

CENTRE-STATE RELATIONS & EMERGENCY PROVISIONS

3

Chapter Outline

- Is Indian Constitution Federal in Nature?
- Legislative Relations between Union and States
- Administrative Relations between Union and States
- Financial Relations between Union and States
- Emergency Provisions
- National Emergency
- State Emergency
- Financial Emergency
- Parliamentary Approval and Duration of the Emergencies

3.1 IS INDIAN CONSTITUTION FEDERAL IN NATURE?

A Federal System of government is one that divides the powers of government between the national government and state and local governments. The constitution of India establishes the Federal System, also known as **Federalism**.

- Federalism is an institutional mechanism to accommodate two sets of polities. The first is the Center or National level and second is at the Provincial or Regional level. Both sets of polities are autonomous in their own sphere.
- Each level of the polity has distinct powers and responsibilities and has a separate system of government.
- The details of this Federalism or dual system of government are generally found in a Written Constitution.
- Written Constitution is considered supreme and is also the source of power of both sets of government.
- Certain subjects, which are the concern of a nation as a whole, for example, defence or currency, are the responsibility of the Union or Central Government.
- On the other hand, regional or local matters are the responsibility of the Regional or State Government.
- In case of a conflict between the Center and the State on any issue, the Judiciary has the powers to resolve the disputes.

- Though the Indian constitution does not use the word 'Federalism' anywhere; however, the structure of Indian government is divided into two sets of governments i.e.
 - For the entire nation known as the **"Union Government"** (or Central Government) and
 - For each unit or state known as the **"State Government."**

The following diagram illustrates the basic structure of the "Federal System" –

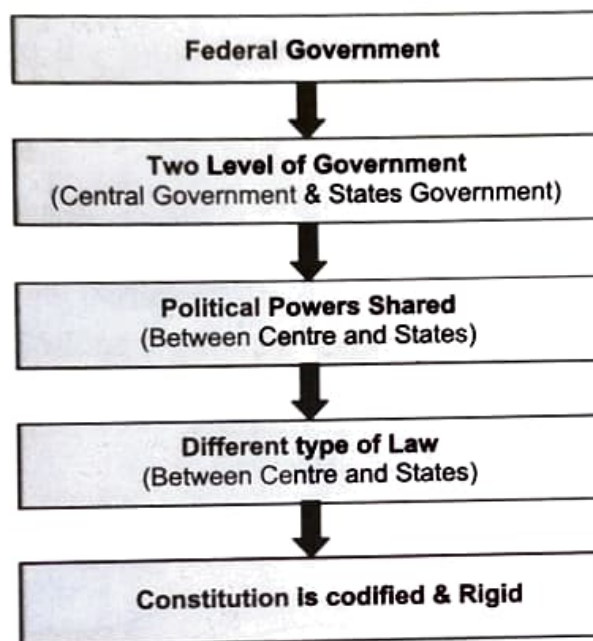


Fig. 3.1.

Subjects of Federal System

- The constitution clearly demarcates subjects which are under the exclusive domain of the Union and those under the States.
- Likewise, the constitution describes three lists:
 - Union List (subjects dealt only by the Central Government);
 - State List (subjects dealt normally by states only); and
 - Concurrent List (both Union and States have the power to legislate these subjects).

Union List

Subjects under Union Lists are:

- Defence
- Atomic Energy
- Foreign Affairs
- War and Peace
- Banking
- Railways
- Post and Telegraph
- Airways
- Ports

- Foreign Trade
- Currency & Coinage

State List

Subjects under State Lists are:

- Agriculture
- Police
- Prison
- Local Government
- Public Health
- Land
- Liquor
- Trade and Commerce
- Livestock and Animal Husbandry
- State Public Services

Concurrent List

Subjects under Concurrent Lists are:

- Education
- Transfer of Property other than Agricultural Land
- Forests
- Trade Unions
- Adulteration
- Adoption and Succession

Other Facts

- Article 257 of the constitution is read as: The Executive power of every state shall be so exercised as not to impede or prejudice the exercise of the Executive power of the Union, and the Executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.
- The Sarkaria Commission was appointed by the Central Government in 1983 to examine the issues relating to Center-State relations; the Commission submitted its report in 1988 and recommended that appointments of governors should be strictly non-partisan.
- In 1953, the states reorganization commission was set up and it recommended the creation of linguistic states, at least for the major linguistic groups.
- Resultantly, Gujarat and Maharashtra were created in 1960 and the process is still ongoing.
- The Constitution of India (under Article 371) has given some special provisions to some states after considering their peculiar social and historical circumstances. However, most of the special provisions are related to the North-Eastern states (i.e., Assam, Nagaland, Arunachal Pradesh, Mizoram, etc.) largely due to a sizeable indigenous tribal population with a distinct history and culture.

- Under Article 370 of the constitution, the Northern most state of Jammu and Kashmir also has special provisions.
- One of the major differences between the other states and the state of Jammu and Kashmir is that no emergency due to internal disturbances can be declared in Jammu and Kashmir without the concurrence of the state.
- The Union Government cannot impose a Financial Emergency in J&K and the Directive Principles also do not apply to Jammu and Kashmir.
- An amendment to the Indian constitution (under Article 368) can only apply in concurrence with the Government of Jammu and Kashmir.

Centre-State Relations

Articles 245 to 263 of Part XI and Articles 268 to 293 of Part XII describe three types of center-state relations. These are divided into three parts, which are mentioned below:

- (a) Legislative Relations (Articles 245-255)
- (b) Administrative Relations (Articles 256-263)
- (c) Financial Relations (Articles 268-293)

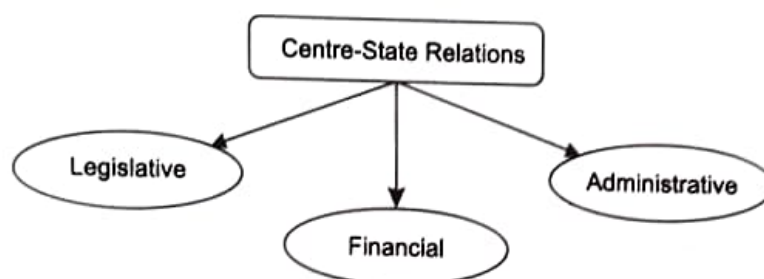


Fig. 3.2

3.2 LEGISLATIVE RELATIONS BETWEEN UNION AND STATES

The Seventh schedule of the constitution provides for the distribution of Legislative powers between the Centre and the States. The Legislative subjects are divided into List I (the Union List), List II (the Concurrent List) and List III (the State List).

- At present, there are 100 subjects in the Union List which includes subjects such as foreign affairs, defence, railways, postal services, banking, atomic energy, communication, currency etc.
- At present, there are 61 subjects in the state list which includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc.
- At present, there are 52 subjects in the concurrent list which includes subjects such as education, forests, protection of wild animals and birds, electricity, labour welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.

3.3 ADMINISTRATIVE RELATIONS BETWEEN UNION AND STATES

Articles 256 to 263 deal with the Administrative Relations between the centre and the

States. Article 256 states that "the Executive power of every state shall be so exercised as to ensure compliance with the laws made by the Parliament and any existing laws which apply in that state, and the Executive power of the union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose."

3.4 FINANCIAL RELATIONS BETWEEN UNION AND STATES

The constitution deals with the Centre-State financial relations in Articles 268-293 of Part XII.

Allocation of Tax Powers

The constitution has provided the Union Government and the state governments with independent sources of revenue. It allocates powers to the centre and the states in the following way:

- (i) The Parliament has exclusive power to levy taxes on the subjects mentioned in the Union List.
- (ii) The State Legislatures have exclusive power to levy taxes on the subjects mentioned in the State List.
- (iii) Both the Parliament and the State Legislature are empowered to levy taxes on the subjects mentioned in the Concurrent List.
- (iv) The Parliament has exclusive power to levy taxes on matters related to the residuary subjects.

3.5 EMERGENCY PROVISIONS

An Emergency is a situation which arises due to the failure of the government machinery which causes or demands immediate action from the authority. According to the Black Law's Dictionary, "Emergency is a situation which requires quick action and immediate notice as such a situation causes a threat to the life and property in the nation. It is a failure of the social system to deliver reasonable conditions of life."

- Article 352: Proclamation of emergency.
- Article 353: Effect of Proclamation of emergency.
- Article 354: Application of provisions relating to the distribution of revenues while Proclamation of Emergency is in operation.
- Article 355: Duty of the Union to protect states against external aggression and internal disturbance.
- Article 356: Provisions in case of failure of Constitutional Machinery in State.
- Article 357: Exercise of Legislative powers under proclamation issued under Article 356.
- Article 358: Suspension of provisions of Article 19 during emergencies.
- Article 359: Suspension of enforcement of the Rights conferred by Part III during Emergencies.
- Article 360: Provisions for financial emergency.

3.6 NATIONAL EMERGENCY

Article 352 (Part XVIII) talks about "*Proclamation of Emergency.*"

National emergency may be imposed by the President if he is satisfied that there exists a grave situation due to which there is a threat to the security of India or any part of the territory because of:

- War
- External Aggression
- Armed Rebellion

Clause 1 states that emergency may be proclaimed by the President even when there is no actual occurrence of war, external aggression or armed rebellion. In this case, the President must be satisfied that there is an imminent danger.

Clause 2 states that another proclamation may be issued to revoke and to make any variation in the previous proclamation.

Clause 3 states that the President of India may declare an emergency when union cabinet (Council of Ministers headed by the Prime Minister) advice to him in writing.

Clause 4 states that before issuing proclamation it is required to be placed before both the Houses of Parliament and shall end its effect at the expiration of one month unless both the Houses of Parliament approve it by resolution before the expiration of the said period.

Clause 5 states that Proclamation approved in the second resolution shall have an effect up to six months and on expiry of six months, it will end to operate unless it is revoked in between the period.

History on National Emergency

So far, National Emergency has been imposed three times in India. The time period in which this happened was from 1962-1977. Brief description of the Emergencies are as follows:

1. An Emergency was imposed at the time of the Indo-China war by the then President of India Dr Sarvepalli Radhakrishnan on the ground of external aggression from October 26, 1962, to January 10, 1968.
2. Again, an emergency was imposed from December 3, 1971 to March 21, 1977, by the then President of India Mr. VV Giri during the Indo-Pakistan war. The reason was the same as above i.e. external aggression.
3. The third emergency was imposed due to a clash between legislature and judiciary. Mrs. Indira Nehru Gandhi, the then Prime Minister of India with the permission of the then President Fakhruddin Ali Ahmed declared an Emergency. It was imposed for a period of 19 months from June 25, 1975 to March 21, 1977.

Effects of National Emergency

Under Article 358, national emergency suspends the rights guaranteed under Article 19 of the Indian constitution. Also, other fundamental rights get suspended under Article 359 except Article 20 and 21.

Article 20 of the Indian Constitution deals with the "*Protection in respect of conviction from offences.*" This Article is the pillar of all the fundamental rights which are guaranteed by the Indian constitution. It protects the Right of an individual in case of conviction.

Article 21 of the Indian constitution deals with "Protection of life and personal liberty" because no person shall be deprived of his life and personal liberty except the procedure established by law.

Under this kind of emergency, the state government comes under direct control of the central government. The state government has to work as per the direction given by the Union.

The distribution of financial resources between the union and the state may be suspended by the President.

The parliament acquires power over the subjects of the state list which ceases on the expiry of six months.

3.7 STATE EMERGENCY

Article 356 deals with state emergency or President's rule in the state ("*Provisions in case of Failure of the Constitutional Machinery in States*"). The President of India has the power to proclaim state emergency when he receives a report from the governor of that particular state explaining that the situation in the state government is such that they cannot carry out the constitutional provisions.

President's rule has been imposed in the State of Jammu and Kashmir for six years and 264 days from January 19, 1990 to October 9, 1996. The State has always been a target for many external elements. The Indian Government imposed President's Rule to control the situation in Jammu and Kashmir which was facing a military threat from Pakistan.

Punjab was under the President's rule for four years and 259 days from June 11, 1987 to February 25, 1992. The reason for imposing President's rule in Punjab was the control of Khalistan commando forces which was a Sikh organization involved in the genocidal attack on hindus.

Till January 2016, the President's rule has been imposed 124 times in India. During Indira Gandhi's regime, the President's rule was invoked for maximum time. The President's rule under her cabinet was imposed 35 times in various states.

Effects of State Emergency

During a state emergency or President's rule, the entire state administrative machinery is transferred to the Union. The President becomes the Executive Head of the state and the Governor works under his name.

The Legislative assembly of the state may be dissolved or it may be suspended. The Parliament takes over the charge of making laws in 66 subjects of List-II, i.e., State List. All the ministers of state legislative Assembly are barred from performing any action as every money bill is required to be first referred to the parliament for approval.

The State's high court functions independently in such a situation. There is no effect of an Emergency in the state judiciary. High courts may even entertain petitions filed against the President's rule. In 2016, the Congress government approached the Nainital high court against the President's rule imposed under Narendra Modi's regime.

It was imposed by the then President of India Pranab Mukherjee. The high court of Uttarakhand gave its verdict in favour of Harish Rawat's Government and declared to restore

the Congress government in the state of Uttarakhand. Later, the judgement was upheld by the Supreme Court of India and the Congress government continued its period of governance.

3.8 FINANCIAL EMERGENCY

Article 360 deals with "Provisions as to Financial Emergency". Financial emergency is imposed by the President when there arises any situation which causes a financial threat to India or any part of the country.

Financial Emergency has never been imposed in India. However, in 1990, the possibility of financial emergency emerged but the situation was controlled by the Indian government as in July 1991 the Reserve Bank of India pledged 46.91 tonnes of gold with the Bank of England and Union Bank of Switzerland to raise \$400 million.

Effects of Financial Emergency

During a financial emergency, the parliament has the power to reduce the salaries and allowances of the people working under the Union or the state government. Financial and money bills passed by the state legislature sent to the President of India for his consideration.

Difference between National Emergency and President's Rule

Jammu and Kashmir	President's Rule (Article 356)
National emergency is Proclaimed under Article 352 on the ground of war, external aggression and armed rebellion.	State emergency is Proclaimed under Article 356 when the state government cannot carry on according to the constitutional provisions.
State executive and Legislature perform their power as mentioned in List II of Schedule VII. Concurrent List powers get vested with the Central Government.	State executive powers get vested in the Central Government. Governor works in the state on the advice of the President. The State legislative assembly is dissolved or suspended.
The proclamation may be continued for an indefinite time as no maximum period is prescribed but it is subject to renewal every six months.	The maximum period up to which state emergency may continue is three years after which it will cease but it may further be continued after the constitutional amendment.
Fundamental rights are suspended during national emergency except Articles 20 & 21.	There is no effect on the fundamental rights of the people of the State.
Resolution for the continuation of the Proclamation of Emergency must be passed with a special majority.	Resolution can be passed with a simple majority in the parliament.
The resolution for the revocation of the Proclamation can be passed by Lok Sabha.	Resolution for revocation of the Proclamation can be passed by the President at his discretion.
During an Emergency, the centre's relation undergoes a modification with all the states.	Centre's relation undergoes a modification only with the State under the President's rule.
There is no delegation of lawmaking power of parliament under the state List.	The President may make laws for the State after consulting with the members of parliament from that State.

3.9 PARLIAMENTARY APPROVAL AND DURATION OF THE EMERGENCIES

In India, there are three types of emergencies and all have a different duration up to which they remain in force. Parliamentary approval also differs in each Emergency as the duration for approval of a resolution is different in each kind of Emergency. The parliamentary procedure for passing the resolution of emergency is discussed below:

Parliamentary Approval and Duration of the National Emergency

Proclamation of national emergency operates for a maximum period of six months subject to approval every six months. There is no period prescribed up to which it may be extended.

Under Article 352, when the President imposes an emergency, it must be approved by both the houses of parliament by a resolution within a month from the date of its issue. Before the 44th amendment act, 1978, the period for approval was two months.

Meanwhile, Lok Sabha gets dissolved when the proclamation is issued or Lok Sabha is dissolved without approving the Proclamation of Emergency. One month will be counted from the first day of sitting of the lower house i.e., Lok Sabha after its reconstitution. It is required that in the meantime Rajya Sabha approves the Proclamation.

When both the houses of parliament approve the Proclamation, it will remain in force for six months and there is no maximum time limit for proclamation. It is subjected to renewal by both the houses of parliament through resolution every six months.

If Lok Sabha gets dissolved within six months from the date of issue of the resolution without further approving the proclamation of emergency, then the proclamation will survive until a month from the first day of Lok Sabha after its reconstitution. It is required that in the meantime Rajya Sabha approves the proclamation.

Every resolution for imposing emergency or continuance of emergency must be passed by either house of parliament by a special majority, i.e., a majority of the total membership of that house and a majority of not less than 2/3rd members of the house present and voting.

Parliamentary Approval and Duration of the State Emergency

Proclamation of state emergency operates for a maximum period of six months or three years (subject to extension of the period).

Under Article 356, when the President imposes emergency, it must be approved by both houses of the parliament by resolution within two months from the date of its issue after which it ceases to affect.

If Lok Sabha gets dissolved when a Proclamation is issued, then it must be passed within 30 days from the first day of sitting of Lok Sabha after its reconstitution. In such a situation Rajya Sabha must approve the proclamation.

The duration of six months can be extended, subject to the approval in six months. But every proclamation passed under this Article cannot be extended for more than three years.

Parliamentary Approval and Duration of the Financial Emergency

Under Article 360, before the President imposes Emergency it shall be approved by both

houses of parliament. Otherwise, after the expiry of two months, from the date of issuance of the Proclamation, it ceases to operate.

In case, Lok Sabha dissolves within two months, it is required to approve the Proclamation within thirty days from the first day of sitting after its reconstitution. Rajya Sabha must approve it in the meantime.

REVIEW QUESTIONS

1. Is Indian Constitution Federal in Nature. Discuss stating features of federalism.
2. Write a note on the relations between union and the state.
3. Elaborate Legislative relations between Center and State according to Article 245-255.
4. Discuss the major provisions of Emergency as per the constitution of India.
6. When can National Emergency be declared in India and by whom?
7. Differentiate between State Emergency and Financial Emergency.
8. What is President Rule in India? Discuss conditions in which President rule can be Imposed in India.

