

# Constitution of India

## Module 5

### The Federal System, Statutory Institution, Miscellaneous Provisions

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## Module Syllabus

5.1	Relations between the Union and the States, legislative relation, administrative relation, financial Relations, Inter State council, finance commission.
5.2	Emergency provision, freedom of trade commerce and inter course, comptroller and auditor general of India, public Services, public service commission, administrative Tribunals.
5.3	Official language, elections, special provisions relating to certain classes, amendment of the Constitution.



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## THE INDIAN FEDERAL SYSTEM



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## Relation between Union and the States

- Before formation of federation the states were not 'sovereign' entities (unlike USA). The Indian model of federation is called 'Quasi-Federal system'
- The residuary powers are assigned to the Union. (similar to Canadian system)
- Union has power to exercise control over the legislature of the states. The legislation can be disallowed by the President if they please.
- No state has power to determine its own constitution.
- The states need not be always consulted for the amendment of the constitution. (can be done by the Parliament by special majority)



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### Relation between Union and the States

- The **Union is indestructible, but the States are not**. The Parliament can reorganise the states or their boundaries by simple majority.
- In the Council of States, **no equality of representation is safeguarded**. (all states have equal representation regardless of the population)
- **No state can leave the federation**.
- The relation between Union and State are under
  - Legislative relations
  - Administrative Relations
  - Financial Relations



### Legislative Relations

- This includes
  - **Territorial jurisdiction** of laws made by the parliament and by the state legislatures
  - **Distribution of legislative subjects**
  - **Power of Parliament** to legislate with respect to a matter in the state list.
  - **Centre's control** over state legislation.
- Distribution of Legislative subjects:
  - **List 1 (Union List) 97 subjects**: Foreign affairs, defence, railway, postal services, banking, communication, currency etc.
  - **List 2 (Concurrent list) 47 subjects**: Education, forests, electricity, labour welfare, criminal law, population control etc.



### Legislative Relations

- **List 3 (State List) 66 Subjects**: Police, roadways, health, agriculture, local government, sanitation etc.
- However, article 249 **empowers the Parliament** to legislate in matters of **State List in the national interest**.
- Article 250, **Parliament is empowered** to make laws related to **State List during National Emergency**.



### Administrative Relations

- Article 256 – **executive power of states shall be in compliance** with the laws made by **Parliament**. The Union can extend their power in that direction.
- Cooperation between the Union and States**
- Article 261: Faith and credit shall be given to **public Acts and Judicial proceedings**.
  - Article 262: The parliament can decide upon a **dispute with respect to usage of inter-state river**.
  - Article 263: empowers President to establish **Inter-state Council** and to advice upon disputes between states



### Administrative Relations

#### Centre-State Relationship during Emergency

- During **National Emergency**, **State Government** become **subordinate to Central Government**. All the Executive functions will be carried out by the Union.
- During **State Emergency**, the **President** can assume all the **functions of State Government**.
- During **Financial Emergency**, **Union may give direction** to states regarding financial matters.



### Financial Relations

- Constitution provides **Union and States with independent sources of revenue**.
- The **Parliament** has exclusive power to levy taxes on the subjects in **Union List**
- **State** can levy taxes on **State List**.
- The **Union and States** can levy taxes on **Concurrent List**.
- The **Union** can levy taxes on the **residuary subjects** (which are not in all the three lists).
- Some matters the taxes are collected by states and transferred to the Union.
- Some cases, the collection is done by the Union and is distributed among the states.



### Emergency Provision

- This is a **unique feature of Indian Constitution** that allows the Centre to assume wide powers in order to handle special crucial situations.
- During Emergency, **Centre can assume the legislative and executive power** of any state.
- This provision also empowers the Centre to **curtail freedom** and rights.
- Because of emergency provisions, **scholars are hesitant to call Indian Constitution to be fully Federal**.
- The **President of India has the power** to impose emergency rule in any or all the Indian states if the security of part or all of India is threatened by "war or external aggression or armed rebellion"
- An emergency can be proclaimed only on the basis of **written advice** tendered to the President by the **Cabinet**.



### Emergency Provision

#### 1. National Emergency (Article 352)

- Whenever there is a threat for peace, security, stability and governance of the country:
  - War
  - External Aggression
  - Internal rebellion(These may not really happen, but if there is a **possibility of happening**, then the president can declare emergency)
- The president can make proclamation of emergency if they are 'satisfied' that grave emergency exists. (Article 352).
- Many **fundamental rights are curtailed**.
- **Freedom for media is curtailed** during emergency.




### Emergency Provision

**Procedure for Proclamation of National Emergency:**

- To be done by **written advice from Union Cabinet**.
- **Each house of Parliament** should approve within **one month** of declaration. (by 2/3 majority).
- Once approved, emergency will remain for a period of **six months**.

**Procedure for Revocation National Emergency:**

- Done by the President by another **proclamation**.
- **10 % or more** members in **Lok Sabha** can disapprove or revoke emergency by simple majority.
- Then immediately the emergency become inoperative.




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### Emergency Provisions

**Effects of National Emergency**

- Federal form of governance changes into **Unitary**.
- **Parliament makes laws** on the state list.
- **President** exercises the **executive power** of the states.
- **Lok Sabha** can extend tenure by **1 year**.
- **Fundamental Rights** are automatically **suspended**.




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### Emergency Provision

**2. State Emergency (Article 356)**

- **President** can proclaim emergency on a state if they are satisfied with a **report from the Governor** that the governance of the state cannot be carried out smoothly.
- This is called 'Proclamation on account of failure of Constitutional machinery' (or in common language **Presidents Rule**).
- Then the President can
  - Assume themselves **any function of the State** (other than High Court).
  - Declare that the **state legislature** is exercised **through the Parliament**.
  - Make any desirable decisions.



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### Emergency Provision

**Procedure for Proclamation of State Emergency:**


- The **Governor shall give satisfactory report** to the President regarding the necessity.
- **Both houses** of Parliament shall approve within **two months**.
- Once approved, emergency will remain for a period of **six months**.
- If not revoked, this can be extended several times **up to 3 years**.

**Procedure for Revocation of State Emergency:**

- By Presidents **proclamation**.

**Effects of National Emergency**

- **President** assumes all the **power over the state**.
- President may **dissolve Legislative Assembly**
- President may make any other consequential decisions.



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### Emergency Provisions

**3. Financial Emergency** (Article 360)


- If President is satisfied that **financial stability** or credit or any of its part is in danger.
- **The executive and legislative powers will be then exercised by the Union.**
- Should be approved by the **both houses** of Parliament **within two months.**

**Procedure for Proclamation of Financial Emergency**

- President shall **proclaim**
- Approved by Parliament in **two houses by simple majority**
- Automatically comes to an end on the **end of financial year** (31<sup>st</sup> March)

**Procedure for Revocation**


- By simple proclamation by the President

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### Emergency Provisions


**Effects of Financial Emergency**

- **Union can direct** the states in financial matters.
- President can **reduce salaries of any person in government service** including Judges of the courts.
- President may direct the states to **reserve money bills to Parliament.**


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### Trade, Commerce and Intercourse

- Adopted from Australian Constitution – freedom of trade, commerce and intercourse, carried out within the country.
- **Free flow of goods** is ensured within different states (Person from one state can sell goods in other states).
- This ensures unity of nation **removing geographical barriers.**
- This freedom is not absolute and can be restricted.
  - **Parliament can impose restrictions** if necessary for public interest.
  - This restriction **cannot be** imposed **in favour of any state** over the other.
  - **States can impose taxes** from imported from other states.
  - **States can impose reasonable restrictions** out of public interest.

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### CONSTITUTIONAL BODIES

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### Constitutional Bodies

- Constitutional bodies **derive their powers and authorities from the Constitution of India**. They are mentioned in the Constitution. Since they get their power from the Indian Constitution, any change in the mechanism of the constitutional bodies would require a constitutional amendment.
- Examples:
  - Attorney General of India
  - Comptroller and Auditor General (CAG)
  - Election Commission
  - Finance Commission
  - National Commissions for Scheduled Castes and Scheduled Tribes
  - Union and State Public Service Commissions
  - Inter-state Council
  - Administrative Tribunals



### Inter-State Council

- Article 263: empowers the **President** to establish Inter-State Council.
- The Council has duty of
  - Inquiring and advising upon **disputes between states**.
  - Investigating **subjects of common interest**.
  - Making recommendations upon any subjects of common interest.
- The Inter State Council of India was established in 1990. Thereafter, five Zonal Council have been set up.
- PM is the president of the council
- **Composition:**
  - Prime Minister, Chair
  - Chief Ministers of all states.
  - Chief Ministers of the union territories having legislative assemblies.
  - Administrators of the union territories not having legislative assemblies.
  - 6 Union Cabinet Ministers, including Home Minister.
  - Governors of the states being administered under President's rule.



### Finance Commission

- Article 280: Finance Commission aid the President for taking financial decisions.
- Functions
  - **Distribution of 'net proceeds' of taxes between Center and the States**, to be divided as per their respective contributions to the taxes.
  - Determine factors governing Grants-in-Aid to the states and the magnitude of the same.
  - To make **recommendations to the president** as to the measures needed to augment the Fund of a State to supplement the resources of the panchayats and municipalities in the state on the basis of the recommendations made by the finance commission of the state.
  - Any other matter related to it by the president in the interest of sound finance.



### Finance Commision

- Finance commission is an **autonomous body which is governed by the government of India**.



Nand Kishor Singh, IAS (Chair of Finance Commission)




### Comptroller and Auditor General


- Ambedkar said CAG is the “Guardian of Public Purse”
- Appointed by the President.

**Duties and Powers**

- Advices the Presidents regarding the accounts of the Country
- Checks the accounts of Union and States
- Conduct account audits for both Union and States
  - Audits accounts concerned with the Contingency Fund, the Consolidated Fund of India and states, and the Public Accounts Fund of the states and centre.



G. C. Murmu, IAS



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### Public Services

- Public Services (alternatively known as government services) play a key role in smooth functioning of democracy in India.
- The public services in India are classified into three categories – all-India services, Central services and state services.

**All-India Services (AIS)**

All-India services are those services which are common to both Central and state governments. The members of these services occupy top positions (or key posts) under both the Centre and the states and serve them by turns.

- Indian Administrative Service (IAS)
- Indian Police Service (IPS)
- Indian Forest Service (IFS)



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### Public Services

**Central Services**

The personnel of Central services work under the exclusive jurisdiction of the Central government. They hold specialized (functional and technical) positions in various departments of the Central government.

Examples:

- Central Engineering Service
- Central Health Service
- Central Information Service
- Indian Economic Service
- Indian Foreign Service
- Indian Revenue Service



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### Public Services

**State Services**

The personnel of state services work under the exclusive jurisdiction of the state government. They hold different positions (general, functional and technical) in the departments of the state government. However, they occupy lower positions (in the administrative hierarchy of the state) than those held by the members of all-India services.

Examples:

- Civil Service
- Police Service
- Forest Service
- Agricultural Service
- Medical Service
- Engineering Service




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### Public Service Commission

- Create appropriate standards to select personnel to public services.
- Three types of PSCs:
  - Union Public Service Commission (UPSC)
  - State Public Service Commission (SPSC). Ex.: KPSC
  - Joint Public Service Commission (JPSC)
- Union Public Service Commission (UPSC) to conduct examinations for recruitment to the "All India Services" (AIS) and the "Higher Central Services" (HCS) and to advise the President on disciplinary matters.
- State Public Service Commission in every state to conduct examinations for recruitment to state services and to advise the governor on disciplinary matters.



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### Public Service Commission

- UPSC Exams Examples:
  - Gazetted group
    - Civil Services Examination (India) (CSE)
    - Combined Defence Services Examination (CDSE)
    - Combined Medical Services Examination (CMSE)
  - Non-Gazetted group
    - Railway Recruitment Control Board (RRCB)
    - Staff Selection Commission (SSC)




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### Administrative Tribunals

- In Administrative law, the term 'tribunal' is used in a significant sense and refers to only the adjudicatory bodies which lie outside the sphere of the ordinary judicial system.
- To institute an effective system of the judiciary with fewer complexities, the judicial powers are delegated to the administrative authorities, thus, giving rise to administrative tribunals or administrative adjudicatory bodies which holds quasi-judicial features.
- Established to avoid regular court approach by public servants.
- It deals with service matters and is vested with limited jurisdiction to decide a particular issue.




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### Administrative Tribunals

#### Characteristics

- Administrative tribunals must have statutory origin i.e. they must be created by any statute.
- They must have some features of the ordinary courts but not all.
- An administrative tribunal performs the quasi-judicial and judicial functions and is bound to act judicially in every circumstance.
- They are not adhered by strict rules of evidence and procedure.
- Administrative tribunals are independent and not subject to any administrative interference
- In the procedural matters, an administrative tribunal possesses the powers of a court to summon witnesses, to administer oaths and to compel the production of documents, etc.
- These tribunals are bound to abide by the principle of natural justice.
- The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.



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MISCELLANEOUS PROVISIONS



Official Languages

There is **NO national language** in India.

Official Languages of the Union

- **Hindi** in Devanagari script. Numerals shall be International type (Arabic numerals).
- **English** is also official language indefinitely until the Parliament changes it.

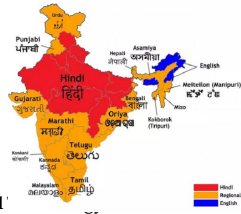
Official Languages of a State

- Hindi or any other language decided by the legislature of the state.



Official Languages

- The Eighth Schedule of the Indian Constitution lists **22 languages** which have been referred to as scheduled languages and given recognition, status and official encouragement.
- In addition, the Government of India has awarded the distinction of **classical language** to Kannada, Malayalam, Odia, Sanskrit, Tamil and Telugu. Classical language status is given to languages which have a rich heritage and independent nature.
- **Hindi remains 'lingua franca'** for almost all the northern and north-eastern states.



Elections

- **Superintendence, direction and control of all the elections** (Parliament, LAs, President, Vice-president) is vested in Election Commission.
- **NO person to be ineligible in electoral roll** in grounds of religion, race, caste or sex.
- Elections to House of the People and LAs are on the basis of **Universal Adult Franchise** (Universal Suffrage).
- **Parliament may make rules** related to elections and constituencies.
- **Courts shall not generally interfere** in electoral matters.



### Special Provisions to Certain Classes

- Article 330 to 342 make **special provisions for safeguarding the SCs, STs, Anglo-Indians and Backward Classes.**
- **Seats are reserved in House of People, LAs** in proportional to their population.
- **President** nominates two members from **Anglo-Indian community to the Lok Sabha.**
- Constitution directs to establish **National Commission for Scheduled Castes and Scheduled Tribes**
- **Linguistic minority** is a class of people whose mother tongue is different from that of the majority in the State or part of a State. Article 350-A, imposes a duty on the State to endeavor to provide adequate facilities for instructions in the mother tongue at the primary stage of education to children belonging to linguistic minority.



### Amendment of the Constitution

- **Amending the Constitution of India** is the process of **making changes** to the nation's fundamental law or supreme law.
- This procedure **ensures the sanctity of the Constitution of India** and keeps a check on arbitrary power of the Parliament of India.
- These are **not easy provisions** and require compliance with other provisions.
- **Three forms** of amendments:
  - Simple majority in Parliament
  - Special majority in Parliament
  - Special majority of Parliament and the total state.
- **105 amendments have been made in the Constitution till date.**



### Amendment of the Constitution

#### Noticeable Amendments [just for information]

- 42<sup>nd</sup> Amendment (1977) : during Indira Gandhi – Emergency . Provides for curtailment of fundamental rights, imposes fundamental duties and changes to the basic structure of the constitution by making India a "Socialist Secular" Republic.
- 61<sup>st</sup> Amendment ( 1989) : Reduce age for voting rights from 21 to 18.
- 101<sup>st</sup> Amendment (2017): Introduced GST
- 103<sup>rd</sup> Amendment (2019): 10% reservation for Economically Backward Classes



### END OF MODULE 5

