



GS FOUNDATION BATCH FOR CSE 2024

Polity - 16
(Centre State Relations)

Centre State Relations

- Legislative Relation {Article 245 to Article 255}
- Administrative Relation {Article 256 to Article 263}
- Financial Relation {Article 268 to Article 293}

{Article 245} Territorial Extent of Parliament and State Legislature

Parliament may make the laws for the whole or any part of territory of India
State legislatures may make laws for whole or any part of the state

Also, that no law of parliament may be deemed to be invalid on the grounds that it would have extra territorial extent.

- E.g. WRT any Indian Citizen living abroad or WRT their properties

Subject matters {Article 246}

Parliament has exclusive power to make laws on matters enumerated in **Union List of Seventh Schedule**

{Article 248}- [Residuary Power] Parliament has the power to make laws on subject not mentioned in either of three lists

State Legislatures have the exclusive power to make laws on the matters enumerated under **State List** of the Seventh Schedule.

Parliament has the authority to make laws for UTs and Other territories

Parliament and State Legislature both can make laws on the matters enumerated in **Concurrent List**

In case of conflict between a law made by the parliament and states in concurrent list the former shall prevail unless it was reserved for the assent of the president and he has assented to it

Parliamentary Legislation in the State List

1. Under the provisions of {A. 249}

If Rajya Sabha Passes a resolution by majority of 2/3rd present and voting.

When it is expedient in national interest

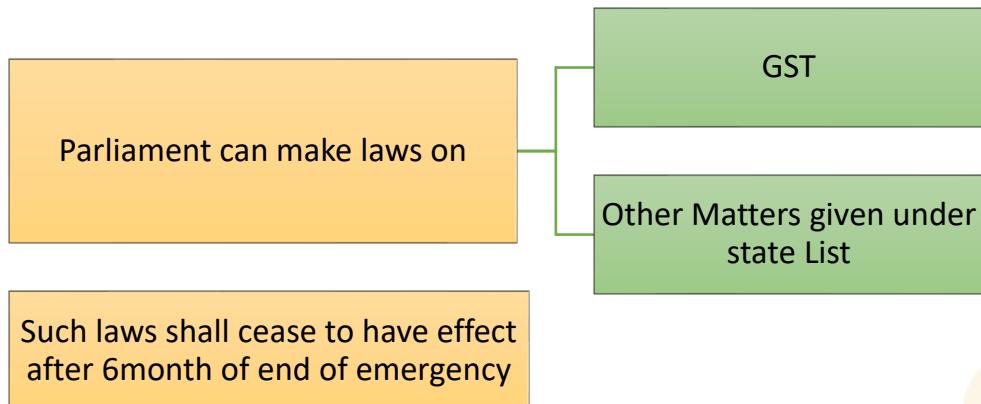
Parliament can make laws on the matters given under state list.

The resolution passed by Rajya Sabha shall remain in force till one year or as specified in the resolution itself

This resolution can again be passed and be extended by one more year

Any such laws made by parliament under this article shall cease to have effect after 6 months of expiry of the resolution passed Rajya Sabha

2. When there is National Emergency in Operation {250}



3. Parliament can enact for states with consent. {252}

If two or more states passes a resolution is passed by all the houses of the respective states

Parliament can also make laws if more than one states requests to do so

Any such act can be amended or repealed by the parliament and not the state legislatures

RS Sarkaria Commission: Any law passed under article 252 should not be of perpetual duration but should remain in force for a specific **term, not exceeding three years.** The Act itself should contain provisions requiring its periodic review before the expiry of its term. If, after such review, it is considered necessary to re-enact the law in its original or modified form, it may be done for a period not exceeding the original term, by following the same procedure as specified in clause (1) of the Article.

4. Article 253: Parliament can enact in state list **to give effect to any treaty, agreement or convention or any decision made at any international conference.**

Administrative Relation

Executive Powers of Centre: (Union List)

- the matters on which the Parliament has exclusive power of legislation
- to the exercise of rights, authority and jurisdiction conferred on it by any treaty or agreement.

Executive Powers of State: (State List)

- the executive power of a state extends to its territory in respect of matters on which the state legislature has exclusive power of legislation

Concurrent List

- **executive power rests with the states** except when a Constitutional provision or a parliamentary law specifically confers it on the Centre.

Obligation of States towards Union:

- **{Article 256}** States shall exercise its executive powers in such a way that it does not prejudice the executive powers of the union.

Control of Union over state by giving certain directions {Article 257}

- Union can give directions to a state for construction and maintenance of means of communication for national or military purpose.
- Union can also give directions to a state in the measures to be taken for the protection of the railways within the state.
- Union can also give directions 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.
- Any cost incurred on implementing such directions shall be paid by the government of India.

RS Sarkaria Commission: Articles 256, 257 and 365 are wholesome provisions, designed to secure coordination between the Union and the States for effective implementation of Union laws and the national policies indicated the rein. Nonetheless, a direction under Articles 256 and 257 and the application of the sanction under Article 365 in the event of its non-compliance, is a measure of last resort. Before issue of directions to a State or application of sanction under Article 365, utmost caution should be exercised, and all possibilities explored for setting points of conflict by all other available means.

Tension Areas in Administrative Relations

Abuse of Article 356

Problems in the Management of All India Services

Role and Functioning of Governor

Deployment of Central Forces in the state

Article 256 and Article 257:

- States pointed out as wide, open and vague
- Violates the federal principles

Punchi Commissions:- has opined that these articles are to be used as the last resort. After repetitive warnings also state governments are not correcting then these articles can be used.

Sarkaria Commission on Deployment of Armed Forces:

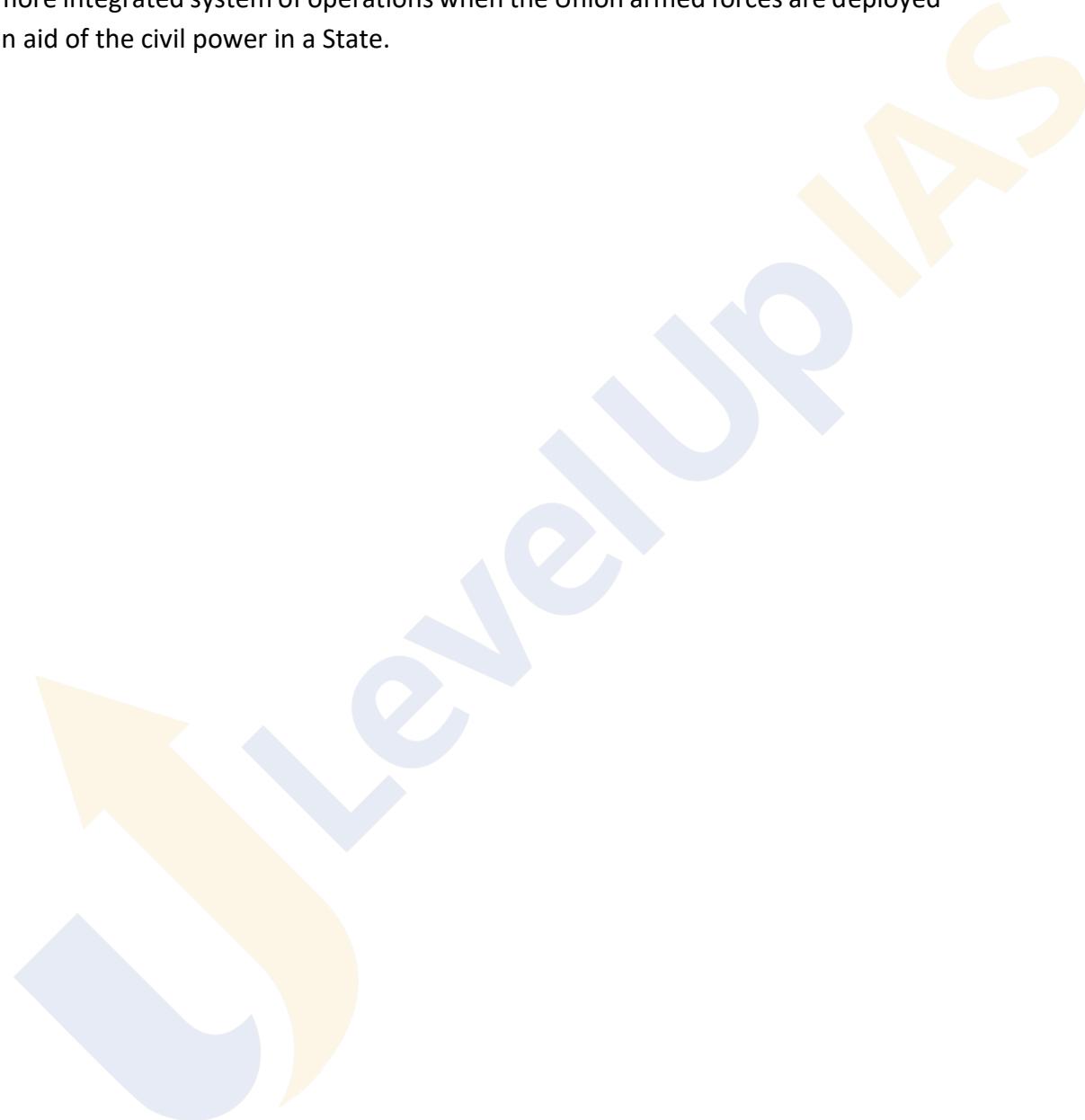
The existing relationship between the Union armed forces and the State civil authorities and the manner of their functioning as prescribed in the relevant Union laws and procedures do not need any change. However, before the Union Government deploys its armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government or declares an area within a State as "disturbed", it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought, even though prior consultation with the State Government is not obligatory.

Further, Each State Government may work out, in consultation with the Union Government, short-term and long-term arrangements for strengthening its Armed Police. The objective will be to become largely self-reliant in the matter of Armed Police so that the assistance of the Union armed forces will be necessary only in cases of very severe disturbances.

A group of neighbouring States may, by consensus, have a standing arrangement for the use of the Armed Police of one another in case of need. The Union Government may devise by consensus the regional groupings, keeping in view contiguity and logistics and encourage States to participate fully. The Zonal Council would be the best forum for achieving consensus of the States within a zone for devising such an arrangement.

Sarkaria Commission also laid stress that states should incorporate various recommendations which was given by the National Police Commission in order to boost the effectiveness and morals of state armed police forces.

There should be a **system of interchange of the officers of the State Armed Police Forces with those of the Central Reserve Police Force**, the Border Security Force and other Union armed forces. They should also have common regional training centres, so as to facilitate better exchange of techniques and information and a more integrated system of operations when the Union armed forces are deployed in aid of the civil power in a State.



Financial Relation:

| | |
|------------------------------------|--|
| Allocation of taxing powers | Parliament has the exclusive power to levy taxes on subjects enumerated in the Union list |
| | State legislature has the exclusive power to levy taxes on subjects enumerated in the state list |
| | Both union and state can levy taxes on matters enumerated in the concurrent list |
| | Residuary power of taxation is vested in the Parliament |

Restrictions on the taxing powers of the states

- A state legislature can impose **taxes on profession, trades, callings and employments**. But, the total amount payable by any **person should not exceed Rs 2500 per annum**
- 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**.
- **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
- state legislature can impose tax on the consumption or sale of electricity except:
 - Electricity consumed by the Centre
 - For the maintenance of railway

Taxes Levied by the Centre but Collected and Appropriated by the States

(Article 268)

- stamp duties on bills of exchange, cheques, promissory notes, policies of insurance, transfer of shares and others.
- The 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**.

Taxes Levied and Collected by the Centre but Assigned to the States (Article 269):

- Taxes on the sale or purchase of goods (other than newspapers) in the course of inter-state trade or commerce. (ii) Taxes on the consignment of goods in the course of inter-state trade or commerce.

- 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.

Taxes Levied and Collected by the Centre but Distributed between the Centre and the States (Article 270):

- all taxes and duties referred to in the Union List except the following:
- (i) Duties and taxes referred to in Articles 268, 269 and 269-A (mentioned below);
 - 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**
- (ii) Surcharge on taxes and duties

Taxes Levied and Collected and Retained by the States:

- These are the taxes belonging to the states exclusively. They are enumerated in the state list and are 18 in number. Land revenue; Duties in respect of succession to agricultural land; **Duties of excise on alcoholic liquors for human consumption Etc.**

Grants-in-Aid to the States: Statutory Grants

Article 275 empowers the 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.

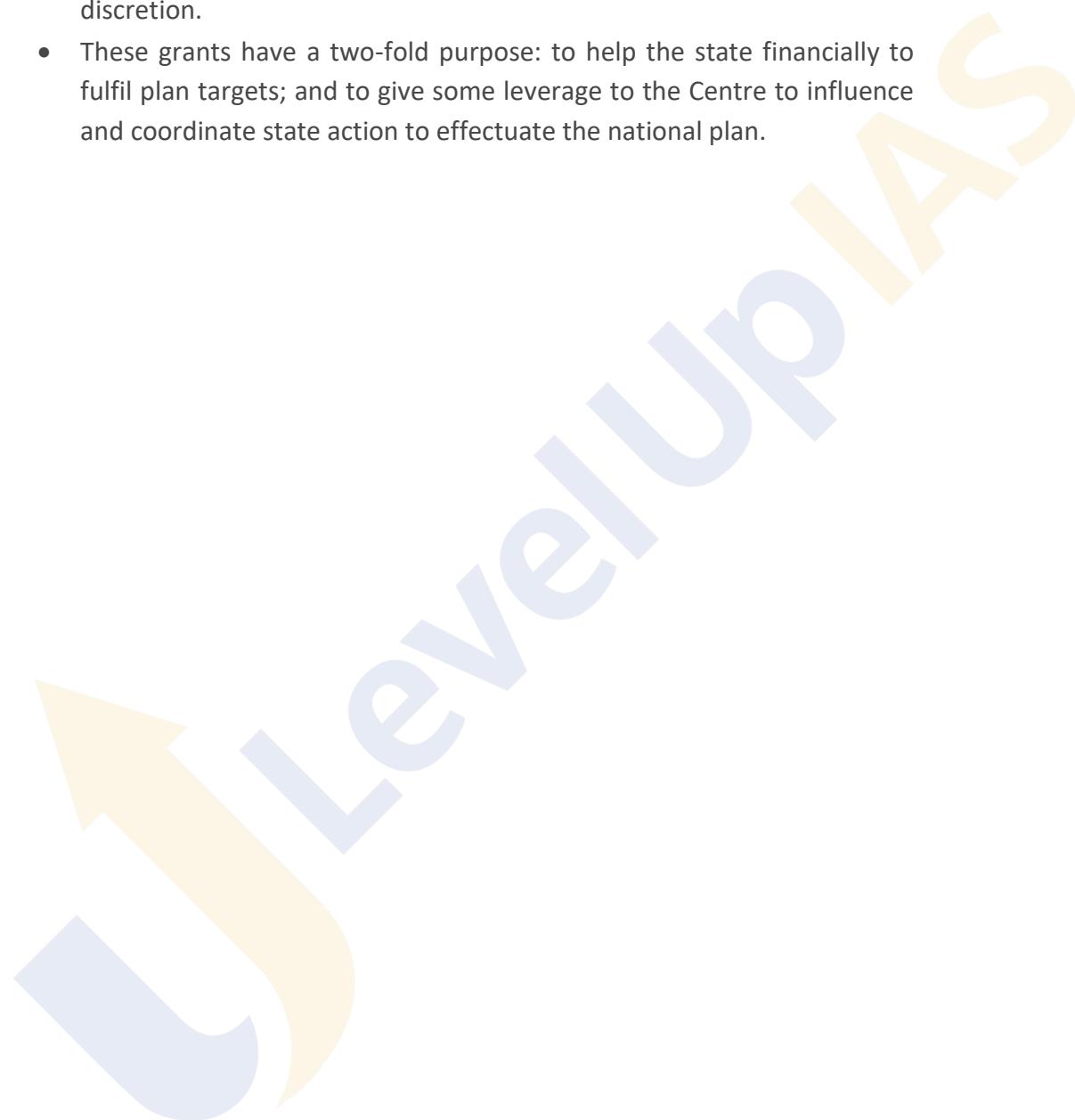
These sums are charged on the Consolidated Fund of India every year.

Apart from this general provision, the 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

Discretionary Grants

- Article 282 empowers 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.
- Under this provision, the Centre makes grants to the states. These grants are 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.
- These grants have a two-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.

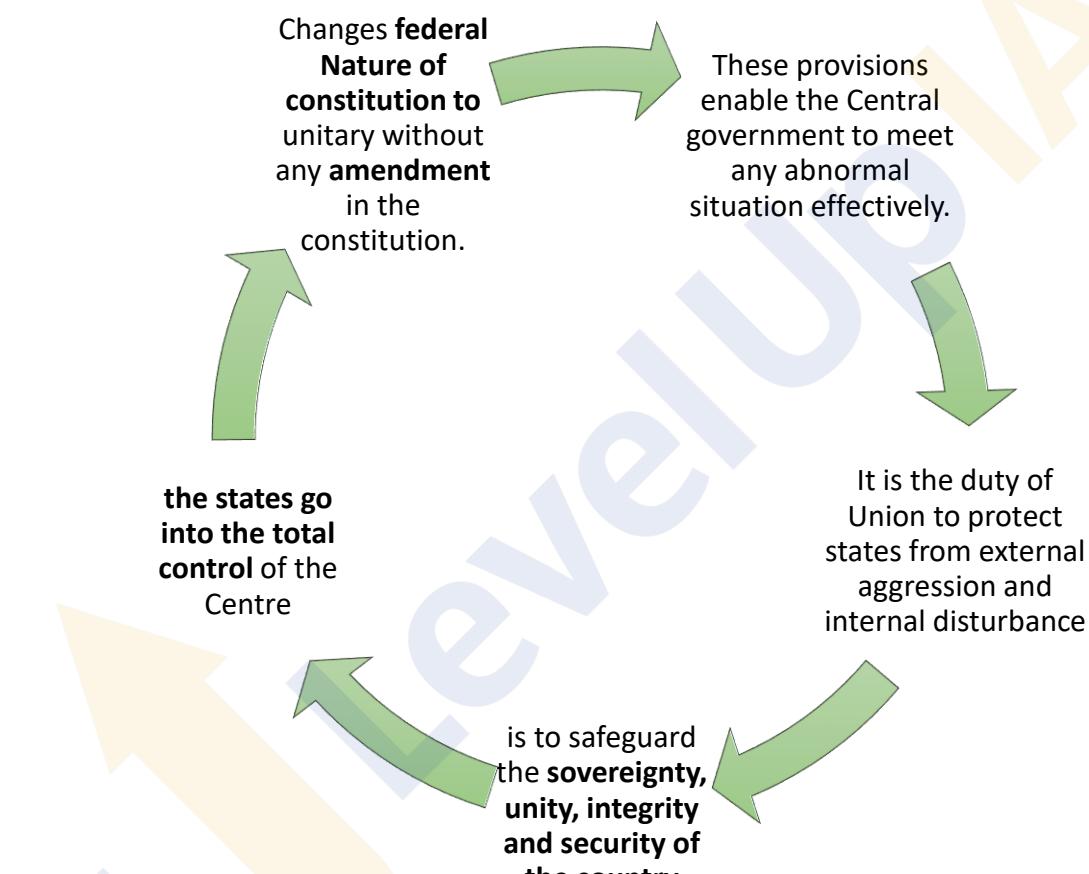


EMERGENCY

The framers of the Constitution felt that, in an emergency, the Centre should have overriding powers to control and direct all aspects of administration and legislation throughout the country.

The Constitution envisages three types of emergencies:

- (i) emergency arising from a threat to the security of India; (National Emergency)
- (ii) breakdown of constitutional machinery in a State; (State Emergency or President Rule)
- (iii) financial emergency.



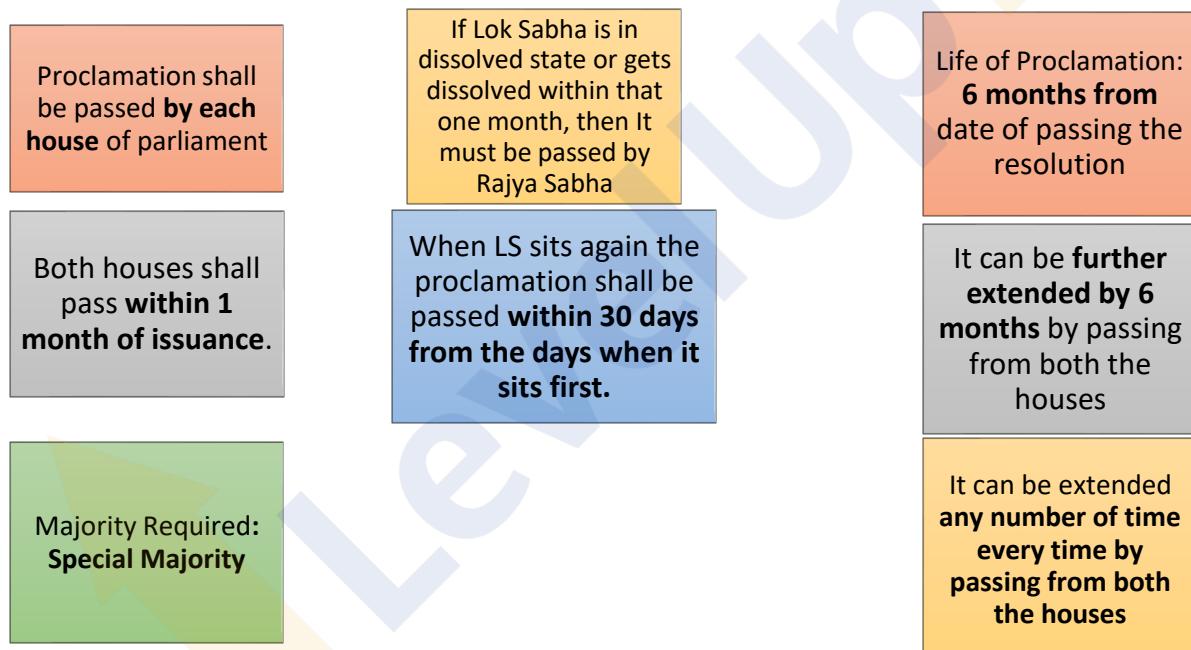
National Emergency:

- **When** can national emergency be proclaimed?- If the president is satisfied that there is a grave emergency and **security of India or any part of territory** is at threat
- **Grounds:** by **War/External Aggression** or [**Armed Rebellion**]
- Earlier in place of Armed Rebellion the word was mentioned as “Internal Disturbance” but by the (44th Constitutional Amendment -1978)] it was replaced with Armed Rebellion.

- **Process of Proclamation:** By the president on the written consent of the Union Cabinet.

How it can be revoked:

- By a **subsequent proclamation** of the president
- If proclamation does not receive the necessary parliamentary approval then it ceases to be in operation.
- If **Lok Sabha passes a resolution** disapproving the continuance of emergency, then president Shall revoke the emergency.
- If one tenth of the members of Lok Sabha has given a request to consider the motion of revoking the emergency- a special sitting of the house shall be called within 14 days.
- **Multiple Proclamation:** president can issue different proclamation on different grounds even when a previous proclamation is in force.



Impact of National Emergency:

Administrative Relations: Union can give directions for executive functions of the state.



Legislative Relations: Parliament can make laws on any matters which is beyond union list as well (state list). President can issue ordinances on state list as well



Financial Relation:

President can modify the constitutional distribution of revenues between the Centre and the states

He can reduce or cancel the transfer of finances (both tax sharing and grants-in-aid)

Laws made by parliament on state list shall be **valid till 6 months only after the emergency has ceased to operate (Article 250)**

How does national emergency impacts fundamental rights?

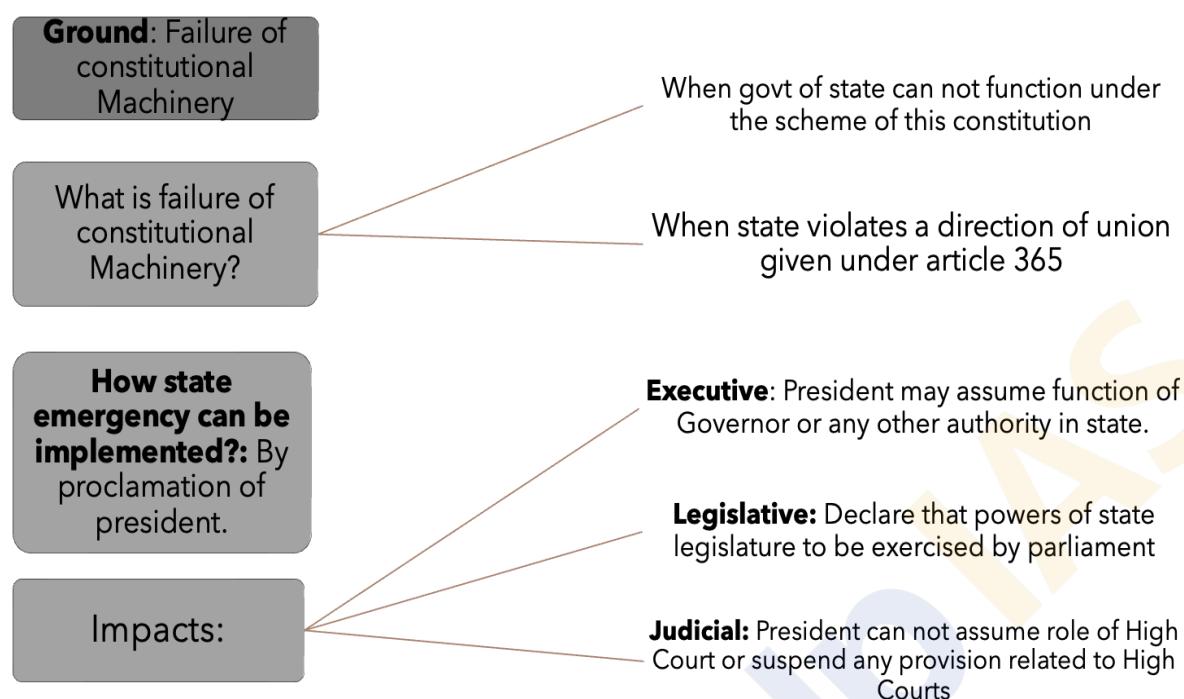
Automatic Suspension: Under Article 358

1. **If national emergency is declared on Ground:** War or External Aggression
2. Article 19 automatically suspended, which means Parliament can make any law or any executive action can be taken which even violates article 19.
3. **Any such law shall expire as soon as emergency ends**
4. If emergency is implemented in any part, even then this provision can be implemented to other parts as well.
5. Any such law made must contain the recitals.

Suspension by Declaration: {A. 359}

- President by order (proclamation) declare that all Fundamental Rights except Article 20 and 21 Including right to move to court {32 and 226} is suspended.
- Duration: Till operation of emergency or shorter period.
- If emergency is implemented in any part, even then this provision can be implemented to other parts as well.
- Any such law made must contain the recitals.

State Emergency or President Rule



Conditions for Presidents Rule

- Must be approved by both houses within **two Months- Simple Majority**.
- If LS is dissolved or gets dissolved, **then within 30 days from its first sitting**.
- Can continue for a period of **6 months**.
- Can be extended by approval of parliament for another period of **6 months**.
- Can be extended for a **maximum period of 3 years**.
- **If it is to be extended beyond 6 months then, following grounds: (by 44th CA).**
 - Existence of National Emergency U/A 352
 - Certificate of Election commission of India

SR Bomai V Union of India guidelines

Presidential Proclamation dissolving legislative assembly is subject to judicial review

Burden lies on Union to prove the relevant material existed to justify president rule

If court strikes down proclamation under 356 it can restore the government

A state government pursuing anti secular politics is liable to action under article 356.
Secularism has been declared as basic features of the constitution.

The power under Article 356 is an exceptional power and should be used only occasionally to meet the requirements of special situations

Financial Emergency (under Article 360)

By President when he 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**.

Satisfaction of the president is not beyond judicial review.

must be approved by both the Houses of Parliament **within two months** by even simple majority

Once approved by both the Houses of Parliament, the Financial Emergency continues indefinitely till it is revoked

revoked by the president at anytime by a subsequent proclamation

The First Administrative Reforms Commission:

The first Administrative Reforms Commission was constituted by the Government of India on **5 January 1966** for reviewing the public administration system of India and recommending measures for making administration fit for carrying out the social and economic policies of the government and being responsive to the people. The Commission was Chaired initially by Morarji R Desai, MP, and later on by K. Hanumanthaiah, MP when Morarji R Desai became the Deputy Prime Minister of India.

The Commission presented its reports in 20 parts, which contained a total of 537 significant recommendations until the mid-seventies. **The 13th report specifically**

focused on matters related to the relationship between the central government and state governments. In regards to the Inter-State Council, the Commission put forth the following recommendations:

1. Establishment of **an Inter-State Council under Article 263 (b) and (c) of the Constitution**. This council would address all national issues that are of interest to the states.
2. Assigning the Council functions which has been outlined in Article 263 (a) i.e. to resolve and provide advice on disputes between states.
3. The Inter-State Council should replace the National Development Council, Chief Ministers' Conference, Finance Ministers' Conference, Food Ministers' Conference, and National Integration Council.
4. The Council should serve as a comprehensive mechanism for consultations between the central government and the states. It should primarily address issues of genuine and national significance, while other matters can be resolved through conferences convened by the relevant ministries at a lower, preferably official level.
5. The Council should have a suitable secretariat, and the Secretary of the Council should possess the necessary knowledge, experience, and status to effectively carry out their responsibilities.

Sarkaria Commission:

To examine centre-state relations, the Government of India constituted its first ever commission in 1983 under the chairmanship of Justice Rajinder Singh Sarkaria, Shri B. Sivaraman and Dr. S.R. Sen; popularly known as the Sarkaria Commission. The commission submitted its report to the Indian government recommending, some of its findings are briefly discussed in this section:

Legislative Relations: The commission recommended that all the residuary powers to legislate in the field of taxation must be retained by the parliament while any **other residuary field apart from taxation must come under the purview of the Concurrent List**.

Further the commission also recommended that the Union occupy **only that much part in the Concurrent List which concerns national interest**, in other fields' **states must be allowed to take actions within Union law**. Also the Union must legislate on the subjects related to the Concurrent list with **prior consultation with the states and the Inter-Governmental Council** suggested by the commission under Article 263.

Administrative Relations: commission observed that though Union laws take precedence over the State laws, they are meant to set a coordination between the state and the centre and thus non-compliance on the part of the state should

be dealt patiently by the centre rather than **invoking Article 365, which should be the last resort.**

The commission envisaged the future of federalism in India based on the cooperation between the centre and the states. As the commission rightly observed:

"Federalism is more a functional arrangement for cooperative action, than a static institutional concept."

Here in this regard Commission quotes the use of Article 258 of the constitution to indicate the element of cooperation envisaged by the makers of the constitution.

Article 258 provides for the delegation of executive power by the president and parliament to the states.

On Deployment of Armed Forces:

The existing relationship between the Union armed forces and the State civil authorities and the manner of their functioning as prescribed in the relevant Union laws **and procedures do not need any change.**

However, before the Union Government deploys its armed and other forces in a State in aid of the civil power otherwise than on a request from the State Government, or declares an area within a State as "disturbed", **it is desirable that the State Government should be consulted, wherever feasible, and its cooperation sought**, even though prior consultation with the State Government is not obligatory.

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The objective will be to become largely self-reliant in the matter of Armed Police so that the assistance of the Union armed forces will be necessary only in cases of very severe disturbances.

A group of neighbouring States may, by consensus, have a standing arrangement for the use of the Armed Police of one another in case of need. The Union Government may devise by consensus the regional groupings, keeping in view contiguity and logistics and encourage States to participate fully. The Zonal Council would be the best forum for achieving consensus of the States within a zone for devising such an arrangement.

Sarkaria Commission also laid stress that states should incorporate various recommendations which were given by the National Police Commission in order to boost the effectiveness and morale of state armed police forces.

On Management of All India Services:

Opinion on utility of All India Services: The All-India Services are as much necessary today as they were when the Constitution was framed and continue to be one of the premier institutions for maintaining the unity of the country. Undoubtedly, the members of the All-India Services have shown themselves capable of discharging the roles that the framers of the Constitution envisaged for them.

Any move to disband the All-India Services or to permit a State Government to opt out of the scheme **must be regarded as retrograde and harmful to the larger interest of the country**. Such a step is sure to encourage parochial tendencies and undermine the integrity, cohesion, efficiency and coordination in administration of the country as a whole.

The All-India Services should be further strengthened and greater emphasis given on the role expected to be played by them.

This can be achieved through well-planned improvements in selection, training, deployment, development and promotion policies and methods. **The present accent on generalism should yield place to greater specialisation in one or more areas of public administration.**

Other Recommendations wrt AIS:

- Every All India Service officer, whether he is a direct recruit or a promoted officer, should be required to put in a minimum period under the Union Government and, for this purpose, the minimum number of spells (term) of Union deputation should be laid down for direct recruits and promoted officers, separately.
- State Governments should offer officers for Union deputation only after screening them. The Union Government may lay down a screening mechanism and the criteria to be followed for the purpose by every State government.
- It should be followed as a principle that services of best officers of AIS shall not be monopolised by the union rather should also be also readily available to the State Governments to whose cadres they belong.
- There should be regular consultations on the management of All India Services between the Union and the State Governments. For this purpose, an Advisory Council for Personnel Administration of the All India Services may be set up.
- To constitute All India Services in sectors like agriculture, cooperation, industry, etc



TH Article on Deputation Rules- Key terms to look out Central Deputation Reserve (CDR)

On Inter State Water Dispute Resolution:

- Amending the act (Inter-State River Water Disputes Act 1956)for making it **mandatory for the union to constitute a tribunal within one year** of the receipt of such a request by any state.
- **Union should also be given the Suo motu power** to appoint interstate water dispute resolution tribunal.
- Act should be amended to ensure that the **award of a Tribunal becomes effective within five years** from the date of constitution of a Tribunal.
- The Inter-State Water Disputes Act 1956 should be amended so that a Tribunal's award **has the same force and sanction behind it as an order or decree of the Supreme Court** to make a Tribunal's award really binding.

On Article 356: it recommended **it be used in extreme cases where all other options ceased to work and only to prevent the constitutional breakdown of state machinery.**

A warning should be issued to the errant State, in specific terms, that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.

Governor while recommending imposition of 356: In a situation of political breakdown, the **Governor should explore all possibilities of having a government enjoying majority support in the Assembly.** If it is not possible for such a government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, if there is one to continue as a caretaker government, provided the Ministry was defeated solely on a major policy issue, unconnected with any allegations of maladministration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate. During the interim period, **the caretaker government should be allowed to function.** As a matter of convention, **the caretaker government should merely**

carry on the day to-day government and desist from taking any major policy decision.

If the important ingredients described above are absent, it would not be proper for the Governor to dissolve the Assembly and install a caretaker government. The Governor should recommend proclamation of President's rule without dissolving the Assembly.

The State Legislative Assembly should not be dissolved either by the Governor or the President before the Proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it. Article 356 should be suitably amended to ensure this.

The Second ARC was setup by the Government of India on 31 August 2005 under the Chairmanship of Shri M. Veerappa Moily with the mandate to suggest measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government.

The Commission submitted its report in 15 parts during June 2006 to May 2009. Part-7 of the report titled '**Capacity Building for Conflict Resolution: Friction to Fusion**' made the following two recommendations regarding the Inter-State Council:

- **The Inter-State Council must be given the complete role provided to it under the Constitution i.e. both conflict resolution and better coordination of policy and action in matters of interest to the Union and States.** For resolution of conflicts, whether inter-State or Union-State, the mechanism of enquiring and advising, even without having the power to adjudicate, envisaged by clause (a) of Article 263 can be an effective method to resolve disputes.
- **The Inter-State Council should be constituted as and when the need in that behalf arises and that the Council need not exist in perpetuity.** The Council could best serve its purpose as a *pro tem* body with a flexible composition suited to its term of reference. **The present omnibus Council may be dissolved.** There should not be any bar or impediment for constituting more than one Council at a given time with different composition for each to consider different disputes or other matters of concern to different States and the Union. This approach would also facilitate meaningful, result-oriented discussions by parties directly interested in an item and facilitate time-bound solutions.

About Inter State Council: Article 263 of the Constitution of India provides for the establishment of an Inter-State Council. The text of the Article reads as under:

"263. Provisions with respect to an inter-State Council – If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of –

- (a) inquiring into and advising upon disputes which may have arisen between States;**
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or**
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure."**

The Commission on Centre-State Relations under the Chairmanship of Justice R. S. Sarkaria in its report in January 1988 recommended that:

"(a) A permanent Inter-State Council called the Inter-Governmental Council (IGC) should be set up under Article 263.

(b) The IGC should be charged with the duties set out in clauses (b) and (c) of Article 263, other than socio-economic planning and development.

Government of India accepted the recommendation of the Sarkaria Commission to set-up an Inter-State Council and notified the establishment of the Inter-State Council **vide Presidential Order dated 28.05.1990.**

- The inter-state council is a recommendatory body that has been empowered to investigate and discuss subjects of common interest between the Union and state(s), or among states.**
- It also makes recommendations for better coordination of policy and action on these subjects, and deliberations on matters of general interest to the states, which may be referred to it by its chairman.**
- It also deliberates on other matters of general interest to the states as may be referred by the chairman to the council.**
- The Council may meet at least thrice in a year.**
- There is also a Standing Committee of the Council.**

Composition:

- Prime Minister – Chairman**
- Chief Ministers of all States – Members**
- Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly – Members**
- Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister – Members**

- Governors of the state which are under the president rule
- Five Permanent invites from Union Cabinet

MM Punchhi Commission:

Almost two decades after the Sarkaria Commission, the second commission to examine the Centre-State relations was constituted in 2007 and chaired by Justice Madan Mohan Punchhi, a former Chief Justice.

The Punchhi Commission conducted a thorough examination of the evolving dynamics between the central government and state governments, **taking into account factors such as liberalization, globalization, decentralization (73rd and 74th Amendments)**, and significant events that have influenced their relationship since the Sarkaria Commission. The commission submitted its report in 2010, which included several noteworthy recommendations:

Inter-State Council: The commission like its predecessor stressed on strengthening the National Development Council and Zonal Councils for better cooperation between the centre and the states. Furthermore, it strongly recommended that the **Inter-State Council (ISC) be constituted and substantially strengthened as the key player in intergovernmental relations**. The ISC will act as a constitutional mechanism in harmonizing centre-state relations which has become urgent in the changed circumstances.

Fiscal Relations: Commenting on the growing regional imbalances among the states, the commission was of the view that the '**one-size fits all**' approach to fiscal consolidation has constrained fiscally strong states to raise more resources and therefore, recommended state-specific official deficit targets in the Fiscal Responsibility and Budget Management (FRBM) legislations of State.

The commission emphasized states be given freedom to plan according to their own needs and priorities within the framework of nationally accepted priorities.

Panchayats: the commission admitted a **mismatch between the functions devolved to the Panchayats and funds given to them**.

Hence, commission recommended that **funds for the centrally sponsored scheme designed for PRIs shall routed through the consolidated funds of state rather than centre directly giving it through their monitoring agencies.**

Legislative Relations:

- **Consultation with States** while legislating on matters in Concurrent List.
- **Time limit on the president to take actions on bills reserved for his consideration by the governor.**

Role of Governor while Appointing and dismissing Chief Minister: the Punchhi commission has given certain guidelines:

- The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.
- 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.
- In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated below:
 - (a) the group of parties which had pre-poll alliance commanding the largest number
 - (b) the largest single party staking a claim to form the government with the support of others.
 - (c) A post-electoral coalition with all partners joining the government
 - (d) A post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside.

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

Use of Article 356:

On invoking the 356-commission recommended that guidelines given by the supreme court in the SR Bomai Case shall be followed.

Committee has termed use of Article 352 and 356 (declaration of president rule) as a measure of last resort, and should not be used in ordinary disturbance situation. To tackle these kinds of intermediate situations, a detailed legal or constitutional framework shall be provided.

Co-ordination between States, Centre-State Relations and Inter-State Council:

- Commission recommended the strengthening and mainstreaming of the Inter-State Council to make it a vibrant forum for all the tasks contemplated under article 263.
- The Council can further have expert advisory bodies or administrative tribunals with quasi-judicial authority to give recommendations to the Council if and when needed. In short, it is imperative to put the Inter-State Council as a specialized forum to deal with intergovernmental relations according to federal principles and Constitutional good practices.

- Commission also recommended suitable amendments to Article 263 with a view to make the Inter-State Council a credible, powerful and fair mechanism for management of inter-state and Centre-State differences.
- If decision by consensus does not work in the Inter-State Council, **it may be taken by majority in matters of national concern.** In other areas, an Empowered Committee of ministers may be asked to study and report within a prescribed time-frame a more acceptable way of resolving the problem. The ISC must be empowered to follow up the implementation of its decisions for which appropriate statutory provisions should be made.
- the Council should have experts in its organizational set up drawn from the disciplines of Law, Management and Political Science besides the All India Services. The proposed legislation should give the ISC an organizational and management structure different from the Government departments and flexible enough to accommodate management practices involving multidisciplinary skills conducive to federal governance under the Constitution.

Zonal Councils:

Under the States Re-organization Act, **1956 five Zonal Councils were created** ostensibly for curbing the rising regional and sectarian feelings and to promote co-operation in resolving regional disputes.

Later the **North Eastern Council** was created under the **North Eastern Council Act, 1971.**

In each of these Zonal Councils, **Union Home Minister is the Chairman and the Chief Ministers of the States in the Zones concerned are members.**

The Commission recommended that the **Zonal Councils should meet at least twice a year** with an agenda proposed by States concerned to maximize coordination and **promote harmonization 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.

15th Finance Commission: (Under NK Singh)

- Share of states in central taxes: The share of states in the central taxes for the 2021-26 period is recommended to be 41%, same as that for 2020-21. This is less than the 42% share recommended by the 14th Finance Commission for 2015-20 period. The adjustment of 1% is to provide for the newly formed union territories of Jammu and Kashmir, and Ladakh from the resources of the centre.

Criteria Used by 15th Finance Commission:

- **Income distance:** Income distance is the distance of a state's income from the state with the highest income. Income of a state has been computed as average per capita GSDP during the three-year period between 2016-17 and 2018-19. A state with lower per capita income will have a higher share to maintain equity among states.
- **Demographic performance:** the Commission used 2011 population data for its recommendations. The demographic performance criterion has been used to reward efforts made by states in controlling their population. States with a lower fertility ratio will be scored higher on this criterion.
- **Forest and ecology:** This criterion has been arrived at by calculating the share of the dense forest of each state in the total dense forest of all the states.
- **Tax and fiscal efforts:** This criterion has been used to reward states with higher tax collection efficiency. It is measured as the ratio of the average per capita own tax revenue and the average per capita state GDP during the three years between 2016-17 and 2018-19.
- **Revenue deficit grants:** 17 states will receive grants worth Rs 2.9 lakh crore to eliminate revenue deficit.
- **Sector-specific grants:** Sector-specific grants of Rs 1.3 lakh crore will be given to states for eight sectors: (i) health, (ii) school education, (iii) higher education, (iv) implementation of agricultural reforms, (v) maintenance of PMGSY roads, (vi) judiciary, (vii) statistics, and (viii) aspirational districts and blocks. A portion of these grants will be performance-linked.
- **State-specific grants:** The Commission recommended state-specific grants of Rs 49,599 crore. These will be given in the areas of: (i) social needs, (ii) administrative governance and infrastructure, (iii) water and sanitation, (iv) preservation of culture and historical monuments, (v) high-cost physical infrastructure, and (vi) tourism.
- **The Commission recommended a high-level committee at state-level to review and monitor utilisation of state-specific and sector-specific grants.**

Grants to Local Governments:

- Along with grants for municipal services and local government bodies, it includes performance-based grants for incubation of new cities and health grants to local governments.
- In grants for Urban local bodies, basic grants are proposed only for cities/towns having a population of less than a million. For Million-Plus cities, 100% of the grants are performance-linked through the **Million-Plus Cities Challenge Fund (MCF)**.

- MCF amount is linked to the performance of these cities in improving their air quality and meeting the service level benchmarks for urban drinking water supply, sanitation and solid waste management.

Other recommendations

- **Health:** States should increase spending on health to more than 8% of their budget by 2022. Primary healthcare expenditure should be two-thirds of the total health expenditure by 2022. Centrally sponsored schemes (CSS) in health should be flexible enough to allow states to adapt and innovate. Focus of CSS in health should be shifted from inputs to outcome. All India Medical and Health Service should be established.
- **Funding of defence and internal security:** A dedicated non-lapsable fund called the Modernisation Fund for Defence and Internal Security (MFDIS) will be constituted to primarily bridge the gap between budgetary requirements and allocation for capital outlay in defence and internal security. The fund will have an estimated corpus of Rs 2.4 lakh crore over the five years (2021-26). Of this, Rs 1.5 lakh crore will be transferred from the Consolidated Fund of India. Rest of the amount will be generated from measures such as disinvestment of defence public sector enterprises, and monetisation of defence lands.

Centrally-sponsored schemes (CSS): A threshold should be fixed for annual allocation to CSS after which the funding for a CSS should be stopped (to phase out CSS which outlived its utility or has insignificant outlay). Third-party evaluation of all CSS should be completed within a stipulated timeframe. Funding pattern should be fixed upfront in a transparent manner and be kept stable.

Criticism

- Performance based incentives disincentivizes independent decision-making. Any conditions on the state's ability to borrow will have an adverse effect on the spending by the state, particularly on development thus, undermines cooperative fiscal federalism.
- It does not hold the Union government accountable for its own fiscal prudence and dilutes the joint responsibility that the Union and States have.

Centrally sponsored schemes (CSS) are criticized for several reasons:

- **Lack of State Autonomy:** Critics argue that centrally sponsored schemes undermine the autonomy of state governments. The central government designs and implements these schemes, often without sufficient consultation with the states. This approach reduces the decision-making

power of the states and limits their ability to address specific local needs and priorities.

- **Imbalanced Funding:** CSS typically involve a financial contribution from both the central and state governments. However, the funding pattern is often skewed, with the central government providing a higher proportion of the funds. This creates a financial burden on the states, as they may struggle to meet their share of the funding. Critics argue that this imbalanced funding arrangement puts undue pressure on state budgets and hampers their ability to allocate resources according to their own development priorities.
- **One-Size-Fits-All Approach:** Centrally sponsored schemes often follow a standardized approach and guidelines set by the central government. Critics argue that this approach fails to consider the diverse needs, challenges, and contexts of different states. It may lead to a uniform implementation of schemes that may not be suitable or effective in all states, resulting in inefficiencies and limited impact on the ground.
- **Administrative Burden:** The implementation of centrally sponsored schemes requires significant administrative machinery and capacity at the state level. Critics argue that states with limited administrative resources may struggle to effectively implement and manage these schemes. This burden can divert resources and attention from other important state-level initiatives and programs.
- **Lack of Flexibility:** Centrally sponsored schemes **often come with strict guidelines and conditions imposed by the central government.** Critics argue that these rigid guidelines limit the flexibility of states to adapt the schemes to their specific needs or modify them based on local circumstances. This lack of flexibility can hinder innovation, responsiveness, and effectiveness in addressing local challenges.
- **Political Considerations:** Critics also point out that centrally sponsored schemes can be influenced by political considerations. **The central government may use these schemes as a means to gain political mileage or control over states, which can undermine the objective and equitable implementation of the schemes.**

POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment, and pornography, while safeguarding their interests at every stage of the judicial process.

This Act adopts a child-friendly mechanism for reporting, recording of evidence, investigation, and speedy trial of offences through designated Special Courts. Salient features of the act are:

1. POCSO is gender neutral – it applies to both girls and boys – and lists all known sexual offenses
2. It covers all persons below the age of 18 years
3. Act defines sexual abuse of children for the first time and provides focus non-contact forms of sexual abuse apart from defining Contact abuse.
4. Mandatory reporting is to report sexual offence to the SJPU or near police station
5. It further provides that if a victim is a child in need of care and protection, the SJPU or Police are to produce the child victim, within 24 hours of a complaint being received, before the Child Welfare Committee for care and rehabilitation.
6. The Police may, through the Special Courts designate a support person/Organisation for the assistance of the victim and their family through the Judicial process.
7. POCSO has mandatory provisions for recording the statement of the survivor in a non-threatening environment by police officers in plain clothes so as not to appear intimidating
8. To record the statement, police officers must go to a place of the minor's choice, and record the statement in presence of a person that he/she trusts
9. Only female doctors can collect forensic evidence from a minor in a medico-legal case in the presence of a person of trust
10. It mandates the protection of minors at all stages of the judicial process, including ensuring that their identity is not revealed, nor do they have to face the accused.
11. The minor's testimony can be given using a video link, and he/she is not made to repeat the testimony in court at any time.
12. The trial must end within 1 year from the date of registering the complaint against the accused.
13. The court must make arrangements for the presence of an interpreter, translator, special educator, social worker, or any other expert in the courtroom for the minor's assistance
14. Compensation must be provided to the minor for medical treatment and rehabilitation in case of sexual abuse
15. It mandates that teachers, management and all employees of educational and other institutions must be made aware of the provisions of the Act, and they have a duty to report cases of child abuse as per the provisions in Sections 19 (I) and 21

Punishments listed under POCSO

Penetrative sexual assault:

Penetration that is peno-vaginal, peno-oral, peno-urethral or peno-anal, fingering or object penetration.

Punishment: Not less than 7 years; this may extend to life imprisonment, and a fine (Section 4).

2. Aggravated penetrative sexual assault:

Committed by a person of trust or authority such as a police officer.

Punishment: Not less than 10 years; this may extend to rigorous life imprisonment, and a fine (Section 6).

3. Non-penetrative sexual assault:

Committed by whoever, with a sexual intent,

- » touches the vagina, penis, anus or breast of the child
- » makes the child touch the vagina, penis, anus or breast of such person or any other person
- » does any other act with sexual intent which involves physical contact without penetration.

Punishment: Not less than 3 years; this may extend to 5 years, and a fine (Section 10).

4. Aggravated non-penetrative sexual assault:

Committed by a person of trust or authority such as a police officer.

Punishment: Not less than 5 years; this may extend to 7 years, and a fine (Section 10).

5. Sexual harassment:

Unwelcome sexual remarks, emails or telephone calls; taunting, jeering, demands or requests for sexual favours.

Punishment: 3 years and a fine (Section 12).

6. Use of minor for pornographic purposes:

Involving a child in the preparation, production and/or distribution of pornography via print, electronic, computer or any other technology.

Punishment: 5 years and a fine, and in the event of second conviction, 7 years and a fine (Section 14 (1)).

7. Attempt of offence:

Punishment: 1 year and/or fine (Section 18).

8. Abetment of offence:

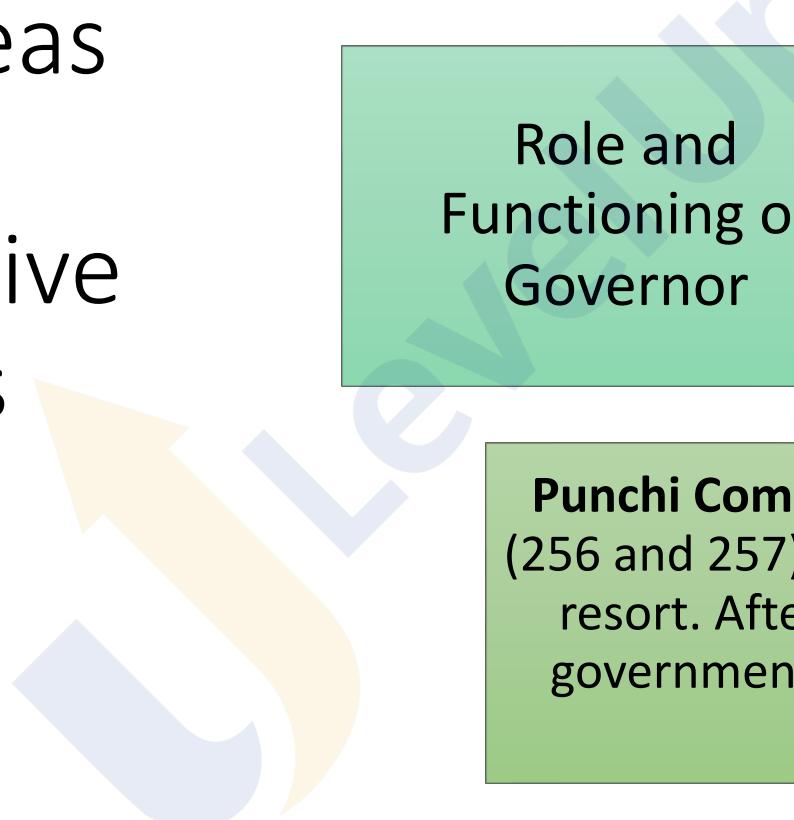
Instigating a person to commit an offence; conspiring to commit an offence; intentionally aiding an offence.

Punishment: Same as that of the offence (Section 17).

9. Failure to report an offence

Punishment: 6 months and/or a fine (Section 21).

Tension Areas in Administrative Relations



Abuse of Article 356

Problems in the
Management of All India
Services

Role and
Functioning of
Governor

Article 256 and Article 257:

- States pointed out as wide, open and vague
- Violates the federal principles

Punchi Commissions:- has opined that these (256 and 257) articles are to be used as the last resort. After repetitive warnings also state governments are not correcting then these articles can be used.

Deployment of Central Forces in the States

- Should union unilaterally impose the positioning of Central Forces?

Article 355: Duty of the Union to protect States against external aggression and internal disturbance: It shall be the duty of the Union 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 this Constitution

Recent Controversy related to BSF

BSF is the 1st line of protection for Indian Borders

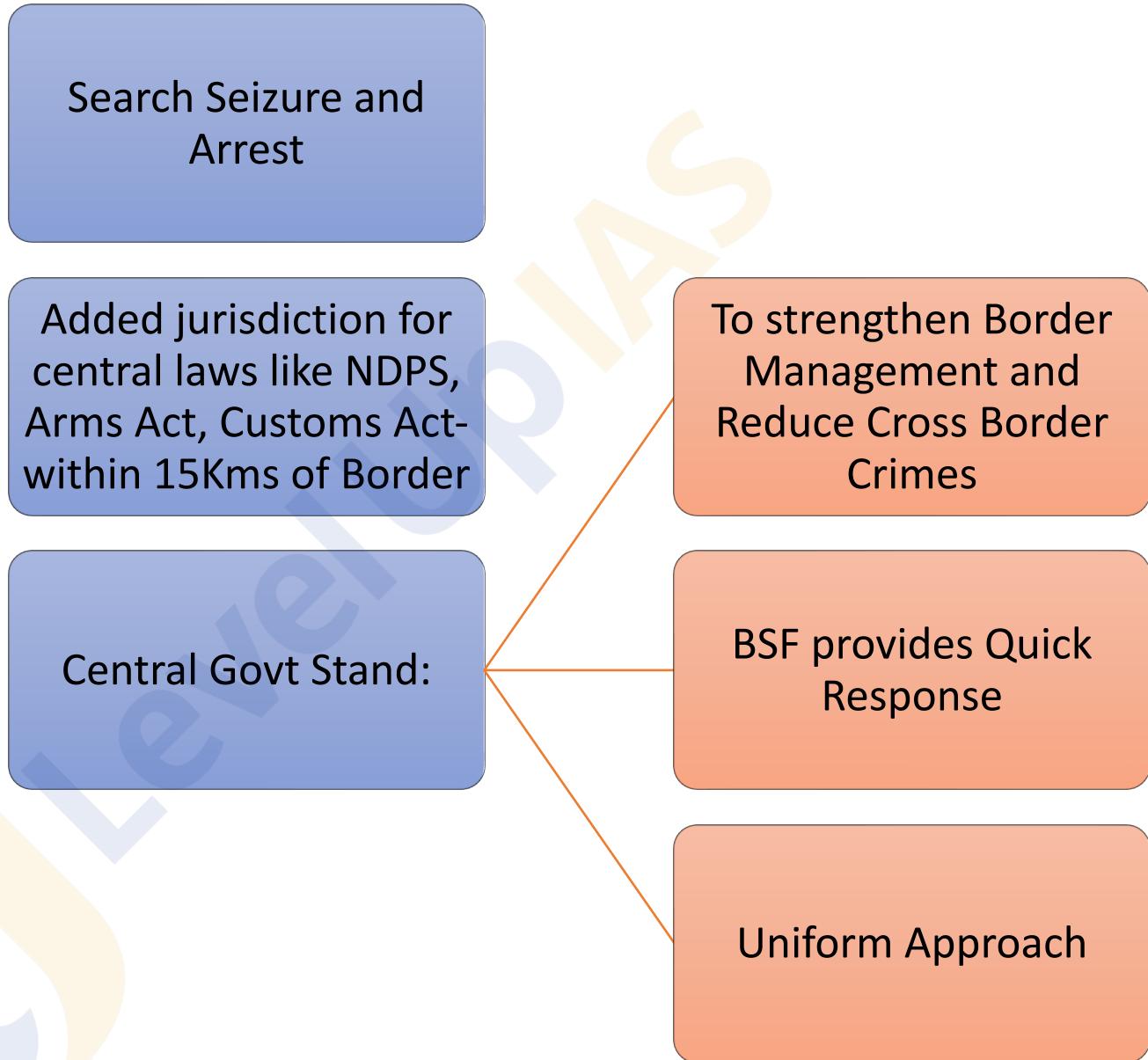
Governed under BSF Act 1968

Section 139: empowers the **Central Government to confer powers and duties** on members of the force in respect of any Central Acts for the purposes specified therein.

Presently BSF has been stationed: Whole area of Manipur, Mizoram, Tripura, Nagaland, Jammu and Kashmir, Ladakh,

Border areas of Gujarat, Rajasthan, Assam, West Bengal and Punjab

Powers of BSF



Issues Involved

- No Consultation with States
- States find it as interference in law order
- Increasing jurisdiction without adequate safeguards may lead to arbitrary exercise of powers, Human Rights Violation and subserving the political vendetta.

Way Forward

- **Clear definition of role:** National Security and Law and Order.
- Enhance operational coordination between state police and central forces.
- Not bypassing Judicial Scrutiny
- Consultation with states as far as practicable
- Role of interstate council becomes very important

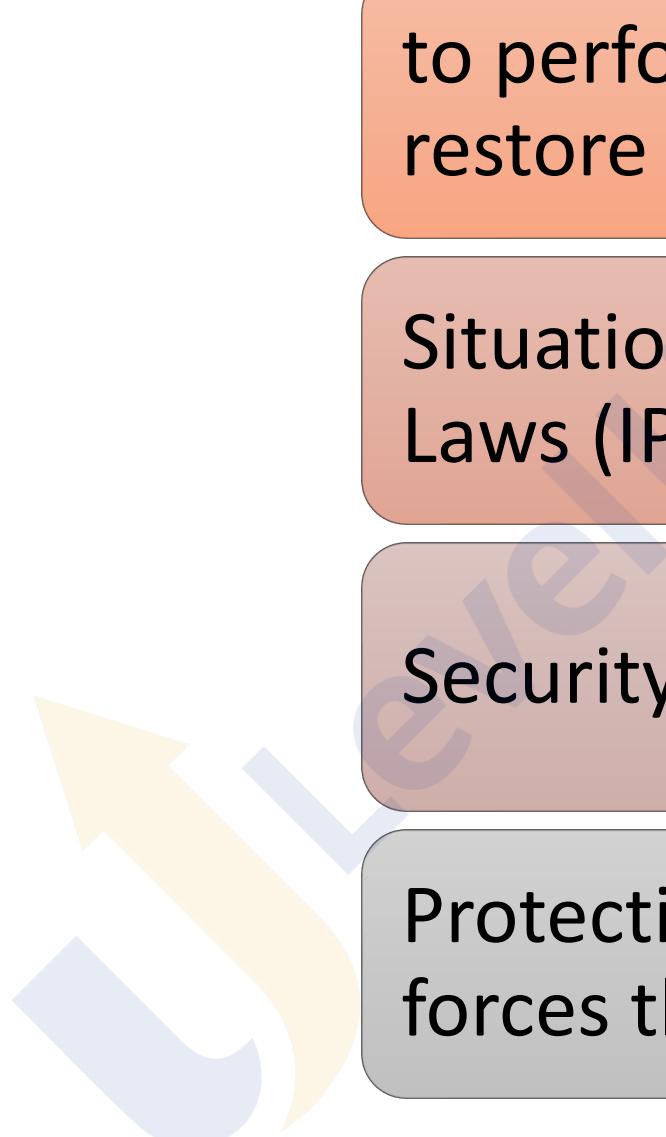
Armed Forces Special Powers Act, 1958

The AFSPA gives unfettered powers to the armed forces and the Central armed police forces deployed in “disturbed areas.

It also grants soldiers executive powers to enter premises, search, and arrest without a warrant.

The Act was amended in 1972 and the powers to declare an area as “disturbed” were conferred concurrently upon the Central government along with the States.

Arguments in Favour



to perform their activities to restore the normal situation

Situations beyond normal criminal Laws (IPC/CrPC)

Security of nation

Protection of member of armed forces themselves

Arguments Against

Misuse of the provisions of Acts like fake encounters, extra-judicial killings, etc.
described as draconian, repressive, colonial and archaic law in Indian democracy.

AFSPA as license to kill given to the Armed forces.

AFSPA can be seen as violation of all other constitutional rights like prevention against arrest and detention, privacy etc.

Abolition will bring down the feeling of alienation in people of particular state and especially north-east.

Abuse of power –Threat to justiciable fundamental rights

Human rights violations in AFSPA areas are not inquired into and followed by adequate action. **Thus, it is against the principle of natural justice.**

Judgment of Apex Court

*Naga People's
Movement of
Human Rights
v.
Union of India*

*Periodic review
after 6 Months*

*Unilateral declaration can be made
by the Central government,
however, it is desirable that the
state government should be
consulted by the central
government before making the
declaration;*

*the authorized officer
should use minimal
force necessary for
effective action.*

Way Forward

government needs to address the affected people and reassure them of favorable action.

The 5th report of the Second Administrative Reforms Commission on public order has also recommended the repeal of the AFSPA.

Removing ambiguity in law – The terms like “disturbed”, “dangerous” and “land force and Ensuring Transparency

Should be open to Independent judicial inquiry of cases

Jeevan Reddy Committee

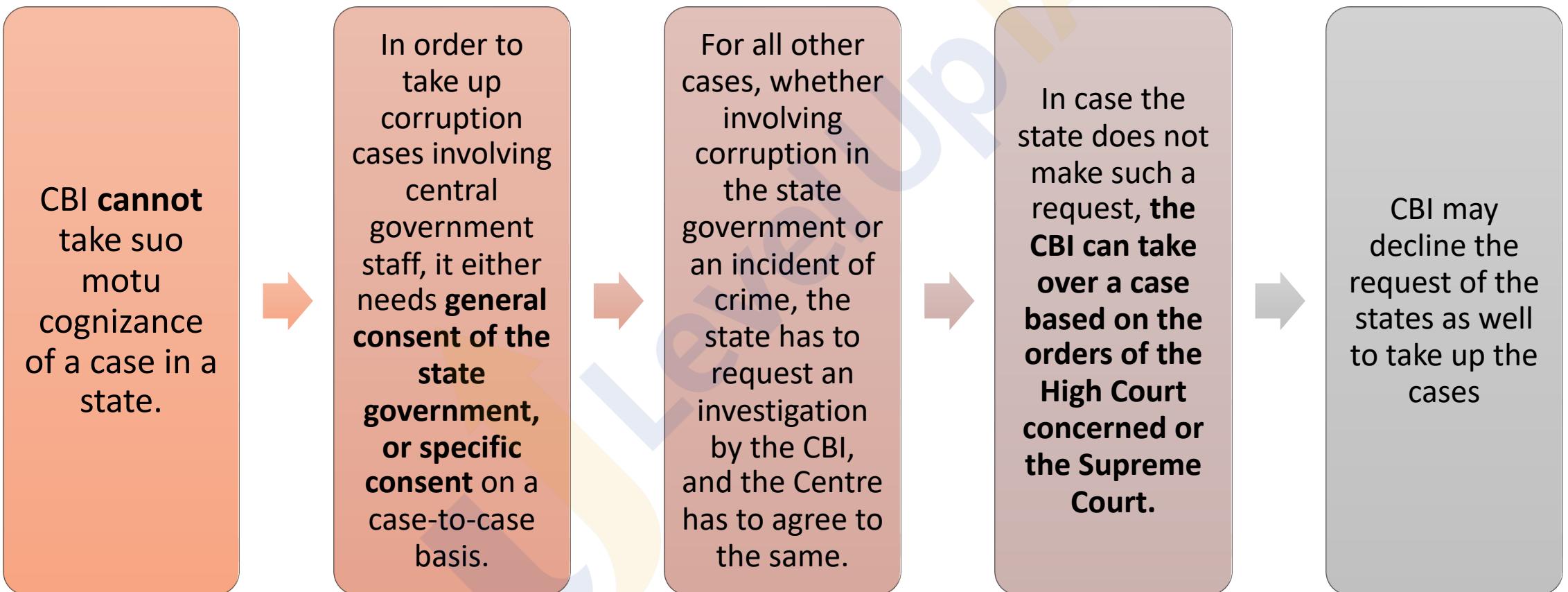
1. After consultation with all the stakeholders **committee recommended abolition of AFSPA.**
2. Instead of AFSPA **some comprehensive arrangement**
3. Central forces must act to aid civil power.
4. **Only commissioned officer can order to use the force if he/she feels necessary.**
5. Each district must have a grievances cell where these forces are deployed this cell should be independent and competent to enquire into violation of rights.

PYQs

Human rights activists constantly highlight the fact that the Armed forces (Special Powers) Act, 1958 (AFSPA) is a draconian act leading to cases of human rights abuses by security forces. What sections of AFSPA are opposed by the activists? Critically evaluate the requirement with reference to the view held by the Apex Court.

(2015)

Working of CBI



Recent Issues:

Since 2015, as many as nine states — **Maharashtra**, Punjab, Rajasthan, West Bengal, Jharkhand, Chhattisgarh, Kerala, Mizoram and Meghalaya — have withdrawn general consent to the CBI.

Opposition-ruled states have alleged the CBI has become its master's voice, and has been unfairly targeting opposition politicians.

In November last year, the Supreme Court expressed concern over **CBI's submission that 78% of its 150 requests for sanction to investigate cases were pending with state governments that had withdrawn consent to the CBI**.

CBI and Federal Issues

- The Police are under List II, i.e., it is exclusively a state subject. So only the state can make law regarding the same
- The jurisdiction of CBI often comes into direct confrontation with state police which causes federal issues recurrently.
- The confrontation between state and center over CBI is often more prominent when there exist different political parties at the state and center level.
- **Ambiguity in law:** CBI is governed under Delhi Special Police Establishment Act. In the Advance Insurance Co. Ltd case, 1970 CBI, Court has held that being a force constituted for Union Territories as recognised under the Delhi Special Police Establishment Act of 1946, can conduct investigation into the territories of the States only with their consent.
- Section 6 of the Delhi Special Police Establishment Act **may give way to a clearer legal provision which guarantees fair investigation and prosecution.**

Finance Commission

Article 280 provides for a Finance Commission as a quasi-judicial body.

It is constituted by the President every fifth year or even earlier

It is required to make recommendations to the President on the following matters:

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.

Any other matter referred to it by the President in the interests of sound finance.