

Introduction



In the *Rakyat Guides: 2. Constitutional Institutions & the Separation of Powers*, we learnt that under the Federal Constitution, there are three main institutions that run the country – the Legislature (“Parliament”), the Executive (“Federal Government”) and the Judiciary (“Courts”).

That is how our country, Malaysia, is run. But Malaysia is also made up of 13 States. If you live in one of these States, you may know that your State can make its own laws and has its own ‘State Government’.

How do the State Governments and the Federal Government work together? What sort of laws can Parliament make, and what laws can the States make?

The answers are in the Constitution.

Malaysia as a Federation

You may have learned in school that Malaysia is a Federation. That means that there is an institution that has the power to make laws for all of Malaysia (“Parliament”), and an institution that runs the country according to the laws (“Federal Government”).



At the same time, each of the 13 States in Malaysia has its own ‘Parliament’ (called a “Legislative Assembly”) and its own ‘Government’ (called a “State Government”). A Legislative Assembly has power to make laws for its State, while a State Government has power to run the State according to those laws.

	Federation Level	State Level
Who makes laws?	Parliament Power to make laws for all of Malaysia	Legislative Assembly Power to make laws for the State

Who governs according to the laws?	Federal Government governs Malaysia	State Government governs its own State
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Who decides what Federal laws or State laws mean?



The Federal Court, the Court of Appeal, the High Courts, the Sessions Courts and the Magistrates Courts can decide what Federal laws and State laws mean. The Federal Territories and each State has its own Syariah Court to decide what Syariah laws mean.

However, all laws must be consistent with the Constitution.

How is the power to make laws divided between Parliament and the Legislative Assemblies?

The Constitution divides the power to make laws between Parliament and the Legislative Assemblies. This means that the Constitution tells us what Parliament can make laws on and what Legislative Assemblies can make laws on.



The Constitution has three lists. The “Federal List” sets out matters that only Parliament can make laws on. The “State List” sets out matters that only Legislative Assemblies can make laws on. The Concurrent List sets out matters which Parliament and Legislative Assemblies can make laws on.

Some examples of what is on the Lists are set out below.

Federal List - Examples

- External affairs including entering into agreements with other countries and issuing passports

- Defence including naval, military and air forces, and national service
- Security within Malaysia including the police force, prisons and preventive detention
- Civil and criminal law and procedure including jurisdiction and powers of courts (except for State Syariah Courts), official secrets, betting and lotteries
- Ascertainment of Islamic law and other personal laws for the purposes of federal law
- Malaysian citizenship
- Finance including taxes, banking, money lending, loans or borrowing by the States, and foreign exchange
- Trade, commerce and industry including imports and exports, price control, food control, and insurance
- Shipping including ports
- Communications and transport
- Federal works including water supplies, rivers and canals, except those wholly within one state or regulated by an agreement between all States concerned; production, distribution and supply of water power (except for Sabah and Sarawak)
- Education including primary, secondary and university education
- Medicine and health
- Labour and social security
- Welfare of the orang asli
- Newspapers and publications
- Censorship
- Tourism

State List - Examples

- Islamic law and personal and family law of persons professing the religion of Islam; setting up of Syariah Courts

- Land, Agriculture and forests
- Local government including municipal corporations, local authorities and local government elections
- Market and fairs, and licensing of theatres, cinemas and places of public amusement
- State works and water (excluding water supplies and services)
- State holidays

Examples of additional matters for Sabah & Sarawak

- Native law and custom
- Subject to the Federal List, water supplies and services

Concurrent List - Examples

- Social welfare
- Scholarships
- Protection of wild animals and National Parks
- Town and country planning
- Public health
- Drainage and irrigation
- Culture and sports
- Housing and provisions for housing accommodation
- Subject to Federal List, water supplies and services
- Preservation of heritage

Examples of additional matters for Sabah & Sarawak

- Personal law relating to marriage divorce, guardianship, adoption, gifts or succession.
- Production, distribution and supply of water power

How can both Parliament and Legislative Assemblies make laws on the same matters in the Concurrent List?



The Concurrent List allows Parliament and Legislative Assemblies to make laws on the same matters. So long as the laws do not overlap or conflict, they can continue to exist and operate together.

However, where a law made by a Legislative Assembly under the Concurrent List contradicts a law made by Parliament under the Concurrent List, the law made by Parliament is the law that must be obeyed.

Can Parliament make laws on matters in the State List?



You might think that if a matter is in the State List, Parliament cannot make laws on it. That is generally true. However, in some situations, Parliament can make laws on matters in the State List. These situations are:

- If a Proclamation of Emergency is made, then during the period of Emergency, Parliament can make laws on any matter under the State List (except for Islamic law, custom of the Malays and native law or custom in Sabah and Sarawak).
- Where Malaysia agrees with another country or international body to do certain things, Parliament can make laws on these things. Such laws must be followed by all States, even if the laws cover matters in the State List.
- For States in West Malaysia, Parliament can make laws on a matter in the State List if it is to make sure that laws on that matter are the same in all those States. If the law made by Parliament is about land and

local government, then all the States in West Malaysia must follow that law. But if the law made by Parliament is not about land and local government, then a State does not need to follow that law unless the Legislative Assembly of that State agrees to adopt the law.

(iv) Parliament can make a law on a matter under the State List if a Legislative Assembly asks Parliament to do so. However, after Parliament makes such a law, the Legislative Assembly must adopt the law for it to apply in the State.

(v) Parliament can make laws on matters under the State List to give effect to a National Development Plan.

Can a Legislative Assembly make laws on matters in the Federal List?



It can do so only if Parliament passes a law to give the Legislative Assembly that power. That power can later be taken away by Parliament.

What if a matter is not in any of the Lists? Who has power to make laws on that matter?

If a matter is not in any of the Lists, the Legislative Assemblies have power to make laws on that matter. This is known as “residual power”.



You can also learn more about the **MyConstitution Campaign** or follow it on:

- www.perlembagaanaku.com
- www.malaysianbar.org.my/constitutional_law_committee
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 Constitutional Law Committee

How is Executive power divided between the Federal Government and the State Governments?



Under the Constitution, Parliament and the Legislative Assemblies have powers to make laws. The power to govern according to those laws (called "executive power") belongs to the Federal Government and the 13 State Governments.

The Federal Government has executive power over all matters on which Parliament can make laws. The States have executive power over all matters on which the Legislative Assemblies can make laws.

The Federal Government's executive power can sometimes affect the State Government's executive power. For example, where the Federal Government needs land in a State for matters of national interest, the State Government must use its power to make sure that the Federal Government gets the land.

Are there any other Constitutional Institutions that affect the States?



National policy-making bodies can control the kinds of laws that the States can make. Examples are the National Council for Local Government ("NCLG") and the National Land Council ("NLC").

The **NCLG** is a body that makes national policy for the promotion, development and control of local government in all of Malaysia. The Federal and State Governments must follow the policies made by the NCLG. However, Sabah and Sarawak do not need to follow an NCLG policy unless Parliament passes a law that says Sabah and Sarawak must follow it and the Legislative Assembly of that State agrees to it.

The **NLC** is a body that makes national policy on land matters. The Federal and State Governments must follow the policies made by the NLC. However, Sabah and Sarawak do not need to follow an NLC policy unless Parliament passes a law that says Sabah and Sarawak must follow it and the Yang di-Pertua Negeri of that State agrees to it.

Funding in a Federation

All monies collected by the Federal Government go into the Federal Consolidated Fund. The Federal Government, among other things, receives revenue from immigration, passports, visas, income tax, sales tax, road tax, other corporate taxes and customs duty. All monies collected by State Governments go into the State Consolidated Fund. Among other things, States receive revenue from toddy shops, lands, mines, forests, entertainment duty, town councils, rental of State property, and receipt from land sales.

In addition, States are entitled to some money from the Federal Government. Every year, the Federation gives each State a sum of money according to the number of people in the State ("the capitation grant"), as well as a sum of money to maintain State roads.

For the capitation grant, a State will get RM72 each person for the first 100,000 people, RM10.20 each person for the next 500,000 people, RM10.80 each person for the next 500,000 people, and RM11.40 for each remaining person.

Sabah and Sarawak receive additional money from the Federal Government, and from (i) taxes, fees and duties on petroleum products, timber, other forests products, and minerals (except for tin), and (ii) licenses connected to water supplies and services.

Examples of Federal-State Relations in Action

1. *As a Malaysian citizen, you get to vote for the person you want to represent you in the Dewan Rakyat. This person is your Member of Parliament. If you live in one of the 13 States in Malaysia, you also get to vote for the person you want to represent you in the State Legislative Assembly. This is your State Assemblyperson.*

2. *The crime rate in your neighbourhood has increased. You want to know what the police are doing to solve the problem. Who should you go to - your State Assemblyperson, or your Member of Parliament? Under the Constitution, police and internal security are matters in the Federal List, so you should ask your Member of Parliament to ask the Home Minister in Parliament about what the police are doing.*

Frequently Asked Questions



1. **Can the Constitution be amended to change what is on the Federal List, the State List and the Concurrent List?**

Yes, Parliament can amend the Federal List, the State List and the Concurrent List to add or remove matters on those Lists. However, two-thirds of the members of Parliament must agree to amend the Lists. Also, the Yang di-Pertua Negeri of Sabah and Sarawak must agree to amend the Lists if the changes affect Sabah and Sarawak.

2. **Has Parliament ever amended the Federal, State and Concurrent Lists?**

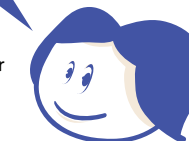
Yes, Parliament has amended the Lists. For example, before 2005, only the States could make laws on water supplies within that State and to enter into agreements with other States on water supplies between those States. However, in 2005, Parliament amended the Constitution to move the States' power to do this from the State List to the Concurrent List. This means that now both Parliament and the States can make laws on those matters. If there is any conflict between

Parliament's law and the State's law on these matters, Parliament's law applies.

3. **Can States in West Malaysia call for local government elections?**

"Local government elections" is a matter under the State List. However, as we said earlier, for West Malaysia, Parliament can make laws on a matter in the State List in order to ensure that the laws on that matter are the same in all those States, and if the laws are on local government, the States' consent is not needed. In 1976, Parliament passed the Local Government Act. Among other things, this Act says that all laws allowing local government elections no longer apply. However, some argue that the Local Government Act allows the States to exempt any area of the State from having to follow the Act, and by exempting certain areas, the States can hold local government elections in those areas.

What's Next?



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The Rakyat Guides

3. Federal - State Relations

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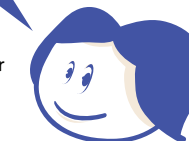
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