legislation are integral to ancillary powers. Entries in legislative lists should be expansively construed to encompass all ancillary and incidental powers. The case questioned whether it was permissible for a State legislature to enact that funds collected by dealers via sales tax, contrary to state law, would be forfeited to the State punitively under Entry 54 in conjunction with Entry 64 of List II. The Court ruled that such measures constituted punitive actions to enforce the Act; penal sanctions to uphold fiscal legislation for the protection of public interest fall within ancillary powers.

Limits on Ancillary Power

The terms 'incidental' and 'ancillary' powers refer to the authorities necessary for the proper and effective exercise of expressly conferred legislative powers. However, this doctrine can only be invoked in support of the primary subject of legislation. While legislative headings in the various lists of the Seventh Schedule should be broadly interpreted to encompass all matters of an incidental nature to the specified topic, there must still be a specific heading or entry to justify the legislation.

There are limits to the ancillary powers derived from legislative entries. Consequently, provisions such as those in the Hyderabad General Sales Tax Act, which mandate the surrender of funds collected by the seller "otherwise than as a tax" to the Government, are deemed void. This is because there is no authorization for the collection of non-tax revenue as tax. The recovery of such funds by the State from the dealer bears no reasonable connection to the topic of 'tax on sale of goods'.

Furthermore, the doctrine of ancillary power cannot be utilised to expand the authority of a legislature to encompass a matter specifically provided for in a separate entry.