

Unit 2 - System of Government

(1) Parliamentary System (2) Federal System (3) Centre–State Relations (4) Inter-State Relations (5) Emergency

(1) Parliamentary System

Modern democratic governments are classified into parliamentary and presidential on the basis of the nature of relations between the executive and the legislative organs of the government.

Parliamentary system of government	Presidential system of government,
one in which the executive is responsible to the legislature for its policies and acts.	one in which the executive is not responsible to the legislature for its policies and acts, and is constitutionally independent of the legislature with respect of its term of office.
also known as cabinet government or responsible government or Westminster model of government and is prevalent in Britain, Japan, Canada and India among others.	also known as non-responsible or non-parliamentary or fixed executive system of government and is prevalent in USA, Brazil, Russia and Sri Lanka among others.
Ivor Jennings - ‘cabinet system’ because the cabinet is the nucleus of power in a parliamentary system. -also known as ‘responsible government’ as the cabinet (the real executive) is accountable to the Parliament and stays in office so long as it enjoys the latter’s confidence. - It is described as ‘Westminster model of government’ after the location of the British Parliament, where the parliamentary system originated.	
In the past, the British constitutional and political experts described the Prime Minister as ‘primus inter pares’ (first among equals) in relation to the cabinet. In the recent period, the Prime Minister’s power, influence and position have increased significantly vis-a-vis the cabinet. He/she has come to play a ‘dominant’ role in the British politico-administrative system. Hence, the later political analysts, like Cross-man, Mackintosh and others have described the British system of government as ‘prime ministerial government’. The same description holds good in the Indian context too.	

The Constitution of India provides for a parliamentary form of government, both at the Centre and in the states.

- Articles 74 and 75 deal with the parliamentary system at the Centre and
- Articles 163 and 164 in the states.

Features of Parliamentary System of Government :

1. Nominal and Real Executives	The President is the nominal executive (<i>de jure</i> executive or titular executive) while the Prime Minister is the real executive (<i>de facto</i> executive). Thus, the President is head of the State, while the Prime Minister is head of the government. Article 74 provides for a council of ministers headed by the Prime Minister to aid and advise the President in the exercise of his/her functions. The advice so tendered is binding on the President.
2. Majority Party Rule	The political party which secures majority seats in the Lok Sabha forms the government. The leader of that party is appointed as the Prime Minister by the President; other ministers are appointed by the President on the advice of the prime minister. However, when no single party gets the majority, a coalition of parties may be invited by the President to form the government.
3. Collective Responsibility	This is the bedrock principle of parliamentary government. The ministers are collectively responsible to the Parliament in general and to the Lok Sabha in particular (Article 75). They act as a team, and swim and sink together. The principle of collective responsibility implies that the Lok Sabha can remove the ministry (i.e., council of ministers headed by the Prime Minister) from office by passing a vote of no confidence.

4. Political Homogeneity	Usually members of the council of ministers belong to the same political party, and hence they share the same political ideology. In case of coalition government, the ministers are bound by consensus.
5. Double Membership	The ministers are members of both the legislature and the executive. This means that a person cannot be a minister without being a member of the Parliament. The Constitution stipulates that a minister who is not a member of the Parliament for a period of six consecutive months ceases to be a minister.
6. Leadership of the Prime Minister	The Prime Minister plays the leadership role in this system of government. He/she is the leader of council of ministers, leader of the Parliament and leader of the party in power. In these capacities, he/she plays a significant and highly crucial role in the functioning of the government.
7. Dissolution of the Lower House	The lower house of the Parliament (Lok Sabha) can be dissolved by the President on recommendation of the Prime Minister. In other words, the Prime Minister can advise the President to dissolve the Lok Sabha before the expiry of its term and hold fresh elections. This means that the executive enjoys the right to get the legislature dissolved in a parliamentary system.
8. Secrecy	The ministers operate on the principle of secrecy of procedure and cannot divulge information about their proceedings, policies and decisions. They take the oath of secrecy before entering their office. The oath of secrecy to the ministers is administered by the President.

Features of Presidential System of Government :

1. The American President is both the head of the State and the head of government. As the head of State, he/she occupies a ceremonial position. As the head of government, he/she leads the executive organ of government.
2. The President is elected by an electoral college for a fixed tenure of four years. He/she cannot be removed by the Congress except by impeachment for a grave unconstitutional act.
3. The President governs with the help of a cabinet or a smaller body called 'Kitchen Cabinet'. It is only an advisory body and consists of non-elected departmental secretaries. They are selected and appointed by him/her, are responsible only to him/her, and can be removed by him/her any time.
4. The President and his/her secretaries are not responsible to the Congress for their acts. They neither possess membership in the Congress nor attend its sessions.
5. The President cannot dissolve the House of Representatives—the lower house of the Congress.
6. The doctrine of separation of powers is the basis of the American presidential system. The legislative, executive and judicial powers of the government are separated and vested in the three independent organs of the government.

Merits of Parliamentary System :

- 1. Harmony Between Legislature and Executive** The greatest advantage of the parliamentary system is that it ensures harmonious relationship and cooperation between the legislative and executive organs of the government. The executive is a part of the legislature and both are interdependent at work. As a result, there is less scope for disputes and conflicts between the two organs.
- 2. Responsible Government** By its very nature, the parliamentary system establishes a responsible government. The ministers are responsible to the Parliament for all their acts of omission and commission. The Parliament exercises control over the ministers through various devices like question hour, discussions, adjournment motion, no confidence motion, etc.
- 3. Prevents Despotism** Under this system, the executive authority is vested in a group of individuals (council of ministers) and not in a single person. This dispersal of authority checks the dictatorial tendencies of the executive. Moreover, the executive is responsible to the Parliament and can be removed by a no-confidence motion.
- 4. Ready Alternative Government** In case the ruling party loses its majority, the Head of the State can invite the opposition party to form the government. This means an alternative government can be formed without fresh elections. Hence, Dr. Jennings says, 'the leader of the opposition is the alternative prime minister'.

5. Wide Representation In a parliamentary system, the executive consists of a group of individuals (i.e., ministers who are representatives of the people). Hence, it is possible to provide representation to all sections and regions in the government. The Prime Minister while selecting his/her ministers can take this factor into consideration.

Demerits of the Parliamentary System :

In spite of the above merits, the parliamentary system suffers from the following demerits:

1. Unstable Government The parliamentary system does not provide a stable government. There is no guarantee that a government can survive its tenure. The ministers depend on the mercy of the majority legislators for their continuity and survival in office. A no-confidence motion or political defection or evils of multiparty coalition can make the government unstable. The Government headed by Morarji Desai, Charan Singh, V.P. Singh, Chandra Sekhar, Deva Gowda and I.K. Gujral are some such examples.

2. No Continuity of Policies The parliamentary system is not conducive for the formulation and implementation of long-term policies. This is due to the uncertainty of the tenure of the government. A change in the ruling party is usually followed by changes in the policies of the government. For example, the Janata Government headed by Morarji Desai in 1977 reversed a large number of policies of the previous Congress Government. The same was repeated by the Congress government after it came back to power in 1980.

3. Dictatorship of the Cabinet When the ruling party enjoys absolute majority in the Parliament, the cabinet becomes autocratic and exercises nearly unlimited powers. H.J. Laski says that the parliamentary system gives the executive an opportunity for tyranny. Ramsay Muir, the British historian, also complained of the 'dictatorship of the cabinet'. This phenomenon was witnessed during the era of Indira Gandhi and Rajiv Gandhi.

4. Against Separation of Powers In the parliamentary system, the legislature and the executive are together and inseparable. The cabinet acts as the leader of legislature as well as the executive. As Bagehot points out, 'the cabinet is a hyphen that joins the buckle that binds the executive and legislative departments together.' Hence, the whole system of government goes against the letter and spirit of the theory of separation of powers³. In fact, there is a fusion of powers.

5. Government by Amateurs The parliamentary system is not conducive to administrative efficiency as the ministers are not experts in their fields. The Prime Minister has a limited choice in the selection of ministers; his/her choice is restricted to the members of Parliament alone and does not extend to external talent. Moreover, the ministers devote most of their time to parliamentary work, cabinet meetings and party activities.

Reasons for adopting Parliamentary System

1. Familiarity with the System The Constitution-makers were somewhat familiar with the parliamentary system as it had been in operation in India during the British rule. K.M. Munshi argued that, 'For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our constitutional traditions have become Parliamentary. After this experience, why should we go back and buy a novel experience.'⁵

2. Preference to More Responsibility Dr. B.R. Ambedkar pointed out in the Constituent Assembly that 'a democratic executive must satisfy two conditions: stability and responsibility. Unfortunately, it has not been possible so far to devise a system which can ensure both in equal degree. The American system gives more stability but less responsibility. The British system, on the other hand, gives more responsibility but less stability. The Draft Constitution in recommending the parliamentary system of Executive has preferred more responsibility to more stability.

3. Need to Avoid Legislative—Executive Conflicts The framers of the Constitution wanted to avoid the conflicts between the legislature and the executive which are bound to occur in the presidential system prevalent in USA. They thought that an infant democracy could not afford to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between these two organs of the government. They wanted a form of government that would be conducive to the manifold development of the country.

4. Nature of Indian Society India is one of the most heterogeneous States and most complex plural societies in the world. Hence, the Constitution-makers adopted the parliamentary system as it offers greater scope for giving representation to various section, interests and regions in the government. This promotes a national spirit among the people and builds a united India.

Whether the parliamentary system should be continued or should be replaced by the presidential system has been a point of discussion and debate in our country since the 1970s. This matter was considered in detail by the Swaran Singh Committee appointed by the Congress government in 1975. The committee opined that the parliamentary system has been doing well and hence, there is no need to replace it by the presidential system.

	Parliamentary System	Presidential System
Features	<ol style="list-style-type: none"> 1. Dual executive. 2. Majority party rule 3. Collective responsibility. 4. Political homogeneity 5. Double membership. 6. Leadership of prime minister. 7. Dissolution of Lower House. 8. Fusion of powers. 	<ol style="list-style-type: none"> 1. Single executive. 2. President and legislators elected separately for a fixed term. 3. Non-responsibility 4. Political homogeneity may not exist. 5. Single membership 6. Domination of president. 7. No dissolution of Lower House. 8. Separation of powers.
Merit	<ol style="list-style-type: none"> 1. Harmony between legislature and executive. 2. Responsible government. 3. Prevents despotism. 4. Wide representation. 	<ol style="list-style-type: none"> 1. Stable government. 2. Definiteness in policies. 3. Based on separation of powers. 4. Government by experts
Demerits	<ol style="list-style-type: none"> 1. Unstable government. 2. No continuity of policies. 3. Against separation of powers 4. Government by amateurs. 	<ol style="list-style-type: none"> 1. Conflict between legislature and executive. 2. Non-responsible government. 3. May lead to autocracy. 4. Narrow representation.

Indian Model vs British Model

	UK	India
System of Govt	monarchical system- while the Head of the State in Britain (that is, King or Queen) enjoys a hereditary position.	Republic- Head of the State in India (that is, President) is elected,
Sovereignty	doctrine of the sovereignty of Parliament	limited and restricted powers due to a written Constitution, federal system, judicial review and fundamental rights.
Membership of PM in Parliament	Prime Minister should be a member of the Lower House (House of Commons) of the Parliament.	Prime Minister may be a member of any of the two Houses of Parliament . Note- 3 Prime Ministers, Indira Gandhi (1966), Deve Gowda (1996), and Manmohan Singh (2004), were members of the Rajya Sabha.
Membership of Parliament	Usually, the members of Parliament alone are appointed as ministers	a person who is not a member of Parliament can also be appointed as minister, but for a maximum period of six months.
legal responsibility of Ministers	system of legal responsibility of the minister	India has no such system Unlike in Britain, the ministers in India are not required to countersign the official acts of the Head of the State.
Shadow cabinet	a unique institution of the British cabinet system . It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office.	There is no such institution in India.

Notes :

1. The 42nd and 44th Amendment Acts of 1976 and 1978 respectively have made the ministerial advice binding on the president.
2. **dictatorship of the cabinet** : This theory was propounded by Montesquieu, a French political thinker, in his book *The Spirit of Laws* (1748) to promote individual liberty. He stated that concentration of powers in one person or a body of persons would result in despotism and negate individual liberty.

(2)Federal System

Political scientists have classified governments into unitary and federal on the basis of the nature of relations between the national government and the regional governments.

Unitary government	Federal government
one in which all the powers are vested in the national government and the regional governments, if at all exist, derive their authority from the national government.	one in which powers are divided between the national government and the regional governments by the Constitution itself and both operate in their respective jurisdictions independently.
Britain, France, Japan, China, Italy, Norway, Sweden	US, Switzerland, Australia, Canada, Russia, Brazil, Argentina
	<p>National government - Federal government or the Central government or the Union government Regional government - state government or the provincial government.</p> <ul style="list-style-type: none"> • The term 'federation' is derived from a Latin word <i>foedus</i> which means 'treaty' or 'agreement'. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units. • The units of a federation are known by various names like states (as in US) or cantons (as in Switzerland) or provinces (as in Canada) or republics (as in Russia). • A federation can be formed in two ways, that is, by way of integration or by way of disintegration. <ol style="list-style-type: none"> 1. a number of militarily weak or economically backward states (independent) come together to form a big and a strong union, as for example, the US. 2. a big unitary state is converted into a federation by granting autonomy to the provinces to promote regional interest (for example, Canada). The US is the first and the oldest federation in the world. It was formed in 1787 following the American Revolution (1775–83). It comprises 50 states (originally 13 states) and is taken as the model of federation. The Canadian Federation, comprising 10 provinces (originally 4 provinces) is also quite old—formed in 1867.

Federal Government	Unitary Government
1. Dual Government (that is, national government and regional government)	1. Single government, that is, the national government which may create regional governments
2. Written Constitution	2. Constitution may be written (France) or unwritten (Britain)
3. Division of powers between the national and regional government	3. No division of powers. All powers are vested in the national government
4. Supremacy of the Constitution	4. Constitution may be supreme (Japan) or may not be supreme (Britain)
5. Rigid Constitution	5. Constitution may be rigid (France) or flexible (Britain)
6. Independent judiciary	6. Judiciary may be independent or may not be independent
7. Bicameral legislature	7. Legislature may be bicameral (Britain) or unicameral (China)

- The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons—the large size of the country and its socio-cultural diversity. They realised that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.
- However, the term ‘federation’ has nowhere been used in the Constitution. Instead, Article 1 of the Constitution describes India as a ‘Union of States’. According to Dr. B.R. Ambedkar, the phrase ‘Union of States’ has been preferred to ‘Federation of States’ to indicate two things: **(i)** the Indian federation is not the result of an agreement among the states like the American federation; and **(ii)** the states have no right to secede from the federation. The federation is a union because it is indestructible.¹
- The Indian federal system is based on the ‘Canadian model’ and not on the ‘American model’. The ‘Canadian model’ differs fundamentally from the ‘American model’ in so far as it establishes a very strong centre. The Indian federation resembles the Canadian federation **(i)** in its formation (i.e., by way of disintegration); **(ii)** in its preference to the term ‘Union’ (the Canadian federation is also called a ‘Union’); and **(iii)** in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

Federal features of the constitution

1. Dual Polity

The Constitution establishes a dual polity consisting of the Union at the Centre and the states at the periphery. Each is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. The Union government deals with matters of national importance like defence, foreign affairs, currency, communication and so on. The state governments, on the other hand, look after matters of regional and local importance like public order, agriculture, health, local government and so on.

2. Written Constitution

The Constitution is not only a written document but also the lengthiest Constitution of the world. Originally, it contained a Preamble, 395 Articles (divided into 22 Parts) and 8 Schedules. At present, it consists of a Preamble, about 470 Articles (divided into 25 Parts) and 12 Schedules. It specifies the structure, organisation, powers and functions of both the Central and state governments and prescribes the limits within which they must operate. Thus, it avoids the misunderstandings and disagreements between the two.

3. Division of Powers

The Constitution divided the powers between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 98 subjects (originally 97), the State List 59 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. The residuary subjects (i.e., which are not mentioned in any of the three lists) are given to the Centre.

4. Supremacy of the Constitution

The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must conform to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

5. Rigid Constitution

The division of powers established by the Constitution as well as the supremacy of the Constitution can be maintained only if the method of its amendment is rigid. Hence, the Constitution is rigid to the extent that those provisions which are concerned with the federal structure (i.e., Centre–state relations and judicial organisation) can be amended only by the joint action of the Central and state governments. Such provisions require for their amendment a special majority of the Parliament and also an approval of half of the state legislatures.

6. Independent Judiciary

The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.

7. Bicameralism

The Constitution provides for a bicameral legislature consisting of an Upper House (Rajya Sabha) and a Lower House (Lok Sabha). The Rajya Sabha represents the states of Indian Federation, while the Lok Sabha represents the people of India as a whole. The Rajya Sabha (even though a less powerful chamber) is required to maintain the federal equilibrium by protecting the interests of the states against the undue interference of the Centre.

Unitary features of the Constitution

1. Strong Centre

The division of powers is in favour of the Centre and highly inequitable from the federal angle. Firstly, the Union List contains more subjects than the State List. Secondly, the more important subjects have been included in the Union List. Thirdly, the Centre has overriding authority over the Concurrent List. Finally, the residuary powers have also been left with the Centre, while in the US, they are vested in the states. Thus, the Constitution has made the Centre very strong.

2. States Not Indestructible

Unlike in some other federations, the states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.

3. Single Constitution

Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states. The Constitution of India embodies not only the Constitution of the Centre but also those of the states. Both the Centre and the states must operate within this single-frame. The only exception in this regard was the case of erstwhile Jammu and Kashmir which had its own (state) Constitution.⁵

4. Flexibility of the Constitution

The process of constitutional amendment is less rigid than what is found in other federations. The bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority. Further, the power to initiate an amendment to the Constitution lies only with the Centre. In US, the states can also propose an amendment to the Constitution.

5. No Equality of State Representation

The states are given representation in the Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31. In US, on the other hand, the principle of equality of representation of states in the Upper House is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

6. Emergency Provisions

The Constitution stipulates three types of emergencies—national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.

7. Single Citizenship

In spite of a dual polity, the Constitution of India, like that of Canada, adopted the system of single citizenship. There is only Indian Citizenship and no separate state citizenship. All citizens irrespective of the state in which they are born or reside enjoy the same rights all over the country. The other federal states like US and Australia have dual citizenship, that is, national citizenship as well as state citizenship.

8. Integrated Judiciary

The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. This single system of courts enforces both the Central laws as well as the state laws. In US, on the other hand, there is a double system of courts whereby the federal laws are enforced by the federal judiciary and the state laws by the state judiciary.

9. All-India Services

In US, the Federal government and the state governments have their separate public services. In India also, the Centre and the states have their separate public services. But, in addition, there are all-India services (IAS, IPS, and IFoS) which are common to both the Centre and the states. The members of these services are recruited and trained by the Centre which also possess ultimate control over them. Thus, these services violate the principle of federalism under the Constitution.

10. Integrated Audit Machinery

The Comptroller and Auditor-General of India audits the accounts of not only the Central government but also those of the states. But, his/her appointment and removal is done by the President without consulting the states. Hence, this office restricts the financial autonomy of the states. The American Comptroller-General, on the contrary, has no role with respect to the accounts of the states.

11. Parliament's Authority Over State List

Even in the limited sphere of authority allotted to them, the states do not have exclusive control. The Parliament is empowered to legislate on any subject of the State List if the Rajya Sabha passes a resolution to that effect in the national interest. This means that the legislative competence of the Parliament can be extended without amending the Constitution. Notably, this can be done when there is no emergency of any kind.

12. Appointment of Governor

The governor, who is the head of the state, is appointed by the President. He/she holds office during the pleasure of the President. He/she also acts as an agent of the Centre. Through him/her, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system.

13. Integrated Election Machinery

The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But, this body is constituted by the President and the states have no say in this matter. The position is same with regard to the removal of its members as well. On the other hand, US has separate machineries for the conduct of elections at the federal and state levels.

14. Veto Over State Bills

The governor is empowered to reserve certain types of bills passed by the state legislature for the consideration of the President. The President can withhold his assent to such bills not only in the first instance but also in the second instance. Thus, the President enjoys absolute veto (and not suspensive veto) over state bills. But in US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.

Critical evaluation of the Federal systems

From the above, it is clear that the Constitution of India has deviated from the traditional federal systems like US, Switzerland and Australia and incorporated a large number of unitary or non-federal features, tilting the balance of power in favour of the Centre. This has prompted the Constitutional experts to challenge the federal character of the Indian Constitution.	
KC Wheare	Constitution of India as "quasi-federal". He remarked that "Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features."
According to K Santhanam	two factors have been responsible for increasing the unitary bias (tendency of centralisation) of the Constitution. These are: (i) the dominance of the Centre in the financial sphere and the dependence of the states upon the Central grants; and (ii) the emergence of a powerful erstwhile planning commission which controlled the developmental process in the states. He observed: "India has practically functioned as a unitary state though the Union and the states have tried to function formally and legally as a federation."
, Paul Appleby	Indian system as "extremely federal"
Morris Jones	"bargaining federalism".
Ivor Jennings	"federation with a strong centralising tendency". He observed that "the Indian Constitution is mainly federal with unique safeguards for enforcing national unity and growth".
Alexandrowicz	"India is a case <i>sui generis</i> (i.e., unique in character).
Granville Austin, an American constitutional expert,	a "cooperative federalism". He said that though the Constitution of India has created a strong Central government, it has not made the state governments weak and has not reduced them to the level of administrative agencies for the execution of policies of the Central government.
Dr. B.R. Ambedkar	: "The Constitution is a Federal Constitution in as much as it establishes a dual polity. The Union is not a league of states, united in a loose relationship, nor are the states the agencies of the Union, deriving powers from it. Both the Union and the states are created by the Constitution, both derive their respective authority from the Constitution." He further observed: "Yet the Constitution avoids the tight mould of federalism and could be both unitary as well as federal according to the requirements of time and circumstances".

	<ul style="list-style-type: none"> • While replying to the criticism of over-centralisation in the Constitution, he stated: “A serious complaint is made on the ground that there is too much centralisation and the states have been reduced to municipalities. It is clear that this view is not only an exaggeration but is also founded on a misunderstanding of what exactly the Constitution contrives to do. As to the relations between the Centre and the states, it is necessary to bear in mind the fundamental principle on which it rests. The basic principle of federalism is that the legislative and executive authority is partitioned between the Centre and the states not by any law to be made by the Centre but by the Constitution itself. This is what the Constitution does. The states are in no way dependent upon the Centre for their legislative or executive authority. The states and the Centre are co-equal in this matter. It is difficult to see how such a Constitution can be called centralism. It is, therefore, wrong to say that the states have been placed under the Centre. The Centre cannot by its own will alter the boundary of this partition. Nor can the judiciary”.
<p><i>Bommai case(1994),</i></p>	<p>Supreme Court laid down that the Constitution is federal and characterised federalism as its ‘basic feature’. It observed: “The fact that under the scheme of our Constitution, greater power is conferred upon the Centre <i>vis-a-vis</i> the states does not mean that the states are mere appendages of the Centre. The states have an independent constitutional existence. They are not satellites or agents of the Centre. Within the sphere allotted to them, the states are supreme. The fact that during emergency and in certain other eventualities their powers are overridden or invaded by the Centre is not destructive of the essential federal feature of the Constitution. They are exceptions and the exceptions are not a rule. Let it be said that the federalism in the Indian Constitution is not a matter of administrative convenience, but one of principle—the outcome of our own process and a recognition of the ground realities”.</p>
<p>In fact,</p>	<p>the federalism in India represents a compromise between the following two conflicting considerations:</p> <ul style="list-style-type: none"> (i) normal division of powers under which states enjoy autonomy within their own spheres; and (ii) need for national integrity and a strong Union government under exceptional circumstances.

The following trends in the working of Indian political system reflects its federal spirit:

- (i) Territorial disputes between states, for example, between Maharashtra and Karnataka over Belgaum;
- (ii) Disputes between states over sharing of river water, for example, between Karnataka and Tamil Nadu over Cauvery water;
- (iii) The emergence of regional parties and their coming to power in states like Andhra Pradesh, Tamil Nadu, etc.;
- (iv) The creation of new states to fulfil the regional aspirations, for example, Mizoram or Jharkhand or Telangana;
- (v) Demand of the states for more financial grants from the Centre to meet their developmental needs; (vi) Assertion of autonomy by the states and their resistance to the interference from the Centre;
- (vii) Supreme Court’s imposition of several procedural limitations on the use of Article 356 (President’s Rule in the States) by the Centre.

(3) Centre–State Relations**Legislative , Executive & Financial relations , Trends & Development**

The Constitution of India, being federal in structure, divides all powers (legislative, executive and financial) between the Centre and the states. However, there is no division of judicial power as the Constitution has established an integrated judicial system to enforce both the Central laws as well as state laws.

Though the Centre and the states are supreme in their respective fields, the maximum harmony and coordination between them is essential for the effective operation of the federal system. Hence, the Constitution contains elaborate provisions to regulate the various dimensions of the relations between the Centre and the states.

The Centre-state relations can be studied under three heads:

- Legislative relations.
- Administrative relations.
- Financial relations.

Legislative relations

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states. Besides these, there are some other articles dealing with the same subject. Like any other Federal Constitution, the Indian Constitution also divides the legislative powers between the Centre and the states with respect to both the territory and the subjects of legislation. Further, the Constitution provides for the parliamentary legislation in the state field under five extraordinary situations as well as the centre's control over state legislation in certain cases.

Thus, there are four aspects in the Centre–states legislative relations, viz.,

- Territorial extent of Central and state legislation;
- Distribution of legislative subjects;
- Parliamentary legislation in the state field; and
- Centre's control over state legislation.

<p>1. Territorial Extent of Central and State Legislation</p>	<p>The Constitution defines the territorial limits of the legislative powers vested in the Centre and the states :</p> <p>(i) The Parliament can make laws for the whole or any part of the territory of India. The territory of India includes the states, the union territories, and any other area for the time being included in the territory of India.</p> <p>(ii) A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object.</p> <p>(iii) The Parliament alone can make 'extra-territorial legislation'. Thus, the laws of the Parliament are also applicable to the Indian citizens and their property in any part of the world.</p> <p>However, the Constitution places certain restrictions on the plenary territorial jurisdiction of the Parliament. In other words, the laws of Parliament are not applicable in the following areas:</p> <p>(i) The President can make regulations for the peace, progress and good government of the Union Territories of the <u>Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu and Ladakh</u>. In the case of Puducherry also, the President can legislate by making regulations but only when the Assembly is suspended or dissolved. A regulation so made has the same force and effect as an act of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.</p> <p>(ii) The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.</p> <p>(iii) The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.</p>
--	--

2. Distribution of Legislative Subjects

The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule:

(i) The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 98 subjects (originally 97 subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.

(ii) The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 59 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theaters, gambling and so on.

(iii) Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (originally 47 subjects) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others. The 42nd Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is, **(a)** education, **(b)** forests, **(c)** weights and measures, **(d)** protection of wild animals and birds, and **(e)** administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.

(iv) The Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state even though that matter is one which is enumerated in the State List. This provision has reference to the Union Territories or the Acquired Territories (if any).

(v) The 101st Amendment Act of 2016 has made a special provision with respect to goods and services tax. Accordingly, the Parliament and the state legislature have power to make laws with respect to goods and services tax imposed by the Union or by the State. Further, the parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of inter-state trade or commerce.

(vi) The power to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes.

From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.

In US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration—Federal and Provincial, and the residuary powers are vested in the Centre.

The Government of India Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the Governor-General of India. In this respect, India follows the Canadian precedent.

The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.

	<p>In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the central law prevails over the state law. But, there is an exception. If the state law has been reserved for the consideration of the President and has received his/her assent, then the state law prevails in that state. But, it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.</p>
<p>3. Parliamentary Legislation in the State Field</p>	<p>The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:</p> <p>A. When Rajya Sabha Passes a Resolution If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws with respect to goods and services tax or a matter in the 3a State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force. This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail.</p> <p>B. During a National Emergency The Parliament acquires the power to legislate with respect to goods and services tax or matters in the State List, while a proclamation of national emergency is in 3b operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate. Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.</p> <p>C. When States Make a Request When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states.</p> <p>The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.</p> <p>Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.</p> <p>D. To Implement International Agreements The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfil its international obligations and commitments.</p> <p>Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS.</p> <p>E. During President's Rule When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the</p>

president's rule. This means that the period for which such a law remains in force is not coterminous with the duration of the President's rule. But, such a law can be repealed or altered or re-enacted by the state legislature.

4. Centre's Control Over State Legislation

Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways:

(i) The Governor can reserve a bill passed by the state legislature for the consideration of the President. It must be noted here that the President enjoys absolute veto over such a bill (Articles 200 and 201).

(ii) A state bill imposing restrictions on the freedom of trade, commerce and intercourse with that state or within that state can be introduced in the legislature of the state only with the previous sanction of the President (Article 304).

(iii) The Centre can direct the states to reserve money bills and other financial bills passed by the state legislature for the President's consideration during a financial emergency (Article 360).

(iv) The Governor cannot make an ordinance without the instructions from the President in certain cases (Article 213).

From the above, it is clear that the Constitution has assigned a position of superiority to the Centre in the legislative sphere. In this context, the Sarkaria Commission on Centre–State Relations (1983–88) observed: “The rule of federal supremacy is a technique to avoid absurdity, resolve conflict and ensure harmony between the Union and state laws. If this principle of union supremacy is excluded, it is not difficult to imagine its deleterious results. There will be every possibility of our two-tier political system being stultified by interference, strife, legal chaos and confusion caused by a host of conflicting laws, much to the bewilderment of the common citizen. Integrated legislative policy and uniformity on basic issues of common Union–state concern will be stymied. The federal principle of unity in diversity will be very much a casualty. This rule of federal supremacy, therefore, is indispensable for the successful functioning of the federal system”.⁴

Administrative relations : Articles 256 to 263 in Part XI

<p>1. Distribution of Executive Powers</p>	<p>The executive power has been divided between the Centre and the states on the lines of the distribution of legislative powers, except in few cases. Thus, the executive power of the Centre extends to the whole of India: (i) to the matters on which the Parliament has exclusive power of legislation (i.e., the subjects enumerated in the Union List); and (ii) to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement. Similarly, the executive power of a state extends to its territory in respect of matters on which the state legislature has exclusive power of legislation (i.e., the subjects enumerated in the State List).</p> <p>In respect of matters on which both the Parliament and the state legislatures have power of legislation (i.e., the subjects enumerated in the Concurrent List), the executive power rests with the states except when a Constitutional provision or a parliamentary law specifically confers it on the Centre. Therefore, a law on a concurrent subject, though enacted by the Parliament, is to be executed by the states except when the Constitution or the Parliament has directed otherwise.⁵</p>
<p>2. Obligation of States and the Centre</p>	<p>The Constitution has placed two restrictions on the executive power of the states in order to give ample scope to the Centre for exercising its executive power in an unrestricted manner. Thus, the executive power of every state is to be exercised in such a way (a) as to ensure compliance with the laws made by the Parliament and any existing law which apply in the state; and (b) as not to impede or prejudice the exercise of executive power of the Centre in the state. While the former lays down a general obligation upon the state, the latter imposes a specific obligation on the state not to hamper the executive power of the Centre.</p> <p>In both the cases, the executive power of the Centre extends to giving of such directions to the state as are necessary for the purpose. The sanction behind these directions of the Centre is coercive in nature. Thus, Article 365 says that where any state has failed to comply</p>

	with (or to give effect to) any directions given by the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. It means that, in such a situation, the President's rule can be imposed in the state under Article 356.																
3. Centre's Directions to the States	<p>In addition to the above two cases, the Centre is empowered to give directions to the states with regard to the exercise of their executive power in the following matters:</p> <ul style="list-style-type: none"> (i) the construction and maintenance of means of communication (declared to be of national or military importance) by the state; (ii) the measures to be taken for the protection of the railways within the state; (iii) the provision of adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups in the state; and (iv) the drawing up and execution of the specified schemes for the welfare of the Scheduled Tribes in the state. <p>The coercive sanction behind the Central directions under Article 365 (mentioned above) is also applicable in these cases.</p>																
4. Mutual Delegation of Functions	<p>The distribution of legislative powers between the Centre and the states is rigid. Consequently, the Centre cannot delegate its legislative powers to the states and a single state cannot request the Parliament to make a law on a state subject. The distribution of executive power in general follows the distribution of legislative powers. But, such a rigid division in the executive sphere may lead to occasional conflicts between the two. Hence, the Constitution provides for inter-government delegation of executive functions in order to mitigate rigidity and avoid a situation of deadlock.</p> <ol style="list-style-type: none"> 1. President may, with the consent of the state government, entrust to that government any of the executive functions of the Centre. 2. Governor of a state may, with the consent of the Central government, entrust to that government any of the executive functions of the state. <p>This mutual delegation of administrative functions may be conditional or unconditional.</p> <ol style="list-style-type: none"> 1. Constitution - entrustment of the executive functions of the Centre to a state without the consent of that state. But, in this case, the delegation is by the Parliament and not by the president. Thus, a law made by the Parliament on a subject of the Union List can confer powers and impose duties on a state, or authorise the conferring of powers and imposition of duties by the Centre upon a state (irrespective of the consent of the state concerned). 2. Notably, the same thing cannot be done by the state legislature. <p>-> mutual delegation of functions between the Centre and the state can take place either under an agreement or by a legislation. While the Centre can use both the methods, a state can use only the first method.</p> <table border="1" data-bbox="373 1451 1481 1637"> <tr> <td>Mutual/Agreement</td> <td>Centre->State</td> <td>president</td> <td>consent of the state government</td> </tr> <tr> <td>Mutual/Agreement</td> <td>State->Centre</td> <td>Governor</td> <td>consent of the central government</td> </tr> <tr> <td>Legislation</td> <td>Centre->State</td> <td>Parliament</td> <td>With out consent of the state government</td> </tr> <tr> <td>Legislation</td> <td>State->Centre</td> <td>----</td> <td>Not applicable ; State can not use</td> </tr> </table>	Mutual/Agreement	Centre->State	president	consent of the state government	Mutual/Agreement	State->Centre	Governor	consent of the central government	Legislation	Centre->State	Parliament	With out consent of the state government	Legislation	State->Centre	----	Not applicable ; State can not use
Mutual/Agreement	Centre->State	president	consent of the state government														
Mutual/Agreement	State->Centre	Governor	consent of the central government														
Legislation	Centre->State	Parliament	With out consent of the state government														
Legislation	State->Centre	----	Not applicable ; State can not use														
5. Cooperation Between the Centre and States	<p>Constitution -</p> <ul style="list-style-type: none"> (i) The Parliament can provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley. (ii) The President can establish (under Article 263) an Inter-State Council to investigate and discuss subject of common interest between the Centre and the states. Such a council was set up in 1990. (iii) Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state. (iv) The Parliament can appoint an appropriate authority to carry out the purposes of the constitutional provisions relating to the interstate freedom of trade, commerce and intercourse. But, no such authority has been appointed so far. 																

6. All-India Services

- Like in any other federation, the Centre and the states also have their separate public services called as the Central Services and the State Services respectively.
- **All India Services:** All-India Services—IAS, IPS and IFoS. In 1947, Indian Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services. In 1966, the Indian Forest Service (IFoS) was created as the third All-India Service.
- The members of these services occupy top positions (or key posts) under **both the Centre and the states and serve them by turns**. But, they are **recruited and trained by the Centre**.
- **Control** : These services are controlled jointly by the Centre and the states. The ultimate control lies with the Central government while the immediate control vests with the state governments.
- **Article 312** : Parliament can create new All-India Services on the basis of a Rajya Sabha resolution to that effect.
- Each of these three All-India Services, irrespective of their division among different states, form a single service with common rights and status and uniform scales of pay throughout the country.
- Though the All-India Services violate the principle of federalism under the Constitution by restricting the autonomy and patronage of the states, they are supported on the ground that **(i)** they help in maintaining **high standard of administration** in the Centre as well as in the states; **(ii)** they help to ensure **uniformity of the administrative system** throughout the country; and **(iii)** they facilitate **liaison, cooperation, coordination and joint action** on the issues of **common interest** between the Centre and the states.

7. Public Service Commissions

	appointed by	removed only by
The Chairman and members of a state public service commission	governor of the state	President
Parliament can establish a Joint State Public Service Commission (JSPSC) for 2 or more states on the request of the state legislatures concerned.	President	President
UPSC can serve the needs of a state on the request of the state governor and with the approval of the President.		
UPSC assists the states (when requested by two or more states) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.		

Where Everyday Is Exam Day

8. Integrated Judicial System

- India has a dual polity, but no dual system of administration of justice.
- Constitution- integrated judicial system with the Supreme Court at the top and the state high courts below it.
- **This single system of courts** enforces both the Central laws as well as the state laws.
- This is done to eliminate diversities in the remedial procedure.
- The judges of a state high court are appointed by the President in consultation with the Chief Justice of India and the governor of the state. They can also be transferred and **removed by the President**.
- Parliament can establish a **common high court** for two or more states. For example, Maharashtra and goa or Punjab and Haryana have a common high court.

<p>9. Relations During Emergencies</p>	<p>(i) During the operation of a national emergency (under Article 352), the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.</p> <p>(ii) When the President's Rule is imposed in a state (under Article 356), the President can assume to himself/herself the functions of the state government and powers vested in the Governor or any other executive authority in the state.</p> <p>(iii) During the operation of a financial emergency (under Article 360), the Centre can direct the states to observe canons of financial propriety and can give other necessary directions including the reduction of salaries of persons serving in the state.</p>
<p>10. Other Provisions</p>	<p>(i) Article 355 imposes two duties on the Centre:</p> <p>(a) to protect every state against external aggression and internal disturbance; and</p> <p>(b) to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.</p> <p>(ii) The governor of a state is appointed by the President. He/she holds office during the pleasure of the President. In addition to the Constitutional head of the state, the governor acts as an agent of the Centre in the state. He/she submits periodical reports to the Centre about the administrative affairs of the state.</p> <p>(iii) The state election commissioner, though appointed by the governor of the state, can be removed only by the President.</p>
<p>11. Extra-Constitutional Devices</p>	<p>In addition to the above-mentioned constitutional devices, there are extra-constitutional devices to promote cooperation and coordination between the Centre and the states. These include a number of advisory bodies and conferences held at the Central level.</p> <p>The non-constitutional advisory bodies include the NITI Ayog (which succeeded the planning commission), the National Integration Council, the Central Council of Health and Family Welfare, the Central Council of Local Government, the Zonal Councils, the North-Eastern Council, the Central Council of Indian Medicine, the Central Council of Homoeopathy, the Transport Development Council, the University Grants Commission and so on.</p> <p>The important conferences held either annually or otherwise to facilitate Centre–state consultation on a wide range of matters are as follows: (i) The governors' conference (presided over by the President). (ii) The chief ministers' conference (presided over by the prime minister). (iii) The chief secretaries' conference (presided over by the cabinet secretary). (iv) The conference of inspector-general of police. (v) The chief justices' conference (presided over by the chief justice of India). (vi) The conference of vice-chancellors. (vii) The home ministers' conference (presided over by the Central home minister). (viii) The law ministers' conference (presided over by the Central law minister).</p>

Financial relations: Articles 268 to 293 in Part XII

<p>1. Allocation of Taxing Powers</p>	<p>The Constitution divides the taxing powers between the Centre and the states in the following way:</p> <ul style="list-style-type: none"> • The Parliament has exclusive power to levy taxes on subjects enumerated in the Union List (which are 13 in number8). • The state legislature has exclusive power to levy taxes on subjects enumerated in the State List (which are 18 in number9). • There are no tax entries in the Concurrent List. In other words, the concurrent jurisdiction is not available with respect to tax legislation. But, the 101st Amendment Act of 2016 has made an exception by making a special provision with respect to goods and services tax. This Amendment has conferred concurrent power upon the Parliament and State Legislatures to make laws governing goods and services tax10. • The residuary power of taxation (that is, the power to impose taxes not enumerated in any of the three lists) is vested in the Parliament. Under this provision, the Parliament has imposed gift tax, wealth tax and expenditure tax.
--	---

The Constitution also draws a distinction between the power to levy and collect a tax and the power to appropriate the proceeds of the tax so levied and collected. For example, the income-tax is levied and collected by the Centre but its proceeds are distributed between the Centre and the states.

Constitution - restrictions on the taxing powers of the states:

(i) A state legislature can impose taxes on professions, trades, callings and employments. But, the total amount of such taxes payable by any person should not exceed ₹2,500 per annum.

(ii) A state legislature is prohibited from imposing a tax on the supply of goods or services or both in the following two cases: (a) where such supply takes place outside the state; and (b) where such supply takes place in the course of import or export. Further, the Parliament is empowered to formulate the principles for determining when a supply of goods or services or both takes place outside the state, or in the course of import or export.

(iii) A state legislature can impose tax on the consumption or sale of electricity. But, no tax can be imposed on the consumption or sale of electricity which is (a) consumed by the Centre or sold to the Centre; or (b) consumed in the construction, maintenance or operation of any railway by the Centre or by the concerned railway company or sold to the Centre or the railway company for the same purpose.

(iv) A state legislature can impose a tax in respect of any water or electricity stored, generated, consumed, distributed or sold by any authority established by Parliament for regulating or developing any inter-state river or river valley. But, such a law, to be effective, should be reserved for the president's consideration and receive his/her assent.

2. Distribution of Tax Revenues

80th Amendment Act of 2000 and the **101st Amendment Act of 2016** have introduced major changes in the scheme of the distribution of tax revenues between the centre and the states.

Alternative Scheme of Devolution: 10th Finance Commission recommended that out of the total income obtained from certain central taxes and duties, 29% should go to the states. W.e.f. retrospectively from April 1, 1996. This amendment has brought several central taxes and duties like Corporation Tax and Customs Duties at par with Income Tax (taxes on income other than agricultural income) as far as their constitutionally mandated sharing with the states is concerned. : **80th Amendment –give effect to 10th FC recommendations**

101st Amendment - introduction of a new tax regime (i.e., goods and services tax – GST) in the country. concurrent taxing powers upon the Parliament and the State Legislatures to make laws for levying GST on every transaction of supply of goods or services or both. The GST replaced a number of indirect taxes levied by the Union and the State Governments and is intended to remove the cascading effect of taxes and provide for a common national market for goods and services.

subsuming of various central indirect taxes and levies	subsuming of State taxes
(i) Central Excise Duty, (ii) Additional Excise Duties, (iii) Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, (iv) Service Tax, (v) Additional Customs Duty commonly known as Countervailing Duty, (vi) Special Additional Duty of Customs, and (vii) Central Surcharges and Cesses so far as they related to the supply of goods and services.	(i) State Value Added Tax / Sales Tax, (ii) Entertainment Tax (other than the tax levied by the local bodies), (iii) Central Sales Tax (levied by the Centre and collected by the States), (iv) Octroi and Entry Tax, (v) Purchase Tax, (vi) Luxury Tax, (vii) Taxes on lottery, betting and gambling, and (viii) State Surcharges and Cesses in so far as they related to the supply of goods and services.

Amendment **deleted Article 268-A as well as Entry 92-C in the Union List**, both were dealing with service tax. They were added earlier by the **88th Amendment Act of 2003**. The

	<p>service tax was levied by the Centre but collected and appropriated by both the Centre and the States.</p> <p>After the 80th Amendment and 101st Amendment, the present position with respect to the distribution of CS tax revenues -</p>
A. Taxes Levied by the Centre but Collected and Appropriated by the States (Article 268):	<ul style="list-style-type: none"> stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others. proceeds of these duties levied within any state do not form a part of the Consolidated Fund of India, but are assigned to that state.
B. Taxes Levied and Collected by the Centre but Assigned to the States (Article 269):	<p>(i) Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce.</p> <p>(ii) Taxes on the consignment of goods in the course of inter-state trade or commerce.</p> <p>The net proceeds of these taxes do not form a part of the Consolidated Fund of India. They are assigned to the concerned states in accordance with the principles laid down by the Parliament.</p>
C. Levy and Collection of Goods and Services Tax in Course of Inter-State Trade or Commerce (Article 269-A):	<p>The Goods and Services Tax (GST) on supplies in the course of inter-state trade or commerce are levied and collected by the Centre. But, this tax is divided between the Centre and the States in the manner provided by Parliament on the recommendations of the GST Council. Further, the Parliament is also authorized to formulate the principles for determining the place of supply, and when a supply of goods or services or both takes place in the course of inter-state trade or commerce.</p>
D. Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270):	<p>all taxes and duties referred to in the Union List except :</p> <p>(i) Duties and taxes referred to in Articles 268, 269 and 269-A (mentioned above);</p> <p>(ii) Surcharge on taxes and duties referred to in Article 271 (mentioned below); and</p> <p>(iii) Any cess levied for specific purposes.</p> <p>The manner of distribution of the net proceeds of these taxes and duties is prescribed by the President on the recommendation of the Finance Commission.</p>
E. Surcharge on Certain Taxes and Duties for Purposes of the Centre (Article 271):	<p>The Parliament can at any time levy the surcharges on taxes and duties referred to in Articles 269 and 270 (mentioned above). The proceeds of such surcharges go to the Centre exclusively. In other words, the states have no share in these surcharges.</p> <p>However, the Goods and Services Tax (GST) is exempted from this surcharge. In other words, this surcharge can not be imposed on the GST.</p>
F. Taxes Levied and Collected and Retained by the States:	<p>Exclusive lists for states - state list [18] (i) land revenue; (ii) taxes on agricultural income; (iii) duties in respect of succession to agricultural land; (iv) estate duty in respect of agricultural land; (v) taxes on lands and buildings; (vi) taxes on mineral rights; (vii) Duties of excise on alcoholic liquors for human consumption; opium, Indian hemp and other narcotic drugs and narcotics, but not including medicinal and toilet preparations containing alcohol or narcotics; (viii) taxes on the consumption or sale or electricity; (ix) taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-state trade or commerce or sale in the course of international trade or commerce of such goods; (x) taxes on goods and passengers carried by road or inland waterways; (xi) taxes on vehicles; (xii) taxes on animals and boats; (xiii) tolls; (xiv) taxes on professions, trades, callings and employments; (xv) capitation taxes; (xvi) taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council; (xvii) stamp duty on documents (except those specified in the Union List); and (xviii) fees on the matters enumerated in the State List (except court fees).</p>

<p>3. Distribution of Non-tax Revenues</p>	<p>A. The Centre The receipts from the following form the major sources of non-tax revenues of the Centre: (i) posts and telegraphs; (ii) railways; (iii) banking; (iv) broadcasting (v) coinage and currency; (vi) central public sector enterprises; (vii) escheat and lapse; and (viii) others.</p> <p>B. The States The receipts from the following form the major sources of non-tax revenues of the states: (i) irrigation; (ii) forests; (iii) fisheries; (iv) state public sector enterprises; (v) escheat and lapse; and (vi) others.</p>
<p>4. Grants-in-Aid to the States</p>	<p>types of grants-in-aid, viz, statutory grants and discretionary grants:</p> <p>A. Statutory Grants</p> <ul style="list-style-type: none"> • Article 275 - Parliament to make grants to the states which are in need of financial assistance and not to every state. Also, different sums may be fixed for different states. These sums are charged on the Consolidated Fund of India every year. • Constitution also provides for specific grants for promoting the welfare of the scheduled tribes in a state or for raising the level of administration of the scheduled areas in a state including the State of Assam. • The statutory grants under Article 275 (both general and specific) are given to the states on the recommendation of the Finance Commission. <p>B. Discretionary Grants</p> <ul style="list-style-type: none"> • Article 282 - both the Centre and the states to make any grants for any public purpose, even if it is not within their respective legislative competence. Under this provision, the Centre makes grants to the states. • “These grants are also known as discretionary grants, the reason being that the Centre is under no obligation to give these grants and the matter lies within its discretion. • 2-fold purpose: to help the state financially to fulfil plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan.” <p>C. Other Grants :</p> <p>Constitution also provided for a third type of grants-in-aid, but for a temporary period. Thus, a provision was made for grants in lieu of export duties on jute and jute products to the States of Assam, Bihar, Orissa and west Bengal. These grants were to be given for a period of 10 years from the commencement of the Constitution. These sums were charged on the Consolidated Fund of India and were made to the states on the recommendation of the Finance Commission.</p>
<p>5. Goods and Services Tax Council</p>	<p>The smooth and efficient administration of the goods and services tax (GST) requires a co-operation and co-ordination between the Centre and the States. In order to facilitate this consultation process, the 101st Amendment Act of 2016 provided for the establishment of a Goods and Services Tax Council or the GST Council.</p> <p>Article 279-A - President to constitute a GST Council by an order.</p> <p>The Council is a joint forum of the Centre and the States.</p> <p>It is required to make recommendations to the Centre and the States on</p> <p>(a) The taxes, cesses and surcharges levied by the Centre, the States and the local bodies that would get merged in GST.</p> <p>(b) The goods and services that may be subjected to GST or exempted from GST.</p> <p>(c) Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce and the principles that govern the place of supply.</p> <p>(d) The threshold limit of turnover below which goods and services may be exempted from GST.</p> <p>(e) The rates including floor rates with bands of GST.</p> <p>(f) Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster</p>

<p>6. Finance Commission</p>	<p>Article 280 - Finance Commission as a quasi-judicial body. It is constituted by the President every 5th year or even earlier. It is required to make recommendations to the President on the following matters:</p> <ul style="list-style-type: none"> • The distribution of the net proceeds of taxes to be shared between the Centre and the states, and the allocation between the states, the respective shares of such proceeds. • The principles which should govern the grants-in-aid to the states by the Centre (i.e., out of the Consolidated Fund of India). • The measures needed to augment the Consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the State Finance Commission.¹⁷ • Any other matter referred to it by the President in the interests of sound finance. <p>Till 1960, the Commission also suggested the amounts paid to 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.</p> <p>The Constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India.</p>
<p>7. Protection of the States' Interest</p>	<p>To protect the interest of states in the financial matters, the Constitution lays down that the following bills can be introduced in the Parliament only on the recommendation of the President:</p> <ul style="list-style-type: none"> • A bill which imposes or varies any tax or duty in which states are interested; • A bill which varies the meaning of the expression 'agricultural income' as defined for the purposes of the enactments relating to Indian income tax; • A bill which affects the principles on which moneys are or may be distributable to states; and • A bill which imposes any surcharge on any specified tax or duty for the purpose of the Centre. <p>"tax or duty in which states are interested" means:</p> <p>(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any state; or (b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable, out of the Consolidated Fund of India to any state.</p> <p>'net proceeds' = proceeds of a tax or a duty minus the cost of collection.</p> <p>The net proceeds of a tax or a duty in any area is to be ascertained and certified by the Comptroller and Auditor-General of India. His/her certificate is final.</p>
<p>8. Borrowing by the Centre and the States</p>	<ul style="list-style-type: none"> • The Central government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament. • State government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state. • Central government can make loans to any state or give guarantees in respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India. • A state cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.
<p>9. Inter-Governmental Tax Immunities</p>	<p>Like any other federal Constitution, the Indian Constitution also contain the rule of 'immunity from mutual taxation' and makes the following provisions in this regard:</p> <p>A. Exemption of Central Property from State Taxation The property of Centre is exempted from all taxes imposed by a state or any authority within a state like municipalities, district boards, panchayats and so on. But, the Parliament is empowered to remove this ban. The word 'property' includes lands, buildings, chattels, shares, debts, everything that has a</p>

	<p>money value, and every kind of property—movable or immovable and tangible or intangible. Further, the property may be used for sovereign (like armed forces) or commercial purposes. The corporations or the companies created by the Central government are not immune from state taxation or local taxation. The reason is that a corporation or a company is a separate legal entity.</p> <p>B. Exemption of State Property or Income from Central Taxation The property and income of a state is exempted from Central taxation. Such income may be derived from sovereign functions or commercial functions. But the Centre can tax the commercial operations of a state if Parliament so provides. However, the Parliament can declare any particular trade or business as incidental to the ordinary functions of the government and it would then not be taxable.</p> <p>Notably, the property and income of local authorities situated within a state are not exempted from the Central taxation. Similarly, the property or income of corporations and companies owned by a state can be taxed by the Centre.</p> <p>The Supreme Court, in an advisory opinion(1963), held that the immunity granted to a state in respect of Central taxation does not extend to the duties of customs or duties of excise. In other words, the Centre can impose customs duty on goods imported or exported by a state, or an excise duty on goods produced or manufactured by a state.</p>
<p>10. Effects of Emergencies</p>	<p>The Centre–state financial relations in normal times (described above) undergo changes during emergencies. These are as follows:</p> <p>A. National Emergency While the proclamation of national emergency (under Article 352) is in operation, the President can modify the constitutional distribution of revenues between the Centre and the states. This means that the President can either reduce or cancel the transfer of finances (both tax sharing and grants-in-aid) from the Centre to the states. Such modification continues till the end of the financial year in which the emergency ceases to operate.</p> <p>B. Financial Emergency While the proclamation of financial emergency (under Article 360) is in operation, the Centre can give directions to the states: (i) to observe the specified canons of financial propriety; (ii) to reduce the salaries and allowances of all class of persons serving in the s</p>

Trends in Centre State relations

Till 1967, the centre–state relations by and large were smooth due to one-party rule at the Centre and in most of the states. In 1967 elections, the Congress party was defeated in nine states and its position at the Centre became weak. This changed political scenario heralded a new era in the Centre–state relations. The non-Congress Governments in the states opposed the increasing centralisation and intervention of the Central government. They raised the issue of state autonomy and demanded more powers and financial resources to the states. This caused tensions and conflicts in Centre–state relations.

Tension Areas in Centre-State Relations

The issues which created tensions and conflicts between the Centre and states are:

- (1) Mode of appointment and dismissal of governor;
- (2) Discriminatory and partisan role of governors;
- (3) Imposition of President’s Rule for partisan interests;
- (4) Deployment of Central forces in the states to maintain law and order;
- (5) Reservation of state bills for the consideration of the President;
- (6) Discrimination in financial allocations to the states;
- (7) Role of Planning Commission in approving state projects; (till its replacement by the NITI Aayog in 2015);
- (8) Management of All-India Services (IAS, IPS, and IFoS);
- (9) Use of electronic media for political purposes;
- (10) Appointment of enquiry commissions against the chief ministers;
- (11) Sharing of finances (between Centre and states);
- (12) Encroachment by the Centre on the State List;
- (13) Implementation of the Centrally sponsored schemes by the states; and
- (14) Modus operandi of the central agencies like CBI, ED and so on.

Development to resolve the Interstate relations

<p>Administrative Reforms Commission</p>	<ul style="list-style-type: none"> • The Central government appointed a six-member First Administrative Reforms Commission (ARC) of India in 1966 under the chairmanship of Morarji Desai (followed by K Hanumanthayya). • Its terms of references included, among others, the examination of Centre–State relations. In order to examine thoroughly the various issues in Centre–state relations, the ARC constituted a study team under M.C. Setalvad. • On the basis of the report of this study team, the ARC finalised its own report and submitted it to the Central government in 1969. <p>It made 22 recommendations for improving the Centre–state relations including,</p> <ul style="list-style-type: none"> ✓ Establishment of an Inter-State Council under Article 263 of the Constitution. ✓ Appointment of persons having long experience in public life and administration and non-partisan attitude as governors. ✓ Delegation of powers to the maximum extent to the states. ✓ Transferring of more financial resources to the states to reduce their dependency upon the Centre. ✓ Deployment of Central armed forces in the states either on their request or otherwise. <p>No action was taken by the Central government on the recommendations of the ARC.</p>
<p>Rajamannar Committee</p>	<p>In 1969, the Tamil Nadu Government (DMK) appointed a 3-member committee under the chairmanship of Dr. P.V. Rajamannar to examine the entire question of Centre–state relations and to suggest amendments to the Constitution so as to secure utmost autonomy to the states. The 19 committee submitted its report to the Tamil Nadu Government in 1971. The Committee identified the reasons for the prevailing unitary trends (tendencies of centralisation) in the country. They include: (i) certain provisions in the Constitution which confer special powers on the Centre; (ii) one-party rule both at the Centre and in the states; (iii) inadequacy of states’ fiscal resources and consequent dependence on the Centre for financial assistance; and (iv) the institution of Central planning and the role of the Planning Commission. The important recommendations of the committee are as follows: (i) An Inter-State Council should be set up immediately; (ii) Finance Commission should be made a permanent body; (iii) Planning Commission should be disbanded and its place should be taken by a statutory body; (iv) Articles 356, 357 and 365 (dealing with President’s Rule) should be totally omitted; (v) The provision that the state ministry holds office during the pleasure of the governor should be omitted; (vi) Certain subjects of the Union List and the Concurrent List should be transferred to the State List; (vii) the residuary powers should be allocated to the states; and (viii) All-India services (IAS, IPS and IFoS) should be abolished. The Central government completely ignored the recommendations of the Rajamannar Committee.</p>
<p>Anandpur Sahib Resolution</p>	<p>In 1973, the Akali Dal adopted a resolution containing both political and religious demands in a meeting held at Anandpur Sahib in Punjab. The resolution, generally known as Anandpur Sahib Resolution, demanded that the Centre’s jurisdiction should be restricted only to defence, foreign affairs, communications, and currency and the entire residuary powers should be vested in the states. It stated that the Constitution should be made federal in the real sense and should ensure equal authority and representation to all the states at the Centre.</p>
<p>West Bengal Memorandum</p>	<p>In 1977, the West Bengal Government (led by the Communists) published a memorandum on Centre–state relations and sent it to the Central government. The memorandum inter alia suggested the following: (i) The word ‘union’ in the Constitution should be replaced by the word ‘federal’; (ii) The jurisdiction of the Centre should be confined to defence, foreign affairs, currency, communications and economic co-ordination; (iii) All other subjects including the residuary should be vested in the states; (iv) Articles 356 and 357 (President’s Rule) and 360 (financial emergency) should be repealed; (v) State’s consent should be made obligatory for formation of new states or reorganisation of existing states; (vi) Of the total revenue raised by the Centre from all sources, 75 per cent should be allocated to the states; (vii) Rajya Sabha</p>

	<p>should have equal powers with that of the Lok Sabha; and (viii) There should be only Central and state services and the All-India Services should be abolished.</p> <p>The Central government did not accept the demands made in the memorandum.</p>
<p>Sarkaria Commission</p>	<p>In 1983, the Central government appointed a three-member Commission on Centre–state relations under the chairmanship of R.S. Sarkaria, a retired judge of the Supreme Court. The commission was asked to examine and review the working of existing arrangements between the Centre and states in all spheres and recommend appropriate changes and measures. It submitted its report in 1988. The Commission did not favour structural changes and regarded the existing constitutional arrangements and principles relating to the institutions basically sound. But, it emphasised on the need for changes in the functional or operational aspects. It observed that federalism is more a functional arrangement for co-operative action than a static institutional concept. It outrightly rejected the demand for curtailing the powers of the Centre and stated that a strong Centre is essential to safeguard the national unity and integrity which is being threatened by the fissiparous tendencies in the body politic. However, it did not equate strong Centre with centralisation of powers. It observed that over-centralisation leads to blood pressure at the centre and anaemia at the periphery. The Commission made 247 recommendations to improve Centre–state relations.</p> <ol style="list-style-type: none"> 1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263. 2. Article 356 (President’s Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail. 3. All-India Services should be further strengthened and more of such services should be created. 4. Residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List. 5. When the President withholds his/her assent to the state bills, the reasons should be communicated to the state government. 6. NDC should be renamed and reconstituted as the National Economic and Development Council (NEDC). 7. Zonal councils should be constituted afresh and reactivated to promote the spirit of federalism. 8. Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted. 9. Centre should consult the states before making a law on a subject of the Concurrent List. 10. Procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself. 11. Net proceeds of the corporation tax may be made permissibly shareable with the states. 12. The governor cannot dismiss the council of ministers so long as it commands a majority in the assembly. 13. Governor’s term of 5 years in a state should not be disturbed except for some extremely compelling reasons. 14. No commission of enquiry should be set up against a state minister unless a demand is made by the Parliament. 15. Surcharge on income tax should not be levied by the Centre except for a specific purpose and for a strictly limited period. 16. Present division of functions between the Finance Commission and the Planning Commission is reasonable and should continue. 17. Steps should be taken to uniformly implement the three language formula in its true spirit. 18. No autonomy for radio and television but decentralisation in their operations. 19. No change in the role of Rajya Sabha and Centre’s power to reorganise the states. 20. The commissioner for linguistic minorities should be activated. <p>Central government has implemented 180 (out of 247) recommendations of the Sarkaria Commission. The most important is the establishment of the Inter-State Council in 1990.</p>

Punchhi
Commission

The **Second commission on Centre-State Relations was set-up by the Government of India in 2007 under the Chairmanship of Madan Mohan Punchhi, former Chief Justice of India.**

It was required to look into 21 the issues of Centre-State relations keeping in view the sea-changes that have taken place in the polity and economy of India since the Sarkaria Commission had last looked at the issue of Centre-State relations over two decades ago. The Commission submitted its report to the government in 2010. In finalising the 1,456 page report, in seven volumes, the Commission took extensive help from the Sarkaria Commission report, the National Commission to Review the Working of the Constitution (NCRWC) report and the Second Administrative Reforms Commission report. However, in a number of areas, the Commission report differed from the Sarkaria Commission recommendations.

After examining at length the issues raised in its Terms of Reference and the related aspects in all their hues and shades, the Commission came to the conclusion that 'cooperative federalism' will be the key for sustaining India's unity, integrity and social and economic development in future. The principles of cooperative federalism thus may have to act as a practical guide for Indian polity and governance.

In all, the Commission made over 310 recommendations, touching upon several significant areas in the working of Centre-state relations. The important recommendations are mentioned below:

To facilitate effective implementation of the laws on List III subjects, it is necessary that some broad agreement is reached between the Union and states before introducing legislation in Parliament on matters in the Concurrent List.

2. The Union should be extremely restrained in asserting Parliamentary supremacy in matters assigned to the states. Greater flexibility to states in relation to subjects in the State List and "transferred items" in the Concurrent List is the key for better Centre-state relations.
3. The Union should occupy only that many of subjects in concurrent or overlapping jurisdiction which are absolutely necessary to achieve uniformity of policy in demonstrable national interest.
4. There should be a continuing auditing role for the Inter-state Council in the management of matters in concurrent or overlapping jurisdiction.
5. The period of six months prescribed in Article 201 for State Legislature to act when the bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a state bill reserved for consideration of the President.
6. Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers.
7. Financial obligations and its implications on state finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time.
8. While selecting Governors, the Central Government should adopt the following strict guidelines as recommended in the Sarkaria Commission report and follow its mandate in letter and spirit:
 - (i) He/she should be eminent in some walk of life
 - (ii) He/she should be a person from outside the state
 - (iii) He/she should be a detached figure and not too intimately connected with the local politics of the state
 - (iv) He/she should be a person who has not taken too great a part in politics generally and particularly in the recent past
9. Governors should be given a fixed tenure of five years and their removal should not be at the sweet will of the Government at the Centre.
10. The procedure laid down for impeachment of President, mutatis mutandis can be made applicable for impeachment of Governors as well.
11. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his/her Council of Ministers. In fact, the area for the exercise of discretion

is limited and even in this limited area, his/her choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.

12. In respect of bills passed by the Legislative Assembly of a state, the Governor should take the decision within six months whether to grant assent or to reserve it for consideration of the President.

13. On the question of Governor's role in appointment of Chief Minister in the case of an hung assembly, it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions. These guidelines may be as follows:

(i) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.

(ii) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.

14. On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his/her majority on the floor of the House for which he/she should prescribe a time limit.

15. The Governor should have the right to sanction for prosecution of a state minister against the advice of the Council of Ministers, if the Cabinet decision appears to the Governor to be motivated by bias in the face of overwhelming material.

16. The convention of Governors acting as Chancellors of Universities and holding other statutory positions should be done away with. His/her role should be confined to the Constitutional provisions only.

17. When an external aggression or internal disturbance paralyses the state administration creating a situation of a potential break down of the Constitutional machinery of the state, all alternative courses available to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Article 356 should be limited strictly to rectifying a "failure of the Constitutional machinery in the state".

18. On the question of invoking Article 356 in case of failure of Constitutional machinery in states, suitable amendments are required to incorporate the guidelines set forth in the landmark judgement of the Supreme Court in **S.R. Bommai** case(1994). This would remove possible 22 misgivings in this regard on the part of states and help in smoothening Centre-state relations.

19. Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of "last resort", and the duty of the Union to protect states under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for "localised emergency" would ensure that the state government can continue to function and the Assembly would not have to be dissolved while providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I and Entry 1 of List II of the Seventh Schedule.

20. Suitable amendments to Article 263 are required to make the Inter-State Council a credible, powerful and fair mechanism for management of inter-state and Centre-state differences.

21. The Zonal Councils should meet at least twice a year with an agenda proposed by states concerned to maximise co-ordination and promote harmonisation of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.

22. The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-state co-ordination on fiscal matters. There is need to institutionalise similar models in other sectors as well. A forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to co-ordinate policies of sectors like energy, food, education, environment and health.

23. New all-India services in sectors like health, education, engineering and judiciary should be created.
24. Factors inhibiting the composition and functioning of the Second Chamber as a representative forum of states should be removed or modified even if it requires amendment of the Constitutional provisions. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the friction points which emerge between Centre and states in fiscal, legislative and administrative relations.
25. A balance of power between states *inter se* is desirable and this is possible by equality of representation in the Rajya Sabha. This requires amendment of the relevant provisions to give equality of seats to states in the Rajya Sabha, irrespective of their population size.
26. The scope of devolution of powers to local bodies to act as institutions of self- government should be constitutionally defined through appropriate amendments.
27. All future Central legislations involving states' involvement should provide for cost sharing as in the case of the RTE Act. Existing Central legislations where the states are entrusted with the responsibility of implementation should be suitably amended providing for sharing of costs by the Central Government.
28. The royalty rates on major minerals should be revised at least every three years without any delay. States should be properly compensated for any delay in the revision of royalty beyond three years.
29. The current ceiling on profession tax should be completely done away with by a Constitutional amendment.
30. The scope for raising more revenue from the taxes mentioned in article 268 should be examined afresh. This issue may be either referred to the next Finance Commission or an expert committee be appointed to look into the matter.
31. To bring greater accountability, all fiscal legislations should provide for an annual assessment by an independent body and the reports of these bodies should be laid in both Houses of Parliament/state legislature.
32. Considerations specified in the Terms of Reference (ToR) of the Finance Commission should be even handed as between the Centre and the states. There should be an effective mechanism to involve the states in the finalisation of the ToR of the Finance Commissions.
33.
The Central Government should review all the existing cesses and surcharges with a view to bringing down their share in the gross tax revenue.
34. Because of the close linkages between the plan and non-plan expenditure, an expert committee may be appointed to look into the issue of distinction between the plan and non-plan expenditure.
35. There should be much better coordination between the Finance Commission and the Planning Commission. The synchronisation of the periods covered by the Finance Commission and the Five-Year Plan will considerably improve such coordination.
36. The Finance Commission division in the Ministry of Finance should be converted into a full-fledged department, serving as the permanent secretariat for the Finance Commissions.
37. The Planning Commission has a crucial role in the current situation. But its role should be that of coordination rather that of micro managing sectoral plans of the Central ministries and the states.
38. Steps should be taken for the setting up of an Inter-State Trade and Commerce Commission under Article 307 read with Entry 42 of List-I. This Commission should be vested with both advisory and executive roles with decision making powers. As a Constitutional body, the decisions of the Commission should be final and binding on all states as well as the Union of India. Any party aggrieved with the decision of the Commission may prefer an appeal to the Supreme Court.
- The recommendations contained in the Report of the Punchhi Commission have been considered by the Standing Committee of the Inter-State Council in its meetings held in 2017 and 2018. The recommendations of the Commission along with the recommendations of the Standing Committee thereon, have been circulated to the state governments for comments²³.

Legislative relations

Article	Subject Matter
245.	Extent of laws made by Parliament and by the legislatures of states
246.	Subject-matter of laws made by Parliament and by the legislatures of states
246A.	Special provision with respect to goods and services tax
247.	Power of Parliament to provide for the establishment of certain additional courts
248.	Residuary powers of legislation
249.	Power of Parliament to legislate with respect to a matter in the state list in the national interest
250.	Power of Parliament to legislate with respect to any matter in the state list if a Proclamation of Emergency is in operation
251.	Inconsistency between laws made by Parliament under articles 249 and 250 and laws made by the legislatures of states
252.	Power of Parliament to legislate for two or more states by consent and adoption of such legislation by any other state
253.	Legislation for giving effect to international agreements
254.	Inconsistency between laws made by Parliament and laws made by the legislatures of states
255.	Requirements as to recommendations and previous sanctions to be regarded as matters of procedure only

Administrative or Executive relations

Article	Subject Matter
256.	Obligation of states and the Union
257.	Control of the Union over states in certain cases
257A.	Assistance to states by deployment of armed forces or other forces of the Union (Repealed)
258.	Power of the Union to confer powers, etc., on states in certain cases
258A.	Power of the states to entrust functions to the Union
259.	Armed Forces in states in Part B of the First Schedule (Repealed)
260.	Jurisdiction of the Union in relation to territories outside India
261.	Public acts, records and judicial proceedings
262.	Adjudication of disputes relating to waters of inter-state rivers or river valleys
263.	Provisions with respect to an inter-state Council

Financial relations

Article	Subject Matter
Distribution of Revenues between the Union and the States	
268.	Duties levied by the Union but collected and appropriated by the states
268A.	Service tax levied by the Union and collected and appropriated by the Union and the states (Repealed)
269.	Taxes levied and collected by the Union but assigned to the states
269A.	Levy and collection of goods and services tax in course of inter-state trade or commerce
270.	Taxes levied and distributed between the Union and the states
271.	Surcharge on certain duties and taxes for purposes of the Union
272.	Taxes which are levied and collected by the Union and may be distributed between the Union and the states (Repealed)
273.	Grants in lieu of export duty on jute and jute products
274.	Prior recommendation of the President required to bills affecting taxation in which states are interested
275.	Grants from the Union to certain states
276.	Taxes on professions, trades, callings and employments
277.	Savings

278.	Agreement with states in Part B of the First Schedule with regard to certain financial matters (Repealed)
279.	Calculation of "net proceeds", etc.
279A.	Goods and Services Tax Council
280.	Finance Commission
281.	Recommendations of the Finance Commission
Miscellaneous Financial Provisions	
282.	Expenditure defrayable by the Union or a state out of its revenues
283.	Custody, etc., of Consolidated Funds, Contingency Funds and moneys credited to the public accounts
284.	Custody of suitors' deposits and other moneys received by public servants and courts
285.	Exemption of property of the Union from state taxation
286.	Restrictions as to imposition of tax on the sale or purchase of goods
287.	Exemption from taxes on electricity
288.	Exemption from taxation by states in respect of water or electricity in certain cases
289.	Exemption of property and income of a state from Union taxation
290.	Adjustment in respect of certain expenses and pensions
290A.	Annual payment to certain Devaswom Funds
291.	Privy purse sums of Rulers (Repealed)
Borrowing	
292.	Borrowing by the Government of India
293.	Borrowing by States

(4) Inter-State Relations

Adjudication of inter-state water disputes	Coordination through inter-state councils.	Mutual recognition of public acts, records and judicial proceedings.	Freedom of inter-state trade, commerce and intercourse.
Article 262	Article 263	Article 301-307	

Adjudication of inter-state water disputes: Article 262 :

(i) Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.	River Boards Act (1956)	River boards for the regulation and development of inter-state river and river valleys. A river board is established by the Central government on the request of the state governments concerned to advise them.
(ii) Parliament may also provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.	Inter-State River Water Disputes Act (1956)]	Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley. The decision of the tribunal would be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.

Sl.	Name	Set-up in	States Involved
1.	Krishna Water Disputes Tribunal-I	1969	Maharashtra, Karnataka and Andhra Pradesh
2.	Godavari Water Disputes Tribunal	1969	Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Odisha
3.	Narmada Water Disputes Tribunal	1969	Rajasthan, Gujarat, Madhya Pradesh and Maharashtra
4.	Ravi and Beas Water Disputes Tribunal	1986	Punjab, Haryana and Rajasthan
5.	Cauvery Water Disputes Tribunal	1990	Karnataka, Kerala, Tamil Nadu and Puducherry
6.	Krishna Water Disputes Tribunal-II	2004	Maharashtra, Karnataka and Andhra Pradesh
7.	Vansadhara Water Disputes Tribunal	2010	Odisha and Andhra Pradesh
8.	Mahadayi Water Disputes Tribunal	2010	Goa, Karnataka and Maharashtra
9.	Mahanadi Water Disputes Tribunal	2018	Odisha and Chhattisgarh

Coordination through inter-state councils :

Article 263: establishment of an Inter-State Council to effect coordination between the states and between the Centre and states.

- Thus, the President can establish such a council if at any time it appears to him/her that the public interest would be served by its establishment.
- He/she can define the nature of duties to be performed by such a council and its organisation and procedure.
- Even though the President is empowered to define the duties of an inter-state council, Article 263 specifies the duties :
 - (a) enquiring into and advising upon disputes which may arise between states;
 - (b) investigating and discussing subjects in which the states or the Centre and the states have a common interest; and
 - (c) making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.

Note- The council's function to enquire and advise upon interstate disputes is complementary to the The Supreme Court's jurisdiction under Article 131 is to decide a legal controversy between the governments. The Council can deal with any controversy, whether legal or non-legal, but its function is advisory, unlike that of the court, which gives a binding decision."

Under the above provisions of Article 263, the President has established the following councils to make recommendations for the better coordination of policy and action in the related subjects:

1. Central Council of Health and Family Welfare.
2. Central Council of Local Government
3. 4 Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.

Establishment of Inter-State Council :

The Sarkaria Commission on Centre-State Relations (1983–88) established a permanent Inter-State Council under Article 263 of the Constitution. It is recommended that, in order to differentiate the Inter-State Council from other bodies established under the same Article 263, it must be called as the Inter-Governmental Council. The Commission recommended that the Council should be charged with the duties laid down in clauses (b) and (c) of Article 263 (see above). In pursuance of the above recommendations of the Sarkaria Commission, the Janata Dal Government, headed by V. P. Singh, established the Inter-State Council in 1990. It consists of

(i) The PM as the Chairman (ii) Chief ministers of all the states/union territories having legislative assemblies & Administrators of union territories not having legislative assemblies, Governors of States under the President's rule(iii) 6 Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.

Permanent invitees to the Council: 5 Ministers of Cabinet rank / Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister)

Function:

- The council is a recommendatory body on issues relating to inter-state, Centre–state and Centre–union territories relations. It aims at promoting coordination between them by examining, discussing and deliberating on such issues. Its duties, in detail, are as follows:
 1. Investigating and discussing such subjects in which the states or the centre have a common interest;
 2. making recommendations upon any such subject for the better coordination of policy and action on it; and
 3. deliberating upon such other matters of general interest to the states as may be referred to it by the chairman.
- The Council may meet at least 3 times a year. Its meetings are held in camera, and all questions are decided by consensus.
- There is also a Standing Committee of the Council. It was set up in 1996 for continuous consultation and processing of matters for the consideration of the Council. It consists of the following members: **(i)** Union Home Minister as the Chairman, **(ii)** 5 Union Cabinet Ministers, **(iii)** 9 Chief Ministers.
- The Council is assisted by a secretariat called the Inter-State Council Secretariat. This secretariat was set up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.

Public Acts , Records & Judicial proceedings

Under the Constitution, the jurisdiction of each state is confined to its own territory. Hence, it is possible that the acts and records of one state may not be recognised in another state. To remove any such difficulty, the Constitution contains the “Full Faith and Credit” clause which lays down the following:

- (i)** Full faith and credit is to be given throughout the territory of India to public acts, records and judicial proceedings of the Centre and every state. The expression ‘public acts’ includes both legislative and executive acts of the government. The expression ‘public record’ includes any official book, register or record made by a public servant in the discharge of his/her official duties.
- (ii)** The manner in which and the conditions under which such acts, records and proceedings are to be proved and their effect determined would be as provided by the laws of Parliament. This means that the general rule mentioned above is subject to the power of Parliament to lay down the mode of proof as well as the effect of such acts, records and proceedings of one state in another state.
- (iii)** Final judgements and orders of civil courts in any part of India are capable of execution anywhere within India (without the necessity of a fresh suit upon the judgement). The rule applies only to civil judgements and not to criminal judgements. In other words, it does not require the courts of a state to enforce the penal laws of another state.

Interstate Trade & Commerce: Articles 301 to 307 in Part XIII

Article 301 - trade, commerce and intercourse throughout the territory of India shall be free.

The object of this provision is to break down the border barriers between the states and to create one unit with a view to encouraging the free flow of trade, commerce and intercourse in the country. The freedom under this provision is not confined to inter-state trade, commerce and intercourse but also extends to intra-state trade, commerce and intercourse.

Thus, Article 301 will be violated whether restrictions are imposed at the frontier of any state or at any prior or subsequent stage.

The freedom guaranteed by Article 301 is a freedom from all restrictions, except those which are provided for in the other provisions (Articles 302 to 305) of Part XIII of the Constitution itself.

(i) Article 302: Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in the public interest. But the Parliament cannot give preference to one state over another or discriminate between the states, except in the case of scarcity of goods in any part of India.

(ii) Article 303: The legislature of a state can impose reasonable restrictions on the freedom of trade, commerce and intercourse with that state or within that state in the public interest. But a bill for this purpose can be introduced in the legislature only with the previous sanction of the president. Further, the state legislature cannot give preference to one state over another or discriminate between the states.

(iii) Article 304: The legislature of a state can impose on goods imported from other states or the union territories any tax to which similar goods manufactured in that state are subject. This provision prohibits the imposition of discriminatory taxes by the state.

(iv) Article 305: The freedom (under Article 301) is subject to the nationalisation laws (i.e., laws providing for monopolies in favour of the Centre or the states). Thus, the Parliament or the state legislature can make

laws for the carrying on by the respective government of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

The Parliament can appoint an appropriate authority for carrying out the purposes of the above provisions relating to the freedom of trade, commerce and intercourse and restrictions on it. The Parliament can also confer on that authority the necessary powers and duties. But no such authority has been appointed so far.

Zonal Councils :

- statutory (and not the constitutional) bodies.
- established by the States Reorganisation Act of 1956. The act divided the country into 5 zones (Northern, Central, Eastern, Western and Southern) and provided a zonal council for each zone.
- While forming these zones, several factors have been taken into account, which include: the natural divisions of the country, the river systems and means of communication, the cultural and linguistic affinity and the requirements of economic development, security and law and order.
- **Compositions :** (a) Home Minister of the Central government. (b) Chief Ministers of all the States in the zone. (c) Two other ministers from each state in the zone. (d) Administrator of each union territory in the zone. Advisors (i.e., without the right to vote in the meetings): (i) a person nominated by the NITI Aayog; (ii) the chief secretary of the government of each state in the zone; and (iii) the development commissioner of each state in the zone.
- **Chairman:** the Home Minister of the Central government is the common chairman
- **Vice Chairman:** Each chief minister acts as a vice-chairman of the council by rotation, holding office for a period of 1 year at a time.
- **Role & Function:** aim at promoting cooperation and coordination between states, union territories and the Centre. They discuss and make recommendations regarding matters like economic and social planning, linguistic minorities, border disputes, inter-state transport, and so on. They are only deliberative and advisory bodies.
- The objectives (or the functions) of the zonal councils, in detail, are as follows:
 1. To achieve an emotional integration of the country.
 2. To help in arresting the growth of acute state-consciousness, regionalism, linguism and particularistic trends.
 3. To help in removing the after-effects of separation in some cases, so that the process of reorganisation, integration and economic advancement may synchronise.
 4. To enable the Centre and states to cooperate in social and economic matters and exchange ideas and experience to evolve uniform policies.
 5. To cooperate in the successful and speedy execution of major development projects.
 6. To secure some kind of political equilibrium between different regions of the country.

North-Eastern Council

- ⇒ created by a separate Act of Parliament—the North-Eastern Council Act of 1971. Its members include Assam, Manipur, Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim.
- ⇒ Its functions are similar to those of the zonal councils, but with few additions. It has to formulate a unified and coordinated regional plan covering matters of common importance. It has to review from time to time the measures taken by the member states for the maintenance of security and public order in the region.

Name	Members	Headquarters
1. Northern Zonal Council	Himachal Pradesh, Haryana, Punjab, Rajasthan, Delhi, Chandigarh, Jammu and Kashmir and Ladakh	New Delhi
2. Central Zonal Council	Uttar Pradesh, Uttarakhand, Chhattisgarh, and Madhya Pradesh	Prayagraj
3. Eastern Zonal Council	Bihar, Jharkhand, West Bengal and Odisha	Kolkata
4. Western Zonal Council	Gujarat, Maharashtra, Goa and Dadra and Nagar Haveli and Daman and Diu	Mumbai
5. Southern Zonal Council	Andhra Pradesh, Telangana, Karnataka, Tamil Nadu, Kerala and Puducherry	Chennai

Article	Subject Matter
Mutual Recognition of Public Acts, etc.	
261.	Public acts, records and judicial proceedings
Disputes Relating to Waters	
262.	Adjudication of disputes relating to waters of inter-state rivers or river valleys
Co-ordination between States	
263.	Provisions with respect to an inter-state council
Inter-State Trade and Commerce	
301.	Freedom of trade, commerce and intercourse
302.	Power of Parliament to impose restrictions on trade, commerce and intercourse
303.	Restrictions on the legislative powers of the Union and of the states with regard to trade and commerce
304.	Restrictions on trade, commerce and intercourse among states
305.	Saving of existing laws and laws providing for state monopolies
306.	Power of certain states in Part B of the First Schedule to impose restrictions on trade and commerce (Repealed)
307.	Appointment of authority for carrying out the purposes of Articles 301 to 304

(5) Emergency Provisions:

- Part XVIII of the Constitution, from Articles 352 to 360 :
- It enable the Central government to meet any abnormal situation effectively.
- Rationality - to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system, and the Constitution.
- During an Emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the **federal structure into a unitary** one without a formal amendment of the Constitution. This kind of transformation of the political system from federal during normal times to unitary during Emergency is a **unique feature of the Indian Constitution.**
- Dr. B.R. Ambedkar : ***'All federal systems including American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand, the Constitution of India can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of Emergency, it is so designed as to make it work as though it was a unitary system.'***
- The Constitution stipulates three types of emergencies:
 1. An emergency due to war, external aggression or armed rebellion(Article 352). This is popularly 2 known as 'National Emergency'. However, the Constitution employs the expression 'proclamation of emergency' to denote an emergency of this type.
 2. An Emergency due to the failure of the constitutional machinery in the states (Article 356). This is popularly known as 'President's Rule'. It is also known by two other names—'State Emergency' or 'constitutional Emergency'. However, the Constitution does not use the word 'emergency' for this situation.
 3. Financial Emergency due to a threat to the financial stability or credit of India (Article 360).

National Emergency

Grounds of Declaration

Under Article 352, the President can declare a National Emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.	President can declare a National Emergency even before the actual occurrence of war or external aggression or armed rebellion, if he/she is satisfied that there is an imminent danger.
The President can also issue different proclamations on grounds of war, external aggression, armed rebellion, or imminent danger thereof, whether or not there is a	38th Amendment Act of 1975. 'war' or 'external aggression' - 'External Emergency'. 'armed rebellion' , - 'Internal Emergency'.

proclamation already issued by him/her and such proclamation is in operation.	
A proclamation of National Emergency may be applicable to the entire country or only a part of it.	42nd CAA 1976 enabled the President to limit the operation of a National Emergency to a specified part of India.
Originally, the Constitution mentioned 'internal disturbance' as the third ground for the proclamation of a National Emergency, but the expression was too vague and had a wider connotation.	44th CAA of 1978 substituted the words 'armed rebellion' for 'internal disturbance'. Thus, it is no longer possible to declare a National Emergency on the ground of 'internal disturbance' as was done in 1975 by the Congress government headed by Indira Gandhi.
The President, however, can proclaim a National Emergency only after receiving a written recommendation from the cabinet. This means that the emergency can be declared only on the concurrence of the cabinet and not merely on the advice of the Prime Minister.	In 1975, the then Prime Minister, Indira Gandhi advised the President to proclaim emergency without consulting her cabinet. The cabinet was informed of the proclamation after it was made, as a <i>fait accompli</i> . The 44th Amendment Act of 1978 introduced this safeguard to eliminate any possibility of the Prime Minister alone taking a decision in this regard.
declaration of a National Emergency is not immune from the judicial review.	The 38th Amendment Act of 1975 made the declaration of a National Emergency immune from the judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 . Further, in the <i>Minerva Mills case, (1980)</i> , the Supreme Court held that the proclamation of a national emergency can be challenged in a court on the ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts or is absurd or perverse.

Parliamentary Approval and Duration

The proclamation of Emergency must be approved by both the Houses of Parliament within one month from the date of its issue.	Originally, the period allowed for approval by the Parliament was two months, but was reduced by the 44th CAA 1978.
However, if the proclamation of emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of one month without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.	
If approved by both the Houses of Parliament, the emergency continues for six months, and can be extended to an indefinite period with an approval of the Parliament for every six months.	44th Amendment Act of 1978 [Before that, the emergency, once approved by the Parliament, could remain in operation as long as the Executive (cabinet) desired.]
However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuance of Emergency, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the mean-time approved its continuation.	

Every resolution approving the proclamation of emergency or its continuance must be passed by either House of Parliament by a special majority, that is, (a) a majority of the total membership of that house, and (b) a majority of not less than 2/3 rd of the members of that house present and voting.	44th CAA of 1978 [Previously, such resolution could be passed by a simple majority of the Parliament.]
---	---

Revocation of Proclamation

A proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval. Further, the President must revoke a proclamation if the Lok Sabha passes a resolution disapproving its continuation.	44th Amendment Act of 1978 [Before the amendment, a proclamation could be revoked by the President on his/her own and the Lok Sabha had no control in this regard.]
where one-tenth of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the President if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving the continuation of the proclamation.	44th Amendment Act of 1978

resolution approving the continuation of a proclamation	resolution of disapproval
passed by the Lok Sabha only	needs to be passed by the both Houses of Parliament.
is to be adopted by a simple majority only	needs to be adopted by a special majority.

Effects of National Emergency

(1) Effect on the Centre–State Relations

normal fabric of the Centre–state relations undergoes a basic change.

(a) Executive	(b) Legislative	(c) Financial
<ul style="list-style-type: none"> executive power of the Centre extends to directing any state regarding the manner in which its executive power is to be exercised. In normal times, the Centre can give executive directions to a state only on certain specified matters. However, during a National Emergency, the Centre becomes entitled to give executive directions to a state on 'any' matter. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended. 	<ul style="list-style-type: none"> Constitution becomes unitary : Parliament becomes empowered to make laws on any subject mentioned in the State List. legislative power of a state legislature is not suspended, it becomes subject to the overriding power of the Parliament. Thus, the normal distribution of the legislative powers between the Centre and states is suspended, though the State Legislatures are not suspended. The laws made by Parliament on the state subjects during a National Emergency become inoperative six months after the emergency has ceased to operate. Notably, while a proclamation of national emergency is in operation, the President can issue ordinances on the state subjects also, if the Parliament is not in session. Further, the Parliament can confer powers and impose duties upon the Centre or its officers and authorities in respect of matters outside the Union List, in order to carry out the laws made by it under its extended jurisdiction as a result of the proclamation of a National Emergency. 	<ul style="list-style-type: none"> President can modify the constitutional distribution of revenues between the centre and the states. i.e. President can either reduce or cancel the transfer of finances from Centre to the states. Such modification continues till the end of the financial year in which the Emergency ceases to operate. Also, every such order of the President has to be laid before both the Houses of Parliament.
<ul style="list-style-type: none"> The 42nd Amendment Act of 1976 provided that the two consequences mentioned above (executive and legislative) extends not only to a state where the Emergency is in operation but also to any other state. 		

(2) Effect on the Life of the Lok Sabha and State Assembly

- life of the Lok Sabha may be extended beyond its **normal term (five years) by a law of Parliament** for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. E.g. Fifth Lok Sabha (1971–1977) was extended two times by one year at a time.
- Similarly, the Parliament may extend the **normal tenure of a state legislative** assembly (five years) by one year each time (for any length of time) during a national emergency, subject to a maximum period of six months after the Emergency has ceased to operate.

Effect on the Fundamental Rights

Suspension of Fundamental Rights under Article 19	Suspension of other Fundamental Rights
Article 358	Article 359
<p>6 Fundamental Rights under Article 19 are automatically suspended.</p> <p>No separate order for their suspension is required . While a proclamation of national emergency is in operation, the state is freed from the restrictions imposed by Article 19. i.e. state can make any law or can take any executive action abridging or taking away the six Fundamental Rights guaranteed by Article 19.</p> <p>Any such law or executive action cannot be challenged on the ground that they are inconsistent with the six Fundamental Rights guaranteed by Article 19. When the National Emergency ceases to operate, Article 19 automatically revives and comes into force.</p> <p>Any law made during Emergency, to the extent of inconsistency with Article 19, ceases to have effect. However, no remedy lies for anything done during the Emergency even after the Emergency expires. i.e. legislative and executive actions taken during the emergency cannot be challenged even after the Emergency ceases to operate.</p> <p>The 44th Amendment Act of 1978 restricted the scope of Article 358 in two ways.</p> <ol style="list-style-type: none"> 1. 6 Fundamental Rights under Article 19 stands suspended only when the National Emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion 2. only those laws which are related with the Emergency are protected from being challenged and not other laws. Also, the executive action taken only under such a law is protected. 	<p>president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. FR as such are not suspended, but only their enforcement. The said rights are theoretically alive but the right to seek remedy is suspended. The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order. Further, the suspension could be for the period during the operation of emergency or for a shorter period as mentioned in the order, and the suspension order may extend to the whole or any part of the country. It should be laid before each House of Parliament for approval.</p> <p>While a Presidential Order is in force, the State can make any law or can take any executive action abridging or taking away the specified Fundamental Rights. Any such law or executive action cannot be challenged on the ground that they are inconsistent with the specified Fundamental Rights. When the Order ceases to operate, any law so made, to the extent of inconsistency with the specified Fundamental Rights, ceases to have effect. But no remedy lies for anything done during the operation of the order even after the order ceases to operate. This means that the legislative and executive actions taken during the operation of the Order cannot be challenged even after the Order expires.</p> <p>44th Amendment Act of 1978 restricted the scope of Article 359 in two ways.</p> <ol style="list-style-type: none"> 1. President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 and 21. In other words, the right to protection in respect of conviction for offences (Article 20) and the right to life and personal liberty (Article 21) remain enforceable even during emergency. 2. only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected

Distinction Between Articles 358 and 359

Articles 358	Articles 359
is confined to Fundamental Rights under Article 19 only	extends to all those Fundamental Rights whose enforcement is suspended by the Presidential Order.
automatically suspends the fundamental rights under Article 19 as soon as the emergency is declared.	does not automatically suspend any Fundamental Right. It only empowers the president to suspend the enforcement of the specified Fundamental Rights.
only in case of External Emergency (that is, when the emergency is declared on the grounds of war or external aggression) and not in the case of Internal Emergency (ie, when the Emergency is declared on the ground of armed rebellion).	operates in case of both External Emergency as well as Internal Emergency.
suspends Fundamental Rights under Article 19 for the entire duration of Emergency	suspends the enforcement of Fundamental Rights for a period specified by the president which may either be the entire duration of Emergency or a shorter period.
suspends Article 19 completely	whereas Article 359 may extend to the entire country or a part of it.
enables the State to make any law or take any executive action inconsistent with Fundamental Rights under Article 19	enables the State to make any law or take any executive action inconsistent with those Fundamental Rights whose enforcement is suspended by the Presidential Order.

Similarity between Article 358 and Article 359.

Both provide immunity from challenge to only those laws which are related with the Emergency and not other laws. Also, the executive action taken only under such a law is protected by both.

Declarations Made So Far

3 times so far—in 1962, 1971 and 1975.

1 st	October 1962	on account of Chinese aggression in the NEFA (North-East Frontier Agency—now Arunachal Pradesh), and was in force till January 1968. The first proclamation of National Emergency was issued in Hence, a fresh proclamation was not needed at the time of war against Pakistan in 1965.	external aggression'
2 nd	December 1971	in the wake of attack by Pakistan.	external aggression'
3 rd	June 1975	Even when this Emergency was in operation, a third proclamation of National Emergency was made in June 1975. Both the second and third proclamations were revoked in March 1977.	'internal disturbance',

Emergency declared in 1975 (internal emergency) proved to be the most controversial. There was widespread criticism of the misuse of Emergency powers. In the elections held to the Lok Sabha in 1977 after the Emergency, the Congress Party led by Indira Gandhi lost and the **Janta Party came to power.** This government appointed **the Shah Commission** to investigate the circumstances that warranted the declaration of an Emergency in 1975. The commission **did not justify the declaration of the Emergency.** Hence, the 44th Amendment Act was enacted in 1978 to introduce a number of safeguards against the misuse of Emergency provisions.

PRESIDENT'S RULE

Grounds of Imposition

Article 355 imposes a duty on the Centre to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. It is this duty in the performance of which the Centre takes over the government of a state under Article 356 in case of failure of constitutional machinery in state. This is popularly known as 'President's Rule'. It is also known as 'State Emergency' or 'Constitutional Emergency'. 2 Grounds

Article 356	Article 365
empowers the President to issue a proclamation, if he/she is satisfied that a situation has arisen in which the government of a state cannot be carried on in accordance with the provisions of the Constitution. Notably, the President can act either on a report of the governor of the state or otherwise too (ie, even without the governor's report).	whenever a state fails to comply with or to give effect to any direction from the Centre, it will be lawful for the President to hold that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution.

Parliamentary Approval and Duration

- A proclamation imposing President's Rule must be approved by both the Houses of Parliament **within 2 months** from the date of its issue.
- However, if the proclamation of President's Rule is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of 2 months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the mean time.
- If approved by both the Houses of Parliament, the President's Rule continues for six months.
- It can be extended for a maximum period of 3 years with the approval of the Parliament, every 6 months.
- However, if the dissolution of the Lok Sabha takes place during the period of six months without approving the further continuation of the President's Rule, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuance.
- Every resolution approving the proclamation of President's Rule or its continuation can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that House present and voting.

The 44th Amendment Act of 1978 introduced a new provision to put restraint on the power of Parliament to extend a proclamation of President's Rule beyond one year. Thus, it provided that, beyond one year, the President's Rule can be extended by six months at a time only when the following two conditions are fulfilled:

- A proclamation of National Emergency should be in operation in the whole of India, or in the whole or any part of the state; and
- The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held on account of difficulties.

A proclamation of President's Rule may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Consequences of President's Rule

- The President acquires the following extraordinary powers when the President's Rule is imposed in a state:
- He/she can take up the functions of the state government and powers vested in the governor or any other executive authority in the state.
- He/she can declare that the powers of the state legislature are to be exercised by the Parliament.
- He/she can take all other necessary steps including the suspension of the constitutional provisions relating to any body or authority in the state.
- Therefore, when the President's Rule is imposed in a state, the President dismisses the state council of ministers headed by the chief minister. The state governor, on behalf of the President, carries on the state administration with the help of the chief secretary of the state or the advisors appointed by the President. This is the reason why a proclamation under Article 356 is popularly known as the imposition of 'President's Rule' in a state. Further, the President either suspends or dissolves the state legislative assembly. The Parliament passes the state legislative bills and the state budget.

- When the state legislature is thus suspended or dissolved:
 - (a) The Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him/her in this regard,
 - (b) The Parliament or in case of delegation, the President or any other specified authority can make laws conferring powers and imposing duties on the Centre or its officers and authorities, and
 - (c) The President can authorise, when the Lok Sabha is not in session, expenditure from the state consolidated fund pending its sanction by the Parliament.
 - (d) A law made by the Parliament or the President or any other specified authority continues to be operative even after the President's Rule. This means that the period for which such a law remains in force is not coterminous with the duration of the proclamation. But it can be repealed or altered or re-enacted by the state legislature.

It should be noted here that the President cannot assume to himself the powers vested in the concerned state high court or suspend the provisions of the Constitution relating to it. In other words, the constitutional position, status, powers and functions of the concerned state high court remain the same even during the President's Rule.

National Emergency (Article 352)	President's Rule (Article 356)
1. It can be proclaimed only when the security of India or a part of it is threatened by war, external aggression or armed rebellion.	1. It can be proclaimed when the government of a state cannot be carried on in accordance with the provisions of the Constitution due to reasons which may not have any connection with war, external aggression or armed rebellion.
2. During its operation, the state executive and legislature continue to function and exercise the powers assigned to them under the Constitution. Its effect is that the Centre gets concurrent powers of administration and legislation in the state.	2. During its operation, the state executive is dismissed and the state legislature is either suspended or dissolved. The president administers the state through the governor and the Parliament makes laws for the state. In brief, the executive and legislative powers of the state are assumed by the Centre.
3. Under this, the Parliament can make laws on the subjects enumerated in the State List only by itself, that is, it cannot delegate the same to any other body or authority.	3. Under this, the Parliament can delegate the power to make laws for the state to the President or to any other authority specified by him/her. So far, the practice has been for the president to make laws for the state in consultation with the members of Parliament from that state. Such laws are known as President's Acts.
4. There is no maximum period prescribed for its operation. It can be continued indefinitely with the approval of Parliament for every six months.	4. There is a maximum period prescribed for its operation, that is, three years. Thereafter, it must come to an end and the normal constitutional machinery must be restored in the state.
5. Under this, the relationship of the Centre with all the states undergoes a modification.	5. Under this, the relationship of only the state under emergency with the Centre undergoes a modification.
6. Every resolution of Parliament approving its proclamation or its continuance must be passed by a special majority.	6. Every resolution of Parliament approving its proclamation or its continuance can be passed only by a simple majority.
7. It affects fundamental rights of the citizens.	7. It has no effect on Fundamental Rights of the citizens.
8. Lok Sabha can pass a resolution for its revocation.	8. There is no such provision. It can be revoked by the President only on his/her own.

Use of Article 356

- Since 1950, the President's Rule has been imposed on more than **125 occasions**. Further, on a number of occasions, the President's Rule has been imposed in an arbitrary manner for political or personal reasons. Hence, Article 356 has become one of the most controversial and most criticised provision of the Constitution.
- For the first time, the **President's Rule was imposed in Punjab in 1951**. By now, all most all the states have been brought under the President's Rule, once or twice or more.
- When general elections were held to the Lok Sabha in 1977 after the internal emergency, the ruling Congress Party lost and the Janata Party came to power. The new government headed by Morarji Desai imposed President's Rule in nine states (where the Congress Party was in power) on the ground that the assemblies in those states no longer represented the wishes of the electorate. When the Congress Party returned to power in 1980, it did the same in nine states^{9 10} on the same ground.
- In 1992, President's Rule was imposed in three BJP-ruled states (Madhya Pradesh, Himachal Pradesh and Rajasthan) by the Congress Party on the ground that they were not implementing sincerely the ban imposed by the Centre on religious organisations. In a landmark judgement in the *Bommai* case (1994), the Supreme Court upheld the validity of this proclamation on the ground that secularism is a 'basic feature' of the Constitution. But, the court did not uphold the validity of the imposition of the President's Rule in Nagaland in 1988, Karnataka in 1989 and Meghalaya in 1991.
- Dr. B.R. Ambedkar, while replying to the critics of this provision in the Constituent Assembly, hoped that the drastic power conferred by Article 356 would remain a 'dead-letter' and would be used only as a measure of last resort. He observed: "The intervention of the Centre must be deemed to be barred, because that would be an invasion on the sovereign authority of the province (state). That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be under some obligation which the Constitution imposes upon the Centre. The proper thing we ought to expect is that such Articles will never be called into operation and that they would remain a dead-letter. If at all they are brought into operation, I hope the President who is endowed with this power will take proper precautions before actually suspending the administration of the province."
- However, the subsequent events show that what was hoped to be a 'dead-letter' of the Constitution has turned to be a 'deadly-weapon' against a number of state governments and legislative assemblies. In this context, H.V. Kamath, a member of the Constituent Assembly commented: 'Dr. Ambedkar is dead and the Articles are very much alive'.

Scope of Judicial Review

The 38th Amendment Act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which could not be challenged in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.

In the *Bommai* case (1994), the following propositions have been laid down by the Supreme Court on imposition of President's Rule in a state under Article 356:

- The presidential proclamation imposing President's Rule is subject to judicial review.
- The satisfaction of the President must be based on relevant material.

The action of the president can be struck down by the court if it is based on irrelevant or extraneous grounds or if it was found to be malafide or perverse.

Burden lies on the Centre to prove that relevant material exist to justify the imposition of the President's Rule.

- The court cannot go into the correctness of the material or its adequacy but it can see whether it is relevant to the action.
- If the court holds the presidential proclamation to be unconstitutional and invalid, it has power to restore the dismissed state government and revive the state legislative assembly if it was suspended or dissolved.
- The state legislative assembly should be dissolved only after the Parliament has approved the presidential proclamation. Until such approval is given, the president can only suspend the assembly. In case the Parliament fails to approve the proclamation, the assembly would get reactivated.
- Secularism is one of the 'basic features' of the Constitution. Hence, a state government pursuing anti-secular politics is liable to action under Article 356.
- The question of the state government losing the confidence of the legislative assembly should be decided on the floor of the House and until that is done the ministry should not be unseated.

- Where a new political party assumes power at the Centre, it will not have the authority to dismiss ministries formed by other parties in the states.
- The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations.

Cases of Proper and Improper Use

Based on the report of the Sarkaria Commission on Centre–state Relations (1988), the Supreme Court in *Bommai* case (1994) enlisted the situations where the exercise of power under Article 356 could be proper or improper¹³.

Imposition of President’s Rule in a state would be proper in the following situations:

Proper	Improper
<ul style="list-style-type: none"> • Where after general elections to the assembly, no party secures a majority, that is, ‘Hung Assembly’. • Where the party having a majority in the assembly declines to form a ministry and the governor cannot find a coalition ministry commanding a majority in the assembly. • Where a ministry resigns after its defeat in the assembly and no other party is willing or able to form a ministry commanding a majority in the assembly. • Where a constitutional direction of the Central government is disregarded by the state government. • Internal subversion where, for example, a government is deliberately acting against the Constitution and the law or is fomenting a violent revolt. • Physical breakdown where the government wilfully refuses to discharge its constitutional obligations endangering the security of the state. 	<ul style="list-style-type: none"> • Where a ministry resigns or is dismissed on losing majority support in the assembly and the governor recommends imposition of President’s Rule without probing the possibility of forming an alternative ministry. • Where the governor makes his/her own assessment of the support of a ministry in the assembly and recommends imposition of President’s Rule without allowing the ministry to prove its majority on the floor of the Assembly. • Where the ruling party enjoying majority support in the assembly has suffered a massive defeat in the general elections to the Lok Sabha such as in 1977 and 1980. • Internal disturbances not amounting to internal subversion or physical breakdown. • Maladministration in the state or allegations of corruption against the ministry or stringent financial exigencies of the state. • Where the state government is not given prior warning to rectify itself except in case of extreme urgency leading to disastrous consequences. • Where the power is used to sort out intra-party problems of the ruling party, or for a purpose extraneous or irrelevant to the one for which it has been conferred by the Constitution.

Where Everyday Is Exam Day

FINANCIAL EMERGENCY

Grounds of Declaration

- **Article 360** empowers the President to proclaim a Financial Emergency if he/she is satisfied that a situation has arisen due to which the financial stability or credit of India or any part of its territory is threatened.
- The 38th Amendment Act of 1975 made the satisfaction of the President in declaring a Financial Emergency final and conclusive and not questionable in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review.
- Parliamentary Approval and Duration
- A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue. However, if the proclamation of Financial Emergency is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during the period of two months without approving the proclamation, then the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.
- Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked. This implies two things:
 1. there is no maximum period prescribed for its operation; and

2. repeated parliamentary approval is not required for its continuation.

- A resolution approving the proclamation of financial emergency can be passed by either House of Parliament only by a simple majority, that is, a majority of the members of that house present and voting.
- A proclamation of Financial Emergency may be revoked by the president at anytime by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.

Effects of Financial Emergency

The consequences of the proclamation of a Financial Emergency are as follows:

- The executive authority of the Centre extends to the giving of (a) directions to any state to observe the canons of financial propriety; and (b) such other directions to any state as the President may deem necessary.
- Any such direction may include a provision requiring (a) the reduction of salaries and allowances of all or any class of persons serving in the state; and (b) the reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state.
- The President may issue directions for the reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court.
- Thus, during the operation of a financial emergency, the Centre acquires full control over the states in financial matters. H.N. Kunzru, a member of the Constituent Assembly, stated that the financial emergency provisions pose a serious threat to the financial autonomy of the states. Explaining the reasons for their inclusion in the Constitution, Dr. B.R. Ambedkar observed in the Constituent Assembly¹⁴:
- “This Article more or less follows the pattern of what is called the National Recovery Act of the United States passed in 1933, which gave the president power to make similar provisions in order to remove the difficulties, both economical and financial, that had overtaken the American people, as a result of the Great Depression.”
- No Financial Emergency has been declared so far, though there was a financial crisis in 1991.

CRITICISM OF THE EMERGENCY PROVISIONS

Some members of the Constituent Assembly criticised the incorporation of emergency provisions in the Constitution on the following grounds¹⁵:

1. ‘The federal character of the Constitution will be destroyed and the Union will become all powerful.
 2. The powers of the State—both the Union and the units—will entirely be concentrated in the hands of the Union executive.
 3. The President will become a dictator.
 4. The financial autonomy of the state will be nullified.
 5. Fundamental rights will become meaningless and, as a result, the democratic foundations of the Constitution will be destroyed.’
- H.V. Kamath observed: ‘I fear that by this single chapter we are seeking to lay the foundation of a totalitarian state, a police state, a state completely opposed to all the ideals and principles that we have held aloft during the last few decades, a State where the rights and liberties of millions of innocent men and women will be in continuous jeopardy, a State where if there be peace, it will be the peace of the grave and the void of the desert. It will be a day of shame and sorrow when the President makes use of these powers having no parallel in any Constitution of the democratic countries of the world’¹⁶.
 - K.T. Shah described them as: ‘A chapter of reaction and retrogression. I find one cannot but notice two distinct currents of thought underlying and influencing throughout the provisions of this chapter: **(a)** to arm the Centre with special powers against the units and **(b)** to arm the government against the people’.
 - T.T. Krishnamachari feared that ‘by means of these provisions the President and the Executive would be exercising a form of constitutional dictatorship’¹⁷.
 - H.N. Kunzru opined that ‘the emergency financial provisions pose a serious threat to the financial autonomy of the States.’
 - However, there were also protagonists of the emergency provisions in the Constituent Assembly. Thus, Sir Alladi Krishnaswami Ayyar labelled them as ‘the very life-breath of the Constitution’. Mahabir Tyagi opined that they would work as a ‘safety-valve’ and thereby help in the maintenance of the Constitution.

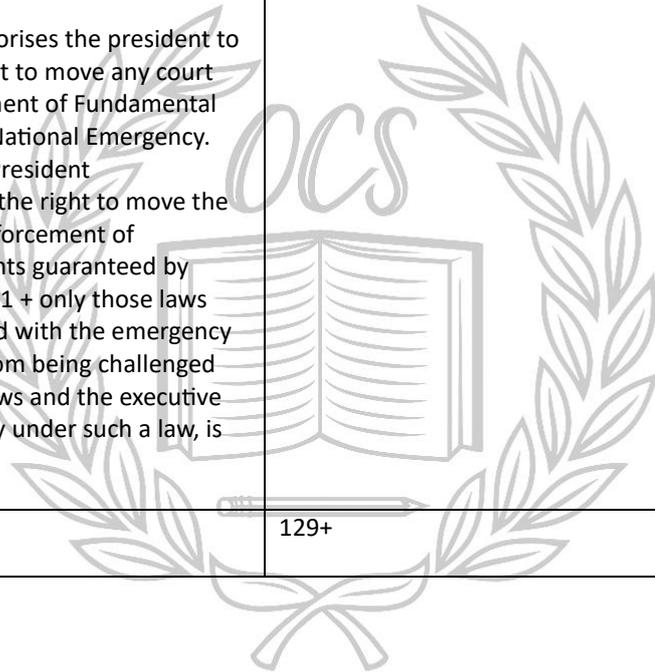
- While defending the emergency provisions in the Constituent Assembly, Dr. B.R. Ambedkar also accepted the possibility of their misuse. He observed, 'I do not altogether deny that there is a possibility of the Articles being abused or employed for political purposes'19.

Article No.	Subject-matter
352.	Proclamation of Emergency
353.	Effect of Proclamation of Emergency
354.	Application of provisions relating to distribution of revenues while a Proclamation of Emergency is in operation
355.	Duty of the Union to protect states against external aggression and internal disturbance
356.	Provisions in case of failure of constitutional machinery in states
357.	Exercise of legislative powers under proclamation issued under Article 356
358.	Suspension of provisions of Article 19 during Emergencies
359.	Suspension of the enforcement of the rights conferred by Part III during Emergencies
359A.	Application of this part to the state of Punjab (Repealed)
360.	Provisions as to Financial Emergency

	National Emergency	'President's Rule'/names—'State Emergency'/'constitutional Emergency'	Financial Emergency
Article	Article 352	Article 356 & 365	Article 360
Ground of Declaration	<p>->War, external aggression or armed rebellion - Yes</p> <p>->Internal disturbance-No [44th CAA 1978]</p> <p>-> before the actual occurrence [imminent danger]</p> <p>->different proclamations</p> <p>-> applicable to the entire country or only a part of it. [42nd CAA 1976]</p> <p>->Cabinet-Mandatory written recommendation.[44th CAA 1978]</p> <p>->Judicial review [Immune – 38th CAA 1975] [Not immune – 44th CAA 1978]</p> <p><i>Minerva Mills</i> case(1980) - ground of malafide or that the declaration was based on wholly extraneous and irrelevant facts, or is absurd or perverse</p>	<p>Article 354 – Govt. of every state is carried on in accordance with the provisions of the Constitution</p> <p>Article 356- failure of constitutional machinery in state</p> <p>Article 365- whenever a state fails to comply with or to give effect to any direction from the Centre</p>	<p>financial stability or credit of India or any part of its territory is threatened.</p> <p>->Judicial review [Immune – 38th CAA 1975] [Not immune – 44th CAA 1978]</p>
Parliamentary Approval	<p>A proclamation must be approved by both the Houses of Parliament within 1 month from the date of its issue. [2 months – 44th CAA 1978]</p> <p>Lok Sabha dissolved</p> <p>30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved it.</p>	<p>2 Months after the issue of the proclamation by the President</p> <p>Lok Sabha - dissolved or dissolution without approving the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the mean time.</p>	<p>2 Months after the issue of the proclamation by the President</p> <p>Lok Sabha - dissolved or dissolution without approving the proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha approves it in the mean time.</p>
Duration	<p>continues for 6 months, and can be extended to an indefinite period with the approval of the Parliament for every six months. [44th CAA 1978]</p> <p>Dissolution of the Lok Sabha without approval of further continuance -></p>	<p>continues for six month can be extended for a maximum period of 3 yrs with the approval of the Parliament, every six months.</p>	<p>no maximum period prescribed for its operation; and repeated parliamentary approval is not required for its continuation.</p>

	proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime approved its continuation.	proclamation survives until 30 days from the first sitting of the Lok Sabha after its reconstitution, provided the Rajya Sabha has in the meantime, approved its continuation	
Every resolution approving the proclamation of emergency or its continuance	must be passed by either House of Parliament by a special majority . [44 th CAA 1978] Earlier- Simple majority [Both House & Special Majority]	[Either House & Simple Majority]	[Either House & Simple Majority]
Revocation of Proclamation	By the President at any time by a subsequent proclamation. Such a proclamation does not require parliamentary approval. -> The President must revoke a proclamation if the Lok Sabha passes a resolution disapproving of its continuation. [44 th CAA 1978] Earlier- No control of LS 1/10 th of the total number of members of the Lok Sabha give a written notice to the Speaker (or to the President if the House is not in session), a special sitting of the House should be held within 14 days for the purpose of considering a resolution disapproving of the continuation of the proclamation. [LS Only & Simple Majority]	does not require the parliamentary approval	does not require the parliamentary approval.
Effect	(1)Executive- Normal time -specified matters NE- 'any' matter State Govt. under complete control of the Centre, though they are not suspended. (2)Legislative- Parliament- State list -> Any list SL not suspended but overriding power of the Parliament. Constitution becomes unitary rather than federal . laws made by Parliament on the state subjects during NE become inoperative six months after the emergency has ceased to operate. President – ordinances-state subjects also, if the Parliament is not in session. (3)Financial: President can either reduce or cancel the transfer of finances from Centre to the states. continues till the end of the financial year in which the Emergency ceases to operate. President has to be laid before both the Houses of Parliament		observe the canons of financial propriety & such other directions to any state as the President may deem necessary. E.g. the reduction of salaries and allowances of all or any class of persons serving in the state; -> reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the state. President -> reduction of salaries and allowances of (a) all or any class of persons serving the Union; and (b) the judges of the Supreme Court and the high court. Centre acquires full control over the states in financial matters.

	<p>Effect on the Life of the Lok Sabha and State Assembly life of the Lok Sabha/SL may be extended beyond its normal term (five years) by a law of Parliament for 1 year at a time (for any length of time). However, this extension cannot continue beyond a period of 6 months after the emergency has ceased to operate. For E.g. term of the 5th Lok Sabha (1971–1977) was extended two times by one year at a time.</p> <p>Effect on the Fundamental Rights : Article 358- Fundamental Rights under Article 19 are automatically suspended. No separate order for their suspension is required. Article 359 authorises the president to suspend the right to move any court for the enforcement of Fundamental Rights during a National Emergency. 44th CAA 1978- President cannot suspend the right to move the Court for the enforcement of fundamental rights guaranteed by Articles 20 and 21 + only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law, is protected.</p>		
<p>Declared son far</p>	<p>1961,1971,1975</p>	<p>129+</p>	<p>None</p>



OCS CORNER
 Where Everyday Is Exam Day