

Introduction to Politics, with reference to India

Federalism

Federalism

Theory

- A federal governance structure refers to the division of powers between the national and regional governments i.e. central and state govts. where both the structures have separate jurisdiction, and no one derives its authority from each other.
- It is an institutional arrangement for sharing power across multiple levels of government that function based on the principle of “shared and self rule”. There can be varieties of federalism depending on historical and societal circumstances, its context and requirements.
- There are two kinds of federalisms – coming together federalism (under which militarily or economically weak independent units/states come together to form a union) and holding together federalism (under which a big unitary state is converted into a federation by granting autonomy to the units/provinces to promote regional affairs)

Federalism in India

- Federal system was brought forward to not only ensure efficient governance but to also ensure that unity and diversity of the country is maintained.
- Article 1 of the Indian Constitution states India i.e. Bharat as ‘Union of States’ indicating two things, 1) that Indian federation is not a result of any agreement between the states and 2) the states have no right to secede from the federation. Meaning that Indian federation structure is basically a Union which is indestructible.

Federalism in India

Features

- Dual Government
- Division of Powers
- Written and Rigid Constitution
- Independent Judiciary
- Supreme Court as the Guardian of Constitution
- Basic Structure of the Constitution

Federalism in India

Legislative Relations between the Centre and States

- The Constitution provides for a three-fold distribution of legislative subjects between the Centre and the states, viz., List-I (the Union List), List-II (the State List) and List-III (the Concurrent List) in the Seventh Schedule.
- Union List - Defence, Foreign Affairs, Railways, Communication etc.
- State List - Public order, Police, Public health and sanitation, Hospitals and dispensaries, Fisheries etc.
- Concurrent List - Education, Forest, Trade unions, Marriage, Adoption etc.
- Residuary Matters - Space Technology, Cyber Law, Computational Technology etc.

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Legislative Relations between the Centre and States

- Parliamentary legislation in the state field – The Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances:
 - When Rajya Sabha passes a Resolution (Article 249) - If the Rajya Sabha declares that it is necessary in the national interest that Parliament should make laws on a matter in the State List, then the Parliament becomes competent to make laws on that matter. Such a resolution must be supported by two-thirds of the members present and voting.
 - During a National Emergency (Article 352)
 - When two or more States make request (Article 252)
 - To implement International Agreements (Article 253)
 - During President's Rule (Article 356 and 365)

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Legislative Relations between the Centre and States

- Centre's control over state legislation – The Constitution has provided certain powers to keep a control over legislation by empowering the Governor to reserve certain bills passed by State legislature for the President in which he enjoys absolute veto.
- The President can direct states to reserve money bills and other financial bills during national emergency.
- Bills on certain matters can be introduced in state legislature only by prior permission of President (such as bills imposing restrictions on freedom of trade and commerce).

Federalism in India

Emergency Provisions

- The Emergency provisions are contained in Part XVIII of the constitution, from Articles 352 to 360.
- The provisions enable the Central Government to meet any abnormal situation effectively.
- The aim behind the incorporation of these provisions in the constitution is to safeguard the sovereignty, unity, integrity and security of the country. During an emergency, the Central government becomes all powerful and the states go into the total control of the central government. It converts the federal structure to unitary one without a formal amendment. This kind of transformation is unique to the Indian Constitution.

Federalism in India

Emergency Provisions

- The Constitution stipulates three types of emergencies:
 - National Emergency (Article 352)
 - President's Rule (Article 356)
 - Financial Emergency (Article 360)

Federalism in India

National Emergency

- Under Article 352, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion.
 - External Emergency – On the ground of war or external aggression
 - Internal Emergency – On the ground of armed rebellion.
- The President can declare a national emergency even before the actual occurrence of war or external aggression or armed rebellion, if he is satisfied that there is an imminent danger.
- The 44th Amendment Act of 1978 substituted the words armed rebellion for ‘internal disturbance’. It also brought in a lot of other changes to the Emergency provisions.
- A President can proclaim a National emergency only after receiving a written recommendation from the cabinet.

Federalism in India

National Emergency

- The proclamation of emergency must be approved (with special majority) by both the Houses of the Parliament within one month from the date of its issue.
- If approved by both the houses of Parliament, the emergency continues for six months and can be extended to an indefinite period with an approval of the Parliament every six months.
- The proclamation of emergency may be revoked by the President at any time by a subsequent proclamation. Such a proclamation does not require the parliamentary approval.
- Further the president must revoke a proclamation if Lok Sabha passes a resolution by a simple majority disapproving its continuation.

Federalism in India

National Emergency – Effect on Centre-State Relations

- Executive – Centre becomes entitled to give executive directions to a state on ‘any’ matter. The state governments are brought under the complete control of the centre, though they are not suspended.
- Legislative – the Parliament becomes empowered to make laws on any subject mentioned in the State List. The Legislative power of a state becomes subjected to the overriding power of the Parliament. The laws made by the parliament on the state subjects during the National Emergency become inoperative six months after the emergency has ceased to operate.
- President can issue **ordinances** on state subjects while in National Emergency.
- Financial – President can modify the constitutional distribution of revenues between the centre and the states. Such modification continues till the end of the financial year in which the emergency ceases to operate.

Federalism in India

National Emergency – Effect on Centre-State Relations

- While a proclamation of national emergency is in operation, the life of the Lok Sabha may be extended beyond its normal term (five years) by a law of Parliament one year at a time. However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate.
- The parliament may extend the normal tenure of a state legislative assembly by one year at a time during the national emergency, subject to maximum period of six months after the emergency has ceased to operate.

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Effect on Fundamental Rights

- Articles 358 and 359 describes the effect of a National Emergency on the Fundamental Rights.
- Suspension of Fundamental rights under Article 19: According to Article 358, when a proclamation of National Emergency is made, the six fundamental rights under article 19 are automatically suspended. Article 19 is automatically revived after the expiry of the emergency.
- The 44th Amendment Act laid out that Article 19 can only be suspended when the National Emergency is laid on the grounds of war or external aggression and not in the case of armed rebellion.

Federalism in India

Effect on Fundamental Rights

- Suspension of other Fundamental Rights: Under Article 359, the President is authorised to suspend, by order, the right to move any court for the enforcement of Fundamental Rights during a National Emergency. Thus, remedial measures are suspended and not the Fundamental Rights.
- The suspension of enforcement relates to only those Fundamental Rights that are specified in the Presidential Order.
- The suspension could be for the period during the operation of emergency or for a shorter period.
- The Order should be laid before each House of Parliament for approval.
- The 44th Amendment Act mandates that the President cannot suspend the right to move the court for the enforcement of Fundamental Rights guaranteed by Article 20 and 21.

Federalism in India

President's Rule

- Article 355 – imposes a duty on the Centre to ensure that the Government of every state is carried on in accordance with the provisions of the constitution.
- Article 356: Centre takes over the state government in case of failure of the Constitutional Machinery in the state – known as President's Rule / State Emergency.
- It empowers the president to issue a proclamation, if he is satisfied that a situation is arisen in which government of state cannot be carried on.
- Article 365 – says that whenever a state fails to comply with or give effect to any direction from the centre, it will be lawful for the President to hold that a situation has arisen that the government of the state cannot be carried on.

Federalism in India

President's Rule

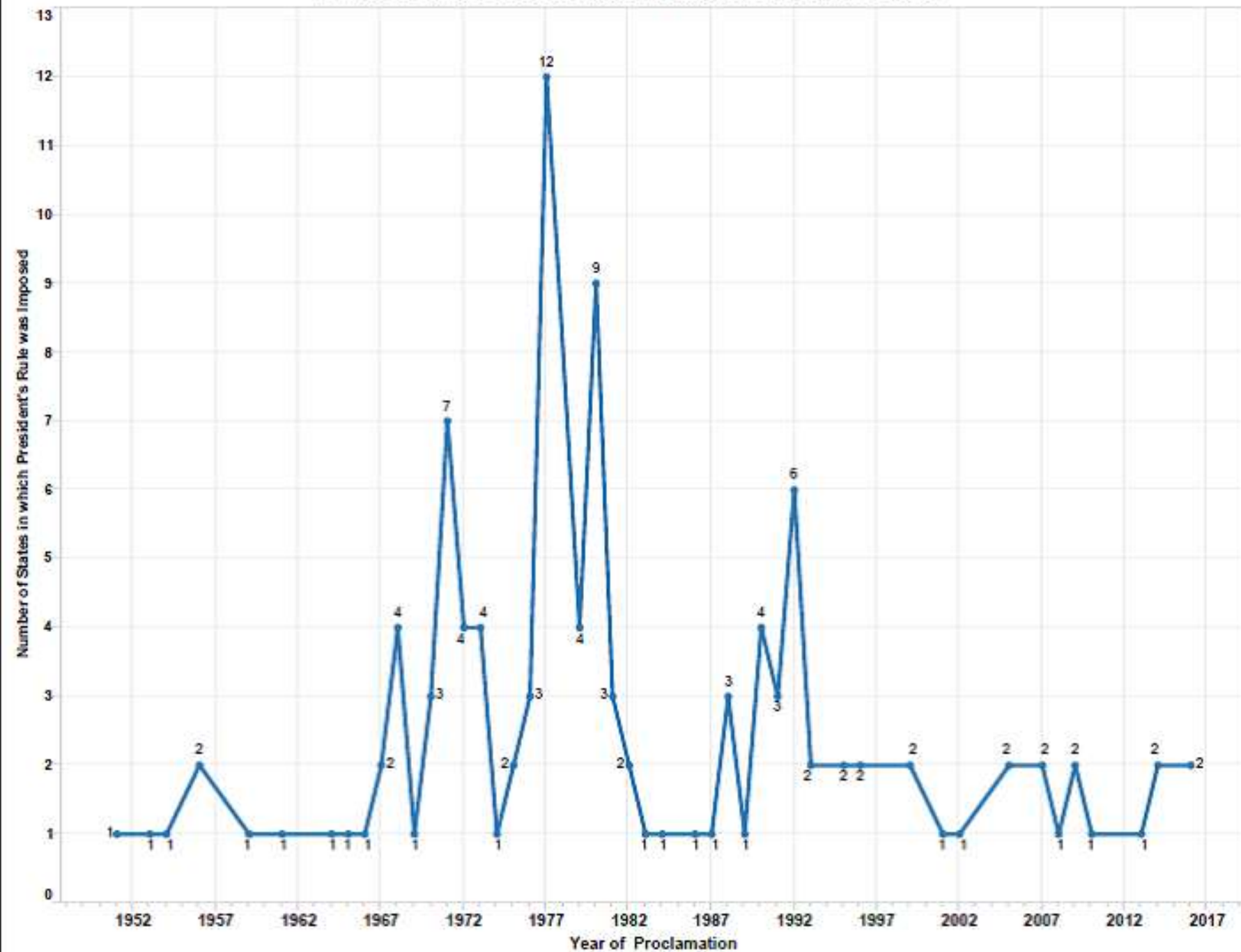
- A proclamation imposing President's Rule must be approved by both the houses of the Parliament within 2 months from the date of its issue.
- If approved, the President's Rule continues for 6 months and can be extended for a maximum period of 3 years with the approval of Parliament, every 6 months.
- Every proclamation can be passed by a simple majority.
- Beyond 1 year, the President's Rule can be extended by 6 months at a time only when the following 2 conditions are fulfilled (44th CAA, 1978):
 - A proclamation of National Emergency should be in operation in the whole of India, or a whole or any part of the state.
 - The Election Commission must certify that the general elections to the legislative assembly of the concerned state cannot be held.

Federalism in India

President's Rule

- President takes up the functions of the state government and powers vested in the governor.
- President can declare that the powers of the state legislature are to be exercised by the Parliament
- President dismisses the State council of ministers headed by the Chief Minister.
- State governor on behalf of the President carries on the State Administration
- President either suspends or dissolves the state legislative assembly. Parliament passes the state legislative bills and the state budget

Number of times President's Rule was Imposed by year since 1950



Federalism in India

Financial Emergency

- Article 360 empowers the president to proclaim a Financial emergency if 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.
- A proclamation declaring financial emergency must be approved by both the houses of the Parliament within 2 months from the date of its issue.
- Once approved by both the houses of the Parliament, it continues indefinitely till it is revoked, meaning:
 - There is no maximum period prescribed for its operation
 - Repeated parliamentary approval is not required for its continuation.
- Resolution approving the proclamation of the financial emergency can be passed by either house of the Parliament by a simple majority.
- It can be revoked by the President at any time.

Federalism in India

Financial Emergency

- Extension of the executive authority of the Union over the financial matters of the States. Which means that the Union gets the power to give financial orders to the states based on its own policies.
- Reduction of salaries and allowances of all or any class of persons serving in the State.
- Reservation of all money bills or other financial bills for the consideration of the President after they are passed by the legislature of the State.
- Direction from the President for the reduction of salaries and allowances of all or any class of persons serving the Union; and the judges of the Supreme Court and the High Courts.

Federalism in India

Unitary Features

- Single Constitution
- Single Citizenship
- Distribution of Powers favours the Centre
- Proclamation of Emergency
- Extension of Union Parliament's authority
- Parliament's power to change the territory of states and new states formation
- Unequal Representation of States in Rajya Sabha
- Appointment of Governor by the President

Federalism in India

Unitary Features

- Fiscal Powers – revenue generating powers is centralized
- Governor's Power to send bills to President
- Parliament to legislate on subjects under State List when two or more states pass a resolution requesting this
- All India Services
- Lok Sabha is more powerful than the Rajya Sabha