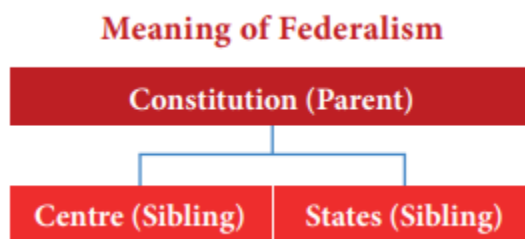


12th Political Science Lesson 5 Notes in English

5] Federalism in India

Meaning of Federalism

- **Federalism** refers to a political system that possess constitutionally provided and guaranteed distribution of powers between a **national government** and **several regional governments**.
- The mere existence of regional governments does not mean that the system follows federalism.
- The fundamental attribute of a **federal constitution** is the constitutionally created and **protected state** or **regional governments**.



- Usually in countries where there is **diversity of people federalism** will be followed.
- If **regions** in a country are distinct in terms of ethnicity, language, religion etc., the ideal form of government will be the federal system.
- **Democratic federalism** is the best instrument to ensure 'Unity in diversity'.
- The constituent states retain and safeguard their distinct linguistic, religious or cultural identity, without compromising the unity of the federated nation.
- In fact **the constituent** states enjoy quasi sovereignty, where as the federal state enjoys ultimate sovereignty.
- This federal system is based on distribution of powers between the federal or central or union government and the constituent states.
- This distribution is determined by the constitution, in clear written terms.
- Hence in any federal system, the constitution becomes the supreme authority.

Evolution of Federalism

- The thirteen **British colonies in America** revolted and liberated themselves from the British yoke.
- Thereafter they constituted themselves into a federal state.
- Thus in the modern world, the **United States of America** became the first federal state.
- Thereafter British colonies in **Australia** and **Canada** were also granted self governments and they too adopted federal forms of government.
- **The trilingual Switzerland** similarly adopted a federal form of government.
- **The European Union** today another example of federal formation on a voluntary basis.

Rise of Federalism in India

- The beginnings of federalism in modern India could be traced in the **Regulating Act of 1773**, which brought the three regions in India under **East India Company's** authority (Madras, Calcutta and Bombay) under the supervisory control of the governor general at Calcutta.
- **The Indian National Movement** recognized the plural character of colonial India and it was inspired by the already existing federal democracies in the **USA, Switzerland, Australia and Canada**; the last two had been British colonies.
- **The Government of India Act 1919**, introduced partial autonomy (**Dyarchy**) in the Presidencies, while the **Government of India Act 1935**, granted provincial autonomy at the presidencies and proposed a **Dyarchical form of government** at the centre.
- **The Nehru Committee Report in 1928** and **Pandit Jawaharlal Nehru's** first proposals of a constitution favoured a federal structure with more powers for the constituent states.
- However the creation of **Pakistan** and consequent human tragedies changed the views of the constituent Assembly resulting in weak state governments and an over centralized union government, but the whole of the **Princely state of Jammu and Kashmir** became a district state within the **Indian Union**.
- **The constitution of independent India** establishes federalism through its **Part VI provisions**.
- **The Seventh Schedule of the constitution** contains the three lists relating to the distribution of powers between the centre and states.

Federal features of Indian Constitution

Indian Constitution possesses several federal features

1. Written Constitution

- Federalism requires a **written constitution**.
- There are many governments in any federal system and for their smooth and friction free functioning their powers must be stated in crystal clear terms.
- There are **twenty nine state governments** and **one national government** at present operating in Indian federalism and therefore their powers and functions must be clearly defined.

2. Supremacy of the Constitution

- The constitution must be **the supreme political document** in the country.
- All governments must follow the terms, **conditions, provisions** and **procedures** contained in the constitution.
- No government can **claim powers** above the constitution.

3. Distribution of Powers

- The distribution of powers between **centre** and **states** is the cardinal principle of any federal system.

- Indian constitution distributes powers between the two levels of governments in a **comprehensive scheme**.
- There are **three lists of power distribution** unlike in the classical federalism of American constitution where there is only a single mode of distribution.

4. Bicameralism

- The federal constitutions provide for bicameralism. It refers to parliaments having **two houses**.
- **Indian Parliament is bicameral** as it consists of two houses.
- The upper house is called **Rajya Sabha** or **Council of States** while the lower house is known as **Lok Sabha** or **House of the People**.
- The Council of States is the guardian of states' rights and it consists of the representatives of the states.
- All over the world the upper house is deemed to be the protector of states' rights and interests.

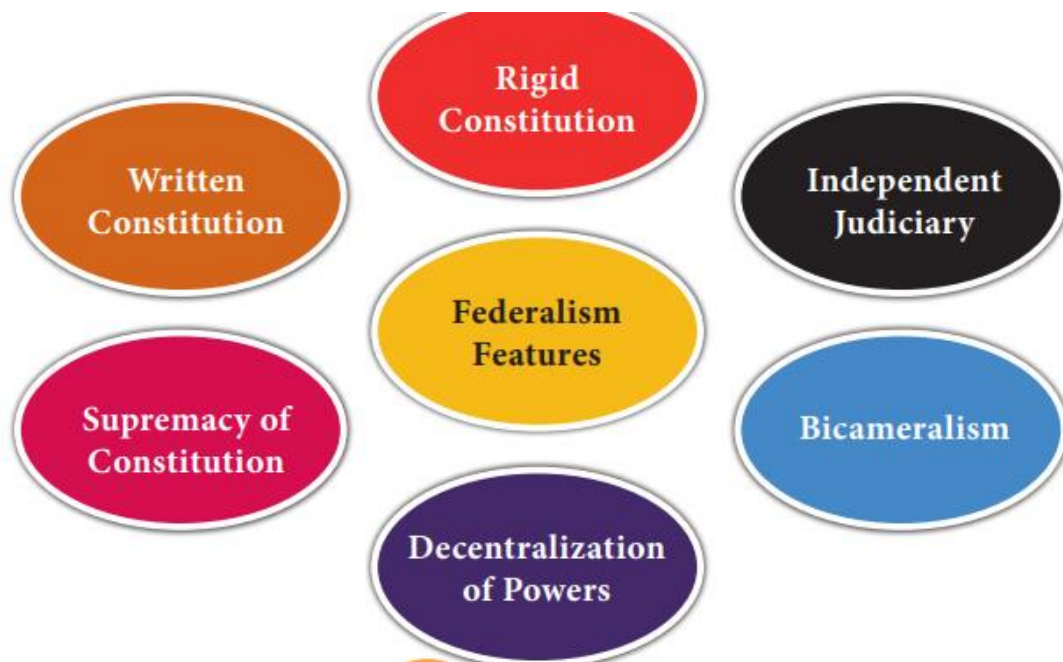
5. Rigidity of Constitution

- A constitution will be called a **rigid constitution** if its provisions can be amended only through a special process of **constitutional amendment** or through a separate amendment body and not through ordinary legislative process.
- **Federal constitutions** do not permit constitutional changes through ordinary legislative process.
- They prescribe a tougher, rigid process of amendment like greater majority.
- The rationale behind this rigidity is the desire to **protect states' rights**.
- If the federal constitution can be amended through ordinary process the union government may be tempted to change constitutional provisions to increase its powers at the cost of the states' rights.
- **The article 368 in Part XX Indian constitution** provides a separate amendment procedure for amending constitutional provisions and therefore our constitution is rigid one and to some extent protects the states.

6. Supreme Court

- **Indian Supreme Court** acts as the umpire of the federal system and protector of the constitution.
- It possesses **the powers of interpretation and adjudication**.
- If any disagreement or contradiction arises among the central and state governments the Supreme Court resolves them.
- The constitution endows the Supreme Court with **Original Jurisdiction**.
- It means that the Supreme Court alone possesses the exclusive powers to resolve any federal dispute between union government and state governments or among state governments.
- If a problem arises between **Tamil Nadu** and **union government** or between Tamil Nadu and any other state only Supreme Court has powers to resolve it.

Indian Constitution is described to be a federal one on the grounds of the aforementioned factors



Unitary or Non-Federal Features of Indian Constitution

- A number of critics have analyzed the **unitary** or **non-federal** features of our constitution and have argued that Indian constitution differs greatly from the **concept of federalism** followed in the classical federal constitutions like the United States

1. Single Constitution

- India possesses only one constitution that caters to the needs of administration both in the centre and states.
- There is **no concept of state constitutions** though the **state of Jammu and Kashmir** has its own constitution due to historical circumstances.
- In classical federal countries like the **United States** the individual states possess their own constitution in addition to the national constitution.

2. Single Citizenship

- There is only one citizenship, exists in India, i.e. **national citizenship**.
- The individual states do not possess their **own citizenship**.
- In the United States the citizens are endowed with both national and state citizenships, for example a person in the **United States** has both **American citizenship** and the citizenship of the state where he lives.

3. Flexibility of Constitution

- A constitution is called a **flexible** one if it prescribes **ordinary legislative process** not only for making laws but also for amending the constitution.
- The constitution of **United Kingdom** is a flexible constitution. Indian Constitution is partially flexible.
- Some of the provisions of the constitution can be carried out by a simple majority in the Parliament, and such amendment are not referred to approval of **States legislatures**

4. No Right to Existence for States

- Our constitution doesn't recognize the right of the states to name and existence.
- The **union parliament** can change the nomenclature and territorial identity of the states through an ordinary law.
- The **articles 3 and 4** of the constitution provide the procedure for the creation of new states and abolition of the existing states.
- **The President of India** refers to the concerned state legislature the proposal to change the name or territory of the states for eliciting its opinion.
- But it is not mandatory for him to implement the opinion of the legislature.
- An ordinary bill is introduced in either **House of the Parliament** for creating a new state or changing the name on the recommendation of the President.
- The bill is discussed and passed in Parliament leading to the creation of new states. A simple majority in Parliament is the requirement for reshaping the identity of the states.
- In contrast the **Supreme Court of the United States** has delivered a judgment stating that the states there have a fundamental right to existence.
- It has described the American federation as "**the indestructible Union Composed of Indestructible States**".
- The states cannot destroy **the Union** and similarly the national government cannot destroy the states in the **United States**
- As the union Parliament has power to rename and reshape the states in India the critics have said that the Indian states do not have a **fundamental** and inalienable right to existence and therefore have characterized Indian federalism as unitary one.

5. Anti-Federal nature of Rajyasabha

- **The upper House** of the Parliament in any federal constitution is positioned as the protector of the state rights.
- **The Rajya Sabha** is known in English as the **Council of States**. It contains the representatives of the states and functions as the protector of the states' rights.
- But there are three reasons and areas where critics have criticized it as being against the **states' rights** and **federal spirit of the constitution**.
- There is **no equality** principle followed in the distribution of seats in the Council of States.
- The **seats are distributed** on the basis of population of the individual states.

- The most populous state of Uttar Pradesh has 31 seats whereas the smaller states like Nagaland have only one seat.
- But in **any ideal federalism** there should be equality of seat distribution in the upper house as seen in the United States where all the fifty state have two seats each in the upper **House of Congress** (Parliament) the Senate.

Tamil Nadu has 18 Seats in the Rajya Sabha

- **Article 243** of the constitution enables the Rajya Sabha to transfer a subject from the **State List to the Union list** for the purpose of legislation by parliament on grounds of national interest.
- It says that the Council of States can pass a resolution for the transfer of power from **state to centre** supported by a **special majority**, that is two third majority of members present and a **simple majority** of the total membership of the House.
- The **transfer** is valid for only **one year**.
- The Rajya Sabha can again pass the resolution if the same circumstances continue.
- Many critics and states have criticized this article as violative of states' rights.
- **Article 312** of the constitution provides power to Rajya Sabha to create new **All India Services** by passing a resolution supported by a two third majority of the members present and a simple majority of the total membership of the House.
- **All India Services** are recruited by the union government but deployed in the states.
- The ultimate control over the officers of the All India Service rests with the union government.
- Many state governments resent the All India services as infringing upon the rights of the states.
- The Council of States is criticized to be against rights of the states on the basis of the aforementioned factors the important All India Services are the Indian **Administrative Service (IAS)**, **Indian Police Service (IPS)**, **Indian Forests Service (IFS)**.

6. Imbalanced Distribution of Powers

- As the **distribution of powers** is the fulcrum of any federal system the state governments have complained that there is intrinsic imbalance and bias in favour of the central government in our constitution.



- **The union government** is endowed with comparatively greater powers both in terms of **quantity and quality**.
- Most of the **lucrative sources of revenue** have been allotted to the union government and the states have been rendered financially weaker and forever **dependent on central government**.
- The Union List has more subjects than **the State List** and in **the Concurrent List** ultimately the union power over the states will prevail.
- **The residuary powers** are given to the union government and not granted to the states as in federal countries like the United States.

7. Emergencies

- **The articles 352 to 360 in Part XIII** of our constitution provide for three kinds of emergencies in India.
- The President of India under **article 352** of the constitution can proclaim **National Emergency** on grounds of War, External Aggression and Armed Rebellion if the security and unity of India as a whole or any of its parts is endangered.
- Under **article 356 of the constitution** the President can impose emergency in any state on the grounds of the **breakdown of constitutional machinery** in the state.
- Under **article 360 of the constitution** the President can declare **Financial Emergency** in India if the financial stability or credit of India is endangered.
- Whenever the emergencies are in operation the federal framework of the constitution will be suspended or modified and state rights will be undermined

8. Integrated Judiciary

- Indian constitution envisages **distribution of powers** only in legislative and administrative domains and it establishes a single, integrated and hierarchical judiciary.

- The Supreme Court is the **apex judicial institution** and the **High Courts** and the **Subordinate Courts** function under its supervision and power.
- There is **no federalism** in judiciary in India.
- In contrast the **classical federalism** of the United States we see federalism not only in legislative, administrative fields but also in judiciary.

9. Election Commission

- **The National Election Commission** conducts elections not only to Parliament but also to the state legislatures.
- There is a **unified election** machinery in charge of both Parliament and state legislature elections.
- **The Chief Electoral Officer** under the control of the **Election Commission** conducts the elections to the state legislatures.
- In the ideal federal systems there is a **separate election machinery** for conducting elections to the state legislature.

10. Unified Auditing

- India follows a **unified auditing system** for both the central and state governments.
- **The Comptroller and Auditor-General** as mentioned in **article 148** of the constitution controls the entire financial system of the country and there is no specific or separate auditing mechanism for states in Indian federalism.

Conclusion

- Indian federalism is designed to be in tune with political, historical, economic and social realities of our nation.
- The Constituent Assembly that formulated the constitution of India after exhaustive deliberations had recognized the **indispensability of federalism** in the quintessentially **plural Indian society**.
- At the same time the **Constituent Assembly** acknowledged the imperative of providing for a **strong central government** so as to curb the fissiparous tendencies in the country.
- The country faced enormous death and destruction in the aftermath of partition on the eve of **independence in 1947** and the Indian political leadership was very determined to protect the nation from any future disintegration.
- **Firstly National Unity** and **secondly regional identity** are the twin objectives of India federalism.
- In spite of federalism the national unity ought to prevail is the motto of Indian federalism.
- **Prof. Wheare** had described Indian federalism as "a system of Government which is **quasi-federal**... a Unitary State with subsidiary federal features rather than a Federal State with subsidiary unitary features".

- **The Russian** expert on constitutionalism **Prof Alexandrowicz** described that “**India is a case sui generis**” meaning Indian federalism is unique one.

Centre-State Relations

- The Centre-State Relations revolve around the fulcrum of **distribution of Powers** between **Centre and States**.
- Distribution of powers is the foundational feature of federalism and in federal constitutions there are three types of distributions, they are:
 1. **Legislative Power** Distribution
 2. **Executive Power** Distribution
 3. **Financial Power** Distribution

Legislative Relations

- There are two aspects to the **distribution of legislative powers** between the Centre and States in our constitution. They are

- a) **Territorial Distribution of Powers**
- b) **Subject Distribution**

a) Territorial Distribution of Powers

- The powers are distributed between **the union and state governments** territorially.
- The union government possess the powers over the entire territory of India while the states have jurisdiction over their own territories.
- The central government has extra territorial jurisdiction that means that its laws govern not only **persons** and **property** within India but also Indian citizens and their properties located in any corner of the world.
- In contrast the state legislatures do not possess jurisdiction outside their own territory.
- **The territorial jurisdiction of Parliament**, of course, is subject to certain limitations imposed by the constitution especially with regard to **union territories and scheduled areas**.

b) Subject Distribution

- **The constitution** distributes the legislative subjects between **the union government and states** in an elaborate scheme.
- There are three Lists of distribution.
 - ❖ List I (**Union List**) contains the subjects and powers exclusively allotted to the union parliament. There are 100 subjects here including defense, foreign affairs, banking, currency
 - ❖ List II (**State List**) contains the subjects that are exclusively allotted to the state governments. There are 59 items including public order, and police, public health, local government, agriculture, forests, fisheries

- ❖ List III (**Concurrent List**) contains 52 items including Criminal law and procedure, Civil Procedure, marriage, education. This list is called as Concurrent List.
- Both the union and state governments have powers over these subjects.
- But when there occurs a clash between the union and state governments the law of the parliament will prevail
- There is also another category called **residuary powers**.
- Any subject not mentioned in the above three lists will automatically come under the jurisdiction of the union government.
- Our constitution broadly follows the legislative distribution of powers provided in **the Government of India Act 1935** enacted during the **British colonial era**.

Exceptions

- The above **scheme of legislative power distribution** will be normally followed.
- But under exceptional circumstances the scheme will be suspended.
- The power of the **Union Parliament** will be expanded and concomitantly the powers of the state legislatures will be diminished.

a) National Emergency

- When the **President of India** declares National Emergency the union parliament acquires the powers to legislate over the subjects in the State List.
- **The emergency** is declared by **the president** to tackle problems like war, external aggression and armed rebellion that pose a danger to the existence of our nation.
- For the purpose of tackling the challenges successfully and effectively these challenges **the union government** gains **control** over **state legislature** powers too.

b) Agreement between States

- When two or more states agree that their **mutual interests** will be served better if there is **common law on a particular subject** and request the union government to enact the needed law, the Parliament can **enact a common law** for the desiring states on that subject even if it falls in the List II (State List).
- c) **The Parliament** will have **powers of enactment** on a state subject for the purpose of implementing an international agreement.
- d) **After the declaration of article 356 emergency** in a state the President can declare that the **parliament will enact on state list** subjects for that state

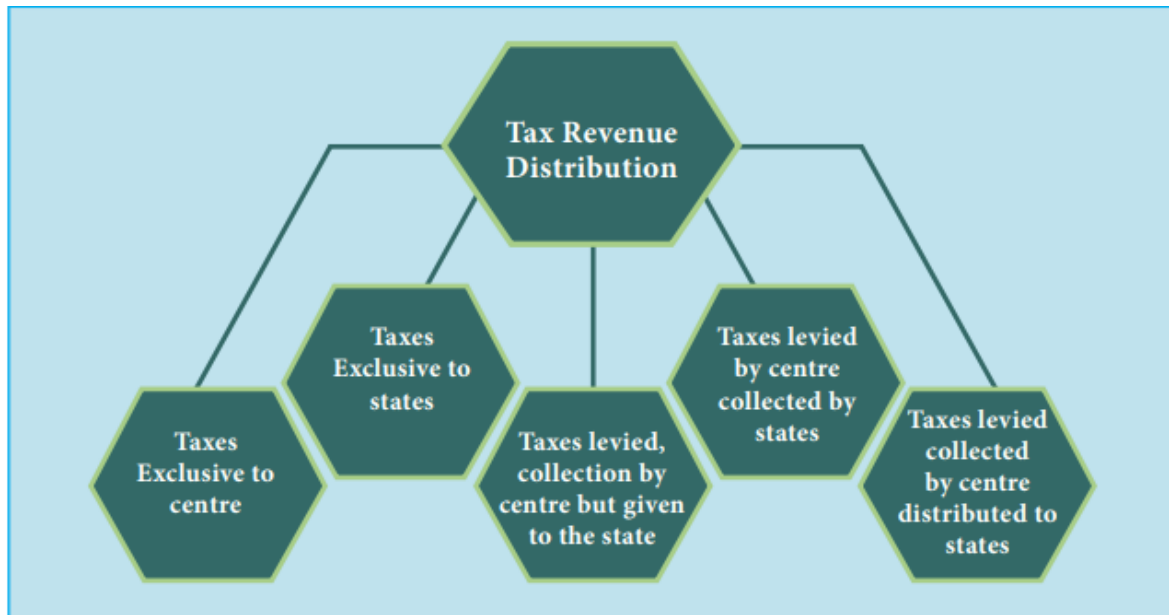
Executive Relations

- Our constitution distributes **executive powers** between the union and state governments.
- The distribution is **co- terminous with legislative power** distribution to a great extent.

- The union government possesses executive powers over the subjects that are included in the List I, namely **the Union List**.
- The states have executive powers over the subjects that are included in the List II, namely **the State List**.
- **The executive power of the union government** extends over the territory of India while the executive power of the state governments extend over their **own territories**.
- The distribution of executive powers over the **List I and List II** is based on the simple principle that they are coterminous with legislative powers of the union and state governments.
- The distribution of the executive powers over **the List III** namely **the Concurrent List** is based on a slightly **complicated scheme**.
- Succinctly it can be stated that the executive powers over the subjects in the Concurrent List is ordinarily with the state governments.
- Nevertheless, the union government retains powers to issue directions to the state governments in the execution of executive functions both in normal times and during emergencies.
- Another feature in the executive **powers distribution scheme** in the constitution relates to **mutual delegation of functions** between the union and state governments.
- The union government can entrust its functions to the state government after getting the consent of the state government concerned.
- Conversely the state government can entrust its executive functions to the union government after getting the **consent of the union government**.
- Moreover, the union government can entrust its **executive function to the state government** without getting the consent of the state government concerned but it must obtain the **consent of the parliament**.

Financial Relations

- Finances are very fundamental in the successful operation of **federal system**.
- Indian constitution **distributes financial powers** between the union and states in a comprehensive arrangement that is broadly modeled on the **1935 Government of India Act**.
- There are two sources of revenue distributed by the constitution namely **Tax Revenue** and **Non-tax Revenue**.



A) Tax Revenue Distribution

- There are **five** important ways in which the **tax revenues** are **distributed** between the union and state governments.
- 1. Certain taxes like **Corporation tax** and **Custom tax** are exclusively allotted to the central government
- 2. Certain taxes like **sales tax** are exclusively allotted to the states
- 3. Certain taxes are levied by the Union but collected and appropriated by the concerned states and the examples are stamp duties on **Bills of Exchange** and **Excise duties** on medicinal and toilet preparations containing alcohol
- 4. Certain taxes are levied and collected by the union government but the proceeds are assigned to the states in which they are levied like **the taxes on the sale of advertisements in newspapers**.
- 5. Certain taxes are levied and collected by the state governments and are distributed between the union and state governments in a certain proportion like **the tax on income other than an agricultural income**

B) Non-tax Revenue Distribution

- Both the union and state governments are provided with **non-tax revenue sources**.
- The union government gets its revenue from the receipts from **commercial** and **industrial** undertakings relating to central subjects like Industrial Finance Corporation.
- It gets its revenue from **Railways, Posts and Telegraphs, Broadcasting** etc
- The state governments get revenue from the **receipts of commercial enterprises** and **industrial** undertakings allotted to them.
- The sources among others include **forests, irrigation, electricity, road transport**.

- The constitution understands **the greater financial needs** of certain states and therefore the **article 275** asks the union government to provide **Grants-in- Aid** to the states like **Assam** keeping in mind the **imperative of the development** and welfare of the **tribal population**.

Finance Commission

- The president of India constitutes a Finance Commission once in **every five years**.
- **The article 280 of the constitution** describes the composition of the Finance Commission.
- It will have one **Chairman** and **four other members**.
- The Chairman will be a person with experience in **public affairs** and the members will have experience in financial administration, special knowledge of economics, special knowledge of public accounts and government finances, and one member will have the **qualification of a High Court judge**.

Finance Commission will provide recommendations in the following manner:

- For the distribution of net **proceeds of taxes** between the centre and states
- Principles governing grants-in-aid
- Measures needed to increase the **Consolidated Fund of India** or **states** to supplement the resources of **the Panchayat Bodies**
- Measures needed to increase the Consolidated Fund of India or states to supplement the resources of the **Urban Local Bodies**
- Any other matter referred by the president So far **fourteen Finance Commissions** have been constituted once in **every five years**

Co-operative Federalism

- The Indian Constitutional expert **Granville Austin** described (Granville Austin, renowned scholar of the Indian constitution, described) **Indian federal system** as **Co-operative Federalism** designed to promote co-operation between the centre and states.
- The concepts of co-operative federalism applies to those federal governments like **the USA** where the states have more or adequate powers and the formation of the union is based on **"the indestructible union composed of indestructible states"**.
- In a quasi federal state like India, the Union Government can very easily pull down any constituent state for **non-cooperation** or **non-compliance** or defiance of union government's will through constitutional provisions, especially through the emergency powers assigned to the President.
- The constitution does not permit states defiance to centre.
- There are many provisions, institutions and bodies created in **Indian political system** to promote the **co-ordinative functioning of the central and state governments** in India.
- They can be classified into **constitutional, statutory and Political bodies and provisions**.

Constitutional Provisions and Institutions

- The constitution itself has created a number of devices to promote **cooperation** and **co-ordination**.

I) Inter-State Council

- **The article 263** of the constitution says that the President of India can establish the Inter-State Council to serve public interests.
- There are **three functions** and **duties** assigned to the Inter-State Council
 - a) To enquire into and advise upon disputes among the states
 - b) To **investigate and discuss** the subjects that are common to the union and state governments
 - c) To make **recommendations to the President** for better co-ordination on any particular subjects among the state governments.
- **A number of councils** have been created to promote cooperation on specific subjects in the past like the **Central Council of Health, Transport**

Development Council, and Central Council of Local Self- Government.

- **The holistic Inter-State Council** was established in early nineties to deal with general cooperation among the units of Indian federal system on the recommendation of the **Sarkaria Commission**.
- **The Prime Minister functions** as the **chairperson** of the council.
- **The Chief Ministers** of all the states and Union Territories with Legislative Assemblies, six cabinet ministers of the union government, administrators of the Union Territories without Legislative Assemblies and Governors of states under President's Rule are its members.
- **A Standing Committee** consisting of the with union **Home Minister**, five other cabinet ministers and nine Chief Ministers also works as part of the **Inter State Council** to promote cooperation among the members of the federal system.

Statutory Bodies

- There are certain bodies created through the statue of the parliament but not mentioned in the constitution that function to promote **cooperative federalism**.

1. Zonal Councils

- **The Zonal Councils** were established by the **States Reorganization Act in 1956** to achieve **cooperation** and **co-ordination** among states.
- They were created in the backdrop of linguistic reorganization of India and the first Prime Minister of India **Jawaharlal Nehru** described their objective as to **"develop the habit of co-operative working"**



- Originally **five Zonal Councils** were created and later on in **1971** one more Zonal Council was established for the **North Eastern States**. They are
 1. **Northern Zonal Council**
 2. **Southern Zonal Council**
 3. **Eastern Zonal Council**
 4. **Western Zonal Council**
 5. **Central Zonal Council**
 6. **North Eastern Zonal Council**
- **The Union Home Minister** will be the common Chairperson of all the Zonal Councils.
- Additionally each Zonal Council will consist of the Chief Minister and two other Ministers of the each state and the **Administrator of the Union Territory** in the zone.
- The Zonal Councils will discuss and suggest measures to promote cooperation among the members in areas like economic and social planning, border disputes, inter-state transport etc.

2. River Board

- **The River Boards Act, 1956** establishes River Boards to provide advice to the concerned governments concerned for the regulation of an interstate river or river valley.

3. Water disputes Tribunal

- **The Inter-State Water Disputes Act, 1956** was enacted in accordance with the **article 262** of the constitution that mandated that all interstate river disputes should be resolved through negotiations.
- The act provides for the formation of **ad hoc tribunals** for resolving interstate water disputes if repeated negotiations prove to be futile in resolving the issue.

Political or Resolution Bodies

NITI AYO

- The union government created the **National Commission for Transforming India** after dissolving the **Planning Commission in 2015**.
- The Prime Minister is the **ex officio chairman** and the permanent members of the governing council are all the Chief Ministers of all the states, Chief Ministers of the **Union Territories of Delhi and Puducherry** and the **Lieutenant Governor of Andaman and Nicobar Islands**.
- One of the primary objectives of the commission is to “foster cooperative federalism through structured support initiatives and mechanisms with the states on a continuous basis”.
- It recognizes that strong states will make strong nation.
- But, without constitutionally empowering more the constituent states and adequate devolution of revenue resources, the states continue to remain over dependent on the Union Government, even in matters relating to tackling of natural calamities.

Inter – State River

- **Water Dispute Inter-State River Water Disputes** play a crucial role in the evolution of **federalism** in Indian politics.
- There are a large number of such disputes in our country.
- **The Cauvery** dispute involving Tamil Nadu, Karnataka, Kerala and Puducherry Union Territory, **Vamsadara River** dispute involving Andhra Pradesh and Odisha, **Sutlej** dispute involving **Punjab, Haryana, Mahadayi river** dispute involving Goa, Maharashtra and Karnataka are the major ones.
- We have a following dispute settlement mechanism in Indian federalism to solve them.

1. Constitution and Inter – State River Water Disputes

- **The article 262 of the constitution** empowers the parliament to enact a law providing for the adjudication of any dispute, complaint relating to the use, distribution and control of any **inter-state river or river valley**.
- It also provides that parliament can exclude the Supreme Court or any other court from exercising any jurisdiction over **inter-state river water disputes**.
- For this purpose parliament is empowered to enact a law overriding any provision of the constitution.
- The logic of this provision is that inter-state river water disputes contain emotional and economic implications affecting the lives and livelihood of millions of people.
- **Judicial adjudication** of the disputes may create social and economic problems.
- Therefore the **national legislature** must have competence to evolve a mechanism for resolution of these disputes through negotiations and direct dialogue.

2. Inter-State River Water Disputes Act, 1956

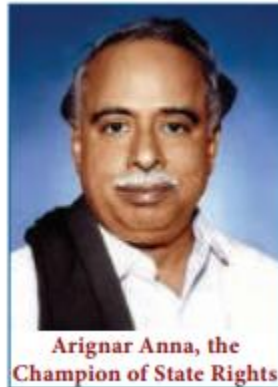
- Empowered by the **article 262 of the constitution** the parliament enacted **inter – state river water dispute act, 1956**.
- This act enables the union government to establish a tribunal for the adjudication of an inter-state river water dispute.
- **The Indian constitutional and legal consensus** is that all inter-state river water disputes must be resolved through peaceful negotiations.
- If **no fruitful decisions** can be reached through negotiations the states concerned can approach the union for the constitution of a tribunal on **ad hoc basis** for resolving that issue.
- When the union govt. decides to constitute a tribunal **the Chief Justice of Supreme Court of India** will nominate a person to head it.
- Earlier, the tribunal always used to consist of one person only but later on this provision was amended to include more members.
- The Chief Justice will choose a person (nominee?) from the sitting or retired **Judge of the Supreme Court and High Courts**.
- **The decision of the Tribunal** shall be published in the **Official Gazette** and there after that decision shall be final and binding on the parties to the dispute.
- Neither the Supreme Court nor any other court shall have jurisdiction over any inter-state water dispute referred to a tribunal under **the Act**. **No tribunal** can be constituted for any dispute that has been placed for arbitration under **the River Water Board Act, 1955**.
- Succinctly, we can say that our **constitutional, legal and political strategy** advocates a dual strategy to resolve inter- state river water disputes.
- It advocates negotiated settlement as the first choice and as and when sincere negotiations fail to resolve the issues, an **ad hoc tribunal** based adjudication should be established.

Issues and Demands in Indian Federalism

- There are many issues in Indian federalism that create disturbances in the centre-state relations.
- We will focus on **the major problems** in this section

Appointment and Role of the Governor

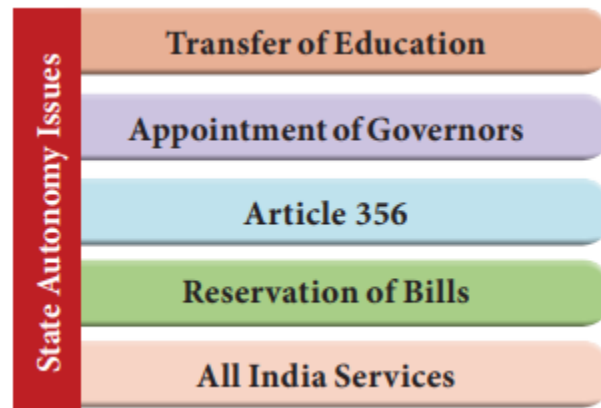
- The very office of the Governor as an agent of the central government to monitor the state government imperils the sovereignty of the constituent States.
- **The Raja Mannar Committee Report** was highly critical of the office and role of governor.
- It is often pointed out that the union Government to arm-twist the state executive.
- **The Dravidian parties**, since the days of **C.N. Annadurai**, have been demanding 'genuine autonomy for the states, by divesting the Governor's power of interfering with the state executive and state legislature.



- The regional parties have deprecated the practice of appointing politically active and partisan persons as governors.
- They have frequently demanded that the governor should be appointed in consultation with the state government.
- Many **political commentators** and **commissions** have argued for the appointment of eminent persons who have contributed to India's development in diverse fields as governors.
- The attitude of the Governor towards the state governments of those ruled by parties opposed to the ruling party at the centre is another major tension area in centre-state relations.
- Whenever there is a split in a ruling state party or hung assembly, the role of the Governor becomes very crucial and in many instances the **regional** and **opposition parties** have agitated against the decisions of the incumbents in gubernatorial office.

Education

- There is a popular demand that the subject of education must be restored to **the List II or State List** in which originally it was located.
- **The Parliament in 1976** enacted the **Forty Second Constitutional Amendment Act** that transferred the subject of education to **the List III or Concurrent List**.
- The state governments exclusively had authority over education when it was in State List and the union government came to acquire joint jurisdiction over education Activity Prepare a project report on the role of the Governor in the **evolution of state politics in India** after this transfer.



- As we learnt earlier when a contradiction arises between the states and the central government in the Concurrent List the authority of the central government or Parliament will prevail.
- Many political parties in states like Tamil Nadu are demanding the transfer of education back to the State List.

Reservation of State Bills for Presidential Consideration

- **The Governor of a state** has discretionary power to reserve a bill of the state legislature for the consideration of the President.
- Whenever a money bill of the **state legislature** is reserved by the **Governor** the **President** may either declare or withhold his assent.
- In case of other bills he can declare or withhold his assent.
- He can also direct the Governor to send the bill for reconsideration to the legislature concerned.
- Even if the bill is again passed by the state legislature it is not obligatory for President to declare his assent.
- This provision was incorporated in the constitution to protect the unity and integrity of India But many state governments have criticized the Governors for reserving the duly passed state bills for the consideration of the President as there were alleged to have been motivated by political considerations to suppress the state governments and to further the interests of the ruling party or coalition at the centre.

Improper use of Article 356

- **The article 356 in Part XIII** of the constitution provides for the proclamation of **Emergency by the President** in any state where there is a breakdown of constitutional machinery either based on the report of the Governor or even otherwise.
- The article emphasizes on the supremacy of **the constitution** and **national unity and integrity**.
- The state governments ruled by the opposition parties of **the ruling party** at the centre have complained against the frequent and improper use of this article by the ruling party or coalition at the centre.

- More than a hundred times the article has been used to impose emergency in states and in many instances there was a huge complaint that political and party considerations have led to the imposition of **the President's Rule**.
- Many regional parties have demanded the abolition of this article.
- However, since the **Supreme Court's judgement** in **S.R. Bommai vs Union of India** case the chances for misuse of **article 356** drastically reduced and it has been discussed in detail in a chapter latter.

All India Services

- All India Services are created under **article 312** of the constitution.
- The officers to these services are recruited by the union government and posted in the states.
- The state governments have powers of posting, transfer while the central government alone has powers to dismiss them.
- As the ultimate control over the **All India Services** are with the central government the state governments have sought changes in the system and the
- **Rajamannar Commission** of **Tamil Nadu** government suggested a complete **revamping** in the **structure and position** of All India Services.

Commissions on Centre-State Relations

- A number of commission have been formed in past to study and provide recommendation on **Centre-State relations**.

Administrative Reforms Commission

- There were two **Administrative Reforms Commissions** that were established in the past to provide recommendations for reviewing and reforming the administrative system of the country.
- **The First Administrative Reforms Commission** was formed in **1966** initially under **the leadership of Morarji Desai** and later on **K. Hanumanthaiah**.
- It submitted **twenty reports** including one in which extensive suggestions were provided in the **domain of centre-state relations**.



- The **Second Administrative Reforms Commission** was constituted in the **new millennium** in 2005 under the chairmanship of initially **Veerappa Moily** and later on **V. Ramachandran**.

Rajamannar Commission

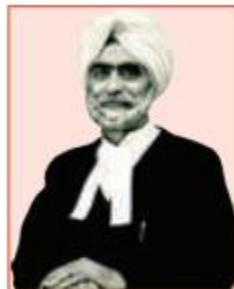


- The **Tamil Nadu government** established the **Rajamannar committee** to analyze and provide recommendations for restructuring the centre-state relations in our constitution.
- The committee consisted of the retired **Chief Justice of Madras High Court Justice**.
- **P.V.Rajamannar**, former **Vice- Chancellor of the University of Madras**, **Dr A Lakshmanaswamy** and a former **Chief Justice of Andhra**, **Dr P. Chandra Reddy**.
- It submitted its report to **the government in 1971** marking a great milestone in the history of autonomy debate in the country.
- The major suggestions of the committee include
- **The article 263** of the constitution should be **implemented** and **Inter- State Commission** should be formed to promote cooperation among central and state governments.
- The proposed council must consist of the Chief Ministers of the states or their nominees as members and the **Prime Minister as the Chairperson**.
- It should be endowed with far reaching powers and all the **major bills** of the **Parliament** and **decisions of the union government** that affect the interests of one or more states must be placed and discussed in the council and its opinion should be considered in the **decision making process**.

- The committee's made consultation with the Inter State Council is mandatory in all matters barring those Rajamannar related to the two subjects, namely defence and foreign affairs.
- The committee argued that the present scheme of centre-state relations in the constitution favors centre's supremacy and erodes state autonomy and therefore recommended the elimination of **articles 256, 257, 339(2)** from our constitution.
- The committee was against specifically these articles as they enable the centre to issue instructions to the state governments
- It favored the shifting of the residuary powers of legislation and taxation from the union government to the state governments to empower the states.
- As **article 356 in Part XVIII** of the constitution should be diligently used by the union government only as a measure of last resort in the event of a complete breakdown of the constitutional machinery in the state and not in a mere law and order break down situation
- **The committee** wanted to introduce far reaching changes in All India Services.
- It opined that there should be only two kinds of **services, central services** devoted to needs of **union administration** and **state services** looking after the state administration.
- It suggested the abolition of All India Services including the elite **Indian Administrative Service** as they are against the spirit of federalism and state autonomy.
- It highlighted the concerns of the state governments ruled by **opposition parties of the ruling party** at the centre about the All India Services acting as agents of the union government.
- In the domain of **financial resources the committee** recommended greater **devolution of powers and resources to the states**.
- For the purpose of expanding the **financial capacity of the states** it suggested changes in certain taxes like corporation tax, customs and export taxes.
- The committee recognized the finances as the fulcrum of state rights and balanced federalism and therefore recommended the transfer of many items from **Union List** and **Concurrent List** to **State List** in the **seventh schedule** of the constitution.
- It argued for making the **Finance Commission** a permanent, impartial body devoted to the priorities of national unity, development and state rights and identities.

Sarkaria Commission

- **The Union Government** in the backdrop of many demands for reform in federal domain constituted a commission under the chairmanship of Justice **R.S. Sarkaria** in **1983** to review **the centre-state relations**.
- **B. Sivaraman and Dr.R.S. Sen** were the two other members of the commission.
- Five years later, it submitted a comprehensive **report** containing **247 recommendations**.



Justice R.S. Sarkaria

Inter State Council

- It recommended that the Inter-State Council must have the functions laid down in **article 263 (b) and (c)** that is to investigate subjects where many states have common interest and to make recommendation for better co-ordination of policy in that subject.
- The commission argued against Justice **R.S. Sarkaria article 263(a)** stating that the Inter-State Commission should not have powers to enquire and advise on interstate disputes.
- The commission also suggested the establishment of an independent, permanent secretariat for **Inter-State Council** to make the body more effective

Article 356

- It suggested that the article 356 must be imposed only sparingly, as a measure of last resort when there is a complete breakdown of constitutional machinery in a state.
- All available and possible alternatives should be explored before the imposition of **the article 356 Emergency** in the state concerned.

Governor

- The commission rejected the demand and suggestion of some political parties and states that the **office of governor** must be abolished or the concerned state government must be consulted before the appointment of state governors.
- On the contrary, for smoother functioning of federalism it suggested that the politically **active persons and leaders** should not be appointed as governors.
- Only eminent persons must be **appointed as governors**.
- When differing parties are ruling at the centre and states the leader belonging the ruling party at the centre must not be appointed as the governor of a state

Language

- It recommended the strict adherence to the tri language formula to strengthen the **unity and integrity** of the country.

Punchhi Commission



- The union government constituted a commission in 2007, under the leadership of **Justice Madan Mohan Punchhi**, the former **Chief Justice of the Supreme Court** in 2007.
- The commission also had three more members and a **Secretary** and presented its **report in 2010**.
- It recommended that the governors of the states must have fixed tenure and they should be removed only through impeachment process akin to the President of India.
- It wanted to introduce changes in **articles 355 and 356** so that insurgency or problem afflicted areas or districts in a state rather than the entire state can be brought under emergency as a strategy to localize emergency and efficiently handle insurgency or troubles.
- The commission also suggested that the union government must have power and authority for the **suomotu deployment** of central forces without the consent of the concerned states in areas affected by **communal violence**.

Supreme Court Judgment in S.R. Bommai Case

- **Somappa Rayappa Bommai** (6 June 1924 to 10 October 2007) was the **11th Chief Minister of Karnataka**.
- He was also the **Human Resource Development Minister** in the United Front Government from **1996 to 1998** and served with both the **Prime Ministers H. D. Deve Gowda and I. K. Gujral**.
- The Supreme Court delivered a landmark judgment in the **S.R. Bommai versus Union of India Case in 1994** that has protected the rights of the states greatly.
- **S.R. Bommai** was the **Chief Minister of Karnataka** and his government was dismissed in **1994** by the central government leading to the filing of the case in the Supreme Court.



- The judgment protected the states from the arbitrary dismissal at the hands of the hostile central government. The main features of the judgment are:
- **Article 356** is an exceptional power to the union government and it should be used only occasionally to meet the exigencies of special occasions.
- Emergency under this article can be imposed only on certain grounds signifying constitutional breakdown.
- For example, if no party or coalition is able to generate majority support after the **Legislative Assembly** elections resulting in a hung Assembly; if constitutional directions from the central government are disregarded by the state government or state government actively assists in internal subversion.
- Emergency cannot be imposed on certain grounds as they do not constitute constitutional breakdown.
- For example, a **mere law and order problem** cannot be construed as constitutional breakdown.
- And, emergency cannot be imposed if the ruling party in the state lost heavily in the **Parliamentary Elections**.
- **The Governor's report** on the breakdown of the constitutional machinery in the state must be placed in Parliament.
- The report should be a thorough one detailing the exceptional situation in the state.
- **The Legislative Assembly of a state** cannot be dissolved before the proclamation of the president is approved by both **Houses of the Parliament**.
- The court has power to determine the validity of the imposition of emergency under **article 356 of the constitution**.
- If the court finds the grounds of imposition unconstitutional it can and will nullify the proclamation and restore the dismissed state government to life.
- To put it succinctly the Supreme Court possesses **the power of Judicial Review** over the imposition of **article 356**.
- Ever since the judgment was delivered by the Supreme Court the state governments ruled by opposition parties have been protected from arbitrary dismissal by the central government with a different ruling party.
- **Dr. Ambedkar called this Article 356** as a dead letter to the Constitution as it neglects the **federal characters of the Indian Political System** and the **popular sovereignty of an elected government**.

Venkatachaliah Commission



- The National Commission to review the working of the Constitution (NCRWC) also known as Justice Manepalli Narayana Rao Venkatachaliah Commission was set up by a resolution of the NDA Government of India led by Atal Bihari Vajpayee on 22 February 2000 for suggesting possible amendments to the Constitution of India.

MORE TO KNOW:

Territory of India

- There are important differences between **Union of States** and **Territory of India**.
- **Union of State** refers to the twenty nine states and central government. Territory of India means:
 - 1. **Twenty Nine States**
 - 2. **Seven Union Territories**
 - 3. **Acquired Territory** (Any territory acquired by India like Pondicherry, Daman Diu after they became part of India and before they were made Union Territories)

State Election Commission

- **State Election Commission** is not part of the **federal system in India**.
- It conducts elections to **Panchayat Bodies** and **Urban Local Bodies** in accordance with **73rd and 74th Constitutional Amendments**.
- State Election Commission "Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source."
- **Dr. B.R. Ambedkar**, Chairman, **Drafting Committee** of the Constituent Assembly of the India.



Conversation on Cauvery Dispute

- **Student:** Sir, can you please explain us the Cauvery dispute
- **Teacher:** Cauvery dispute is an interstate water dispute. It involves the states of Tamil Nadu, Karnataka, Kerala and Union Territory of Puducherry.
- **Student:** what is the history behind the issue
- **Teacher:** The history of the issue is a long one. The Madras Presidency and the Princely Sate of Mysore signed an agreement in 1924 for sharing the waters.
- After being in operation for fifty years the agreement lapsed in 1974.
- **Student:** Did the disputants hold negotiations thereafter
- **Teacher:** Yes, many rounds of negotiations were conducted for nearly two decades but no solution was reached.
- As we learnt earlier in the class the Inter State River Water Disputes Act 1956 allows for the formation of a tribunal for resolving the river water disputes.
- The Cauvery River Water Tribunal was established in 1991 to solve the issue.
- **Student:** Did the Tribunal deliver its Award .What are the features of its Award?
- **Teacher:** Yes. The Tribunal gave the final Award in 2007. It stipulated a monthly release of water from Karnataka to Tamil Nadu across the border in Biligundlu. It fixed the share of each state from Cauvery River. It provided a distress formula to share the waters in years when rainfall is low allowing for proportionate sharing of the available water.
- **Student:** what is the Cauvery management Board?
- **Teacher:** The Tribunal provided a Cauvery Water Management Board to manage the tricky problem of sharing the water
- **Student:** Has it been formed?
- **Teacher:** After many years of litigation the Supreme Court delivered the final verdict and directed the union government to constitute the mechanism to implement the Award.
- The Cauvery Water Management Authority and the Cauvery Water Regulation Committee were established in 2018 to implement the Award of the Tribunal as modified by the Supreme Court.
- At present Tamil Nadu is entitled to get 177.25 tmcft of water from Karnataka as measured in Biligundlu border.

- The total share for Cauvery water allotted to Tamilnadu is 404.25 tmcft. Karnataka is entitled to get 284.25 tmcft. Kerala's share is 30 tmcft and the fourth disputant Puducherry will get 7 tmcft.

Quotable Quote

- **Dicey:** "A federal state is nothing but a political contrivance intended to reconcile national unity with maintenance of states' rights".