



SNS COLLEGE OF ENGINEERING

Coimbatore-107



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COURSE NAME : INDIAN CONSTITUTION

I YEAR/ I SEMESTER

UNIT – II SYSTEM OF GOVERNMENT

Topic

**Parliament-Federal System of India-Administrative Relationship between
Central and State Governments-Emergencies**

PARLIAMENT

A Parliamentary form of Government is one in which the executive becomes a part of the legislature that frames laws and policies and also implements them. It is also known as the Cabinet Government. The Constitution of India came into force on January 26, 1950.

The Constitution has decided on the British Parliamentary System of Government as opposed to the American Presidential arrangement of government.

Indian Parliament consists of two houses,

- Rajya Sabha (Council of States)
- Lok Sabha (House of the People).

There are three main branches of the Parliamentary system of Government:

1. The Legislative.
 2. The Executive.
 3. The Judiciary.
- The Legislative is the law-making body of the government. It frames laws and policies that are required to run a country smoothly.
 - The Executive body of the government implements the laws and regulations framed by the legislative body.
 - The Judiciary ensures justice to the citizens of India based on the framed laws of the country's Constitution.
 - The functions of these organs, their jurisdiction, limitations, and interrelationship are decided by the Constitution.
 - Cabinet is formed by the parliament and parliament is the superior organ.
 - There are two executives i.e. the Elected President and the Prime Minister.

The Constitution of India embodies the parliamentary system of government in several ways,

Parliament

The Parliament of India is the supreme legislative body of the country and is bicameral, consisting of the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The Parliament has the power to hold the Executive accountable, monitor policies, and expose government lapses.

President

The President is the constitutional head of the country and has the power to summon either House of Parliament or dissolve the Lok Sabha. However, the President can only exercise these powers on the advice of the Prime Minister and the Union Council of Ministers.

Union Executive

The Union Executive is drawn from both Houses of Parliament and is collectively responsible to the Lok Sabha. The Prime Minister heads the Council of Ministers, which advises the President.

Majority party rule

The party that wins a majority of seats in the Lok Sabha usually forms the government. If no party wins a majority, the President may invite an alliance of parties to form the government.

An electoral college comprising the elected members of both the Lok Sabha and the Rajya Sabha, the Legislative Assemblies of the states and union territories generally elect the President for a consecutive term of five years unless there is any allegation against him by the Parliament.

The Prime Minister is then appointed by the President and also appoints the other members on the advice of the Prime Minister.

The other such official members are particularly-

- The Judges of the Supreme and the High Court.
- The Comptroller and Auditor-General of India.

- The Attorney-General of India.
- The Chairman and members of the Union Public Service Commission and the Finance Commission.
- The Chief and other election Commissioners.

The Lok Sabha:

The Lok Sabha consists of 545 members of which 543 are the people's elected representatives including two nominated members from the Anglo-Indian community by the President of India. It lasts for a term of five years and can be dissolved by president.

The Rajya Sabha:

The Rajya Sabha consists of 245 members of which 233 members represent the different states and the union territories and 12 people nominated by the President of India. The Rajya Sabha is a permanent body of members which cannot be dissolved. One-third of the members may retire voluntarily after the completion of a term of six consecutive years.

Qualifications to be fulfilled for being a member of the Parliament:

- The concerned person must be a citizen of India.
- He/She must attain an age of 25 years given the Lok Sabha whereas the age of 30 years in case of the Rajya Sabha.
- The President is entitled to perform the following functions:
- Addressing any one house or both the houses of the Parliament.

Dissolution of the Lok Sabha.

- Summoning the joint meeting or sitting of both Houses of Parliament on account of disagreement.
- At the very first meeting after the General Elections and the commencement of the first session every year, the President has to address both the houses of the Parliament together and give a briefing regarding the root of its summon. A bill without the assent of the President cannot become an Act.

FEDERAL SYSTEM OF INDIA

A **federal system** is a political system where power is divided between the national government and regional governments. Some features of a federal system include:

Division of powers

- The federal government is divided into three branches: executive, legislative, and judicial. Each branch is independent of the others.

Independent judiciary

- The judiciary is free from interference by the other branches of government. The judiciary upholds the law and resolves disputes.

Constitutional supremacy

- The constitution guarantees the existence and authority of each level of government. The constitution also specifies the jurisdiction of each level of government.

Multiple levels of government

- There are two or more levels of government, such as state, provincial, and local.

The national government deals with issues like national defense, foreign relations, commerce, and currency.

State governments deal with issues like education, public safety, and infrastructure.

There are two kinds of federations in the case of India:

1. Holding Together Federation- powers are shared between various constituent parts to
 - a. accommodate the diversity in the whole entity.
2. Coming Together Federation- Independent states come together for the formation of a larger unit and states come to enjoy more autonomy. An example is the USA.

Federalism is divided into- Co-operative federalism and Competitive federalism.

1. Cooperative Federalism in India reflects an ideology that promotes cooperation between the central, state, and local governments to address common issues. It guides all the governing bodies to resolve common social, political, economic and civic problems.
2. Competitive federalism is a concept where Centre competes with states and vice-versa, and states compete with each other. It refers to relations between regional governments (horizontal competition) and between central and regional governments (vertical competition).

Key Features of Federalism under the Indian Constitution:

1. Division of Powers: It is an essential feature of the federal constitution and division of power is done by the Constitution itself. The Constitution clearly defines the power of the Union and the States. Both governments are independent in their rights, powers, and jurisdiction.
 - a. e.g. In the Indian constitution national importance like defense, foreign affairs, currency fall under the domain of the center while local importance like land, water, and agriculture fall under the domain of the States.
2. Supremacy of the Constitution: The Constitution is the main source of all the powers of the Executive, legislative, and judiciary. All the institutions function under the control of the Constitution. Supremacy is necessary for the smooth working of the federal government.
3. Written Constitution: The federal constitution must be specific and documented. Without a written constitution it is never possible to easily delineate the division of powers between the Centre and the State. Also, it would be impossible to maintain the supremacy of the Constitution without a written constitution.
4. Rigid Constitution: The written Constitution is rigid. It cannot be easily amended and this is to maintain the supremacy of the Constitution. e.g. Amendments can be made by simple majority, special majority, or special majority plus ratification of the state.
5. Judiciary: In federal states, it is natural that disputes may arise between the center and the state regarding the interpretation of the Constitution according to them. In this condition, it's necessary to have an institution or authority which can properly interpret the Constitution and adjudicate the dispute.

6. Bi-Cameral Legislature:

- a. India has a Bi-cameral legislature and it is an essential feature of federalism. In India bicameral legislature i.e. two houses in the Parliament of India i.e. Upper House (Rajya Sabha) and the lower house (Lok Sabha). For any amendment, the bill should be passed from both houses for enforcement of such amendments in law.
- b. Few states in India have also a bicameral legislature;
- c. Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, and Uttar Pradesh -each have two houses Vidhan Sabha as the Upper House and Vidhan Parishad as the lower house, While the remaining states are unicameral legislatures

India, a federal democracy, is a union of states with a well-defined system of government that divides **authority, powers and responsibilities** between the Centre and the states.

India is considered a **quasi-federal** state because of its strong central government and "Union of States". Both levels of government have distinct powers and responsibilities.

The states cannot break away from the union. However, the central government has the authority to intervene in the state government's decisions.

Types of Centre State Relations

All powers in India are divided into three categories:

1. Legislative
2. Executive /Administrative
3. Financial

Part XI of the Indian Constitution focuses on center-state relations, covering legislative and administrative connections, while Part XII deals with financial relations.

1. Legislative Relations between Centre and State

These are mentioned in articles 245 to 255 in part 11, which deals with legislative relations between centre and states. They define the scope of legislative powers with Parliament, inconsistency between state and national laws and residual powers.

- Schedule VII categorizes Union List, State List, and Concurrent List.

Legislative relations are further divided into two parts – Based on the territorial extent and the basis of Legislative subjects.

Based on the territorial extent – Article 245

- Laws made by parliament apply to the whole of India and on matters related to extraterritorial legislation.
- Laws made by Parliament are not applicable in the following cases:- In five union territories (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli Daman, and Diu and Ladakh).
- Only the president can make regulations/ amend or repeal any act of parliament for them.
- The State's laws apply to its own state only or territorial extension.

Based on Legislative subjects

There are 3 kinds of lists provided in the seventh schedule in the constitution:

- The union list includes approximately 98 subjects. Examples – Defence, banking, atomic energy etc. Only Parliament can make laws on these subjects.
- The state list includes approximately 61 subjects. Examples – Politics, fisheries, and police. Only the state legislature has the power to make laws on these subjects.
- The concurrent list includes approximately 52 subjects. Example – population control and civil procedure. Both Parliament and the state can make laws on these subjects. In cases of disputes, the laws made by the Parliament prevail.

ADMINISTRATIVE RELATIONSHIP BETWEEN STATE AND CENTRAL GOVERNMENT

These are mentioned in articles 256 to 263 in part XI of the constitution. Administrative Relations between centre and state can be studied in two parts – Based on the territorial extent and the basis of subjects.

Based on territorial extent:

- Administrative power of the centre or Union prevails on the whole of India or any State or UT.
- The administrative power of States prevails on its Territory or State only.

Based on subjects

- Central officer Union officials will execute laws on subjects listed in the union list.
- State officers will execute laws on subjects listed in the state list.
- State officers will execute laws on subjects listed in concurrent lists.

The administrative relations between the Union and the States in India are governed by the Constitution of India. The administrative relations between the Centre and the State are divided based on the distribution of legislative powers.

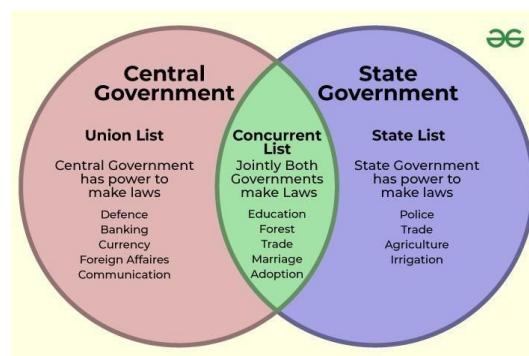
Distribution of powers

- The Constitution divides powers between the union and the states into three lists: the Union List, the State List, and the Concurrent List.

Union List: Contains subjects on which only the Central Government can legislate.

State List: Contains subjects on which only the State Governments can legislate.

Concurrent List: Contains subjects on which both the Centre and the States can legislate.



However, in case of a conflict, the law made by the Centre prevails.

Administrative Relations Between the Centre and States (Articles 256-263)

The administrative relations between the Centre and States are outlined in Part XI of the Constitution under Articles 256 to 263. These provisions lay down how administrative functions are shared and coordinated between the two tiers of government.

Article 256: Obligation of States and the Union

Article 256 plays a crucial role in maintaining uniformity in the application and execution of laws throughout the country, ensuring that States do not deviate from the

legislative intent of Parliament. It also gives the **Union Government** the power to issue directions to a State if it seems it necessary to ensure compliance with these laws.

Article 257: Control of the Union Over States in Certain Cases

Article 257 places a restriction on the executive powers of States. It states that the executive power of a State must not be exercised in a way that impedes the exercise of the executive power of the Union. Furthermore, the Union Government is empowered to issue directions to a State on matters related to:

- **Construction and maintenance of means of communication** declared to be of national or military importance.
- **Railway protection** within the State.

If a State fails to comply with such directions, the Central Government can withhold financial assistance and impose penalties.

Article 258: Delegation of Union Functions to States

Article 258 empowers the President of India to delegate the executive functions of the Union to the State Governments or their officers. This delegation of powers can happen in matters where the Union has executive authority but finds it efficient or expedient to have these functions executed by the States.

For example, functions related to Union subjects such as census-taking, elections, and taxation can be delegated to the States to ensure smoother administration.

Article 258A: Delegation of State Functions to the Union

Article 258A, inserted by the 7th Amendment in 1956, allows States to delegate their executive powers to the Union. Like Article 258, this provision fosters administrative cooperation but from the States' perspective. The **Governor of a State**, with the consent of the State Legislature, can entrust certain State functions to the Union, making this provision an example of **flexible federalism.**

Article 260: Jurisdiction of the Union in Relation to Foreign Territories

Article 260 allows the Union Government to exercise executive, legislative, and judicial functions in any territory outside India, in agreement with the government of that territory. This article is not directly related to the administrative relations between the Centre and States.

Article 261: Public Acts, Records, and Judicial Proceedings

Article 261 mandates that full faith and credit should be given to public acts, records, and judicial proceedings of the Union and every State throughout the territory of India. This article promotes administrative uniformity and cooperation between States and the Centre by ensuring that legal documents and judgments are recognised and respected across the entire country.

Additionally, final judgments or orders delivered by civil courts in one State are executable in other States as well, reinforcing the unity of the judiciary and administrative procedures across the nation.

Article 262: Adjudication of Disputes Relating to Waters of Inter-State Rivers

Water disputes between States are a critical area of contention in India. Article 262 empowers Parliament to provide for **the adjudication of disputes** related to the waters of inter-state rivers. The article allows Parliament to exclude such disputes from the jurisdiction of courts, including the Supreme Court.

This provision ensures that water disputes are resolved through a structured and efficient mechanism, preventing prolonged legal battles. The Parliament, under this provision, has enacted the Inter-State Water Disputes Act, 1956, which provides **Water Dispute Tribunals** to adjudicate these disputes.

Article 263: Inter-State Council

Article 263 empowers the President of India to establish an Inter-State Council to discuss and investigate matters of common interest between the Union and the States or among the States themselves.

The Inter-State Council promotes cooperative federalism and provides a forum for various issues affecting both levels of government.

The Council can be tasked with:

- Inquiring into and advising on disputes between States.
- Investigating and discussing subjects of common interest between the Centre and States.

- Making recommendations on better coordination of policy and action between the Centre and States.

All-India Services and Administrative Relations

An important aspect of administrative relations between the Centre and States is the role of All-India Services such as the Indian Administrative Service (IAS), Indian Police Service (IPS), and Indian Forest Service (IFS). These services are jointly managed by the Centre and the States, ensuring that the administrative machinery functions uniformly across the country.

- Article 312 of the Constitution empowers Parliament to create certain key positions in the bureaucracy and is filled by officials who are trained and appointed by the Union but serve in both the Centre and States.
- All-India Service officers can be transferred between States or recalled to the Centre.

3. Financial Relations

- Part XII Articles 264-293 govern financial relations between the Center and states.
- This deals with tax division, with the Center allocating funds to states.
- After the 101st Amendment Act of 2016, Parliament and state legislature can make laws governing goods and services tax.
- Schedule VII outlines taxation powers, regulations on levies, grants, surcharges, and Goods and Services Tax (GST). The state legislature can impose taxes on professions, trades, and employment but at most 2500 per annum.
- The state legislature is prohibited from imposing the tax on the supply of goods or services outside the state OR when the supply occurs in the course of import or export.
- The state legislature can tax the consumption or sale of electricity. but it cannot impose tax on the consumption or sale of electricity consumed or sold by the centre or consumed in the maintenance of railways.
- The state legislature can impose any water tax, but that water should not be distributed or sold by any authority established by Parliament.
- Other Taxes levied by the Centre but collected and appropriated by the states:
 - Bill of exchange, cheque, promissory note, insurance policies, shares, etc.

Grant-in-aids to States

- **Statutory grants:** Under Article 275, the Parliament can make grants to states in need of financial assistance. **Example:** grant for the Welfare of scheduled tribes in a state.
- **Discretionary grants:** Under Article 282, the centre and state can make any grant for a public purpose.

Borrowing by Centre and States

- The Central Government can borrow within the country or outside up to a certain limit fixed by the parliament.
- The state government can borrow only within the country from the central government.

EMERGENCIES

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.

- The emergency provisions are contained in **Part XVIII** of the Constitution of India, from **Article 352 to 360**. These provisions enable the Central government to meet any abnormal situation effectively.

Parliamentary approval and duration:

- If emergency is approved by both the houses of parliament, it continues for 6 months and can be extended to an indefinite period with an approval of the Parliament for every six months.
- 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.

Types of Emergencies:

The Constitution stipulates three types of emergencies-

1. National Emergency
2. Constitutional Emergency
3. Financial Emergency

National Emergency (Article 352):

National Emergency can be proclaimed by the President when he/she perceives threats to the nation from internal and external sources or from financial situations of crisis.

National Emergency in India has been declared 3 times - 1962 (China war), 1971 (Pakistan war), and 1975 (Internal Disturbances).

Part XVIII of the Constitution contains the emergency provisions in India. Article 352 demarcates the National Emergency:

Grounds of declaration:

1. 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.
2. The President can declare a national emergency even before the actual occurrence of war or armed rebellion or external aggression
3. When a national emergency is declared on the grounds of **‘war’ or ‘external aggression’**, it is known as **‘External Emergency’**. On the other hand, when it is declared on the grounds of **‘armed rebellion’**, it is known as **‘Internal Emergency’**.
 - This term ‘armed rebellion’ is inserted from the [44th amendment](#). Before this term it was known as internal disturbance.

▪ Example:

1. If India and Pakistan openly accept that they will use armed forces against each other is simply war.
2. If there is no formal declaration that there will be armed forces used against a country is External aggression.
3. And if because of these two grounds an emergency is proclaimed as an **external emergency**.

A state emergency in India is declared when the President of India is satisfied that a state's government is unable to function in accordance with the Constitution:

State emergencies

A state of emergency in India refers to a period of governance that can be proclaimed by the President of India during certain crisis situations.

If a state fails to comply with the union's directions, the president can impose a state emergency. A state of emergency can be declared in any state of India under article 356 on the recommendation of the governor of the state.

President's Rule (Article 356):

President's rule is also popularly known as the **constitution emergency**. According to Article 355 central ensures that the state government functions according to the provisions of the Indian constitution.

If the state fails to fulfil its duty, then according to article 356 the central can take over the state government. The proclamation of the imposition of the president's rule should be approved by both the upper house and the lower house within 2 months from the date it has been issued.

- This is popularly known as 'President's Rule'.
- The President can act on a report from the state's Governor or without the Governor's report.

Examples

The first state of emergency was imposed in Punjab in 1951, and lasted 302 days. The longest state of emergency was imposed in Jammu and Kashmir, and lasted 6 years and 264 days.

3.Financial Emergency (Article 360):

- **Grounds of declaration: 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.
- During a Financial Emergency, the **President can direct the reduction of salaries and allowances** of all or any class of persons serving in the civil services, including judges of the SC and High Courts.
- The **central government also gains control over the financial resources of the states**, with the power to give directions for their efficient management.

- **Parliamentary approval and duration:** A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
- Once approved by both the houses of Parliament, the Financial Emergency continues indefinitely till it is revoked.

*****UNIT -2 ENDS*****