

Diplomatic Relations and Constitution of India**Mr M Prem Kumar*****Abstract:**

In a federal form of Constitution the Central Government has an edge over the State Governments. It is primarily due to responsibility vesting with the Central Government to protect the states from any sort of aggression both internal or external, as the state doesn't have an Army of its own. The supremacy of the Central Government upon the Concurrent list is an classic example of the same. The Article 253 and Article 246(3) empowers the Union Government to make treaties with foreign countries and bodies and the states are bound by it. Article 73 on the other hand allows the Executive to legislate on matters on which there is no legislation by the parliament but subject to Constitutional Restrictions.

Key Words: Government, Articles, Lists, Legislation, Constitution.

Entering into treaties and agreements with foreign powers is one of the attributes of State sovereignty. No State can insulate itself from the rest of the world whether it be in the matter of foreign relations, trade, environment, communications, ecology or finance. This is truer since the end of the World War II. The advent of globalization and the enormous advances made in communication and information technology have rendered independent States inter-dependent. Every State has entered into and is entering into treaties – be it multi-lateral or bilateral – which have a serious impact upon the economy and the social and political life of its society. In spite of the fundamental importance of the treaty-making power, it has unfortunately received very little attention in our country, though in many other countries, good amount of research and debate has gone into it. We in India cannot afford to ignore this subject any longer, particularly because of the experience of W.T.O. treaties signed by our Government without consulting or without taking into confidence either the Parliament or the public or, for that matter, groups and institutions likely to be affected adversely thereby. The Agreements signed on Intellectual Property Rights, trade, agriculture and services are so far-reaching that there is a body of opinion, which honestly thinks that some of the provisions of these Agreements are adverse to our national interest - so much so that the Human Development Report, 1999 published by the U.N.D.P. has called for a review – a roll back – of the Agreement on Trade-related Intellectual Property Rights (TRIPs) to protect the health of the people and economies of the developing countries.¹

It would be legitimate to presume that our Founding Fathers were acutely aware of this decision and have consciously provided for a departure therefrom in two respects. Firstly, they expressly included the treaty-making power within the legislative competence of the Parliament (as I will explain presently) and secondly they incorporated Article 253 in Part XI of the Constitution. I may elaborate:

Article 246 effects a distribution of legislative power between the Union and the States. Article 246(1) says: "Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the

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¹ <https://legalaffairs.gov.in/sites/default/files/Treaty-making%20power%20under%20our%20Constitution.pdf>



“Union List).” Clause (2) speaks of the concurrent power of Parliament and State Legislatures to legislate with respect to matters in Concurrent List (List III) while clause (3) empowers the State Legislatures to legislate with respect to matters in the State List (List II). Clause (4) empowers the Parliament to make laws with respect to Union territories without any limitation of division of legislative power.

The Seventh Schedule to the Constitution (which is referable to Article 246) contains three Lists: Union, State and Concurrent. Entries 13, 14, 15 and 16 in the Union List are relevant, particularly Entry 14. They read as follows:²

“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.”

From a reading of Article 246 along with the said Entries³, it is obvious that the Parliament is competent to make a law with respect to the several matters mentioned in the above entries. In other words, treaty making is not within the exclusive competence of the Executive. It is squarely placed within the legislative competence of the Parliament.

By virtue of Article 73 of the Constitution⁴, however, the Executive power of the Union extends, in the absence of parliamentary legislation, to the matters with respect to which the Parliament has power to make laws subject, of course, to constitutional limitations. It is well known that the Parliament has not so far made any law regulating the procedure concerning the entering into treaties and agreements nor with respect to their implementation.

Article 253. Article 253 is one of those set of Articles, which provide certain exceptional situations in which the Parliament can legislate with respect to matters in the State List. Ordinarily speaking, Parliament cannot make a law with respect to a matter in State List. State Legislatures alone have the exclusive power to legislate with respect to those matters. Article 253 reads:-⁵

“Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, associated or other body.”

This Article empowers the Parliament to make any law, for the whole or any part of the territory of India, for implementing “any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.” Conferment of this power on the Parliament is evidently in line with the power conferred upon it by Entries 13 and 14 of List I. The opening words of the Article

² <https://www.mea.gov.in/Images/pdf1/S7.pdf>

³ <https://www.constitutionofindia.net/articles/article-246-subject-matter-of-laws-made-by-parliament-and-by-the-legislatures-of-states/>

⁴ <https://blog.examarly.com/upsc/article-73-of-indian-constitution/>

⁵ <https://blog.ipleaders.in/legislation-for-giving-effect-to-international-agreements-article-253-of-the-constitution/>



“Notwithstanding anything in the foregoing provisions of this Chapter” mean that this power is available to Parliament notwithstanding the division of power between the Centre and States effected by Article 246 read with the Seventh Schedule. In the light of this Article, it is evident, the situation similar to the one arising in Canada by virtue of the 1937 decision afore-mentioned, may not arise.

Articles 1, 3, 73 and 253 as well as Entries 14 and 15 in List-I of the Seventh Schedule

The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body. In terms, the Article deals with legislative power; thereby power is conferred upon the Parliament which it may not otherwise possess. But it does not seek to circumscribe the extent of the power conferred by Article 73. If, in consequence of the exercise of executive power, rights of the citizen or others are restricted or infringed, or laws are modified, the exercise of power must be supported by legislation : where there is no such restriction, infringement of the right or modification of the laws, the executive is competent to exercise the power.”

Conclusion: From a reading of Article 246 along with the said Entries, treaty making is not within the exclusive competence of the Executive. It is squarely placed within the legislative competence of the Parliament. By virtue of Article 73 of the Constitution, however, the Executive power of the Union extends, in the absence of parliamentary legislation, to the matters with respect to which the Parliament has power to make laws subject, of course, to constitutional limitations. Article 253. The effect of Article 253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State Legislature, the Parliament alone has, notwithstanding Article 246(3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body.