

Federalism in India

The Constitution of India gives a federal structure to the Republic of India, declaring it to be a "Union of States". Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the Union or Federal or Central government, and the States of India.^[1] The legislative powers are categorised under a Union List, a State List and a Concurrent List, representing, respectively, the powers conferred upon the Union government, those conferred upon the State governments and the shared powers.

The federalism is asymmetric in that the devolved powers of the constituent units are not all the same. The state of Jammu and Kashmir was accorded a higher degree of autonomy than other States under the Article 370.^[1] The Union Territories are unitary type directly governed by the Union government though Article 1 (1) of the constitution stipulates a two tier-governance with an additional local elected government by the local citizens throughout the country. However, Delhi and Puducherry have been accorded their own legislatures under Article 239AA and 239A respectively^[1]

The fundamental rights of the citizens can be applicable differently to each state per Article 31 (B) when the required changes are added to the schedule IX of the constitution by constitutional amendments.^[2]

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Legislative powers

The power of the states and the Centre are defined by the constitution and the legislative powers are divided into three lists^[3]:

Union List

Union List consists of 100 items (previously 97 items) on which the parliament has exclusive power to legislate including: defence, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, elections, audit

of Government accounts, constitution and organisation of the Supreme Court, High Courts and union public service commission, income tax, custom duties and export duties, duties of excise, corporation tax, taxes on capital value of assets, estate duty, terminal taxes.^{[4][1]}

State List

State List consists of 61 items (previously 66 items). Uniformity is desirable but not essential on items in this list: maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, etc. The state legislature has exclusive power to make laws on these subjects. But in certain circumstances, the parliament can also make laws on subjects mentioned in the State List, then the Council of States (Rajya Sabha) has to pass a resolution with a two-thirds majority that it is expedient to legislate on this state list in the national interest.^[1]

Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 state situations in which the Union government can legislate on these items.^[4]

Concurrent List

Concurrent List consists of 52 (earlier 47) items. Uniformity is desirable but not essential on items in this list: Marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labour welfare, electricity, newspapers, books and printing press, stamp duties.^{[4][1]}

Residuary Subjects

The subjects that are not mentioned in any of the three lists are known as residuary subjects. However, there are many provisions made in the constitution outside these lists permitting parliament or state legislative assembly to legislate. Excluding the provisions of the constitution outside these lists per Article 245, the power to legislate on residuary subjects (not mentioned anywhere in the constitution), rests with the parliament exclusively per Article 248.^[5] Parliament shall legislate on residuary subjects following the procedure per Article 368 as constitutional amendments.

In case the above lists are to be expanded or amended, the legislation should be done by the Parliament under its constituent power per Article 368 with ratification by the majority of the states. Federalism is part of the basic structure of the Indian constitution which cannot be altered or destroyed through constitutional amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court

Executive powers

The Union and states have independent executive staffs fully controlled by their respective governments and executive power of the states and the Centre are extended on issues they are empowered to legislate. As in legislative matters, in administrative matters also, the Central government can not overrule the constitutional rights/powers of a state government except when president rule is promulgated in a state. It is the duty of the Union to ensure that the government of every State is carried on in accordance with the provisions of the Constitution as per Article 355. Article 256 of the Constitution has made it clear that the State governments cannot go against the Central laws in administrative matters. When a State has failed to work according to the Constitution, President's rule is imposed under Article 356 and President takes over its (the State's) administration with post facto consent of the Parliament per Article 357.

Financial powers

Article 282 accords financial autonomy in spending the financial resources available to the states for public purpose.^{[1][6]} Article 293 gives liberty to states to borrow without any limit to its ability for its requirements within the territory of India without any consent from the Union government. However, the Union government can insist for compliance of its loan terms when a state has outstanding

loan charged to the consolidated fund of India or an outstanding loan in respect of which a guarantee has been given by the Government of India under the liability of consolidated fund of India.^[7]

President constitutes a Finance Commission after every five years to recommend the modality for devolving Union government revenues between central and state governments.

Under Article 360 of the constitution, President can proclaim a financial emergency when the financial stability or credit of the nation or of any part of its territory is threatened. However, until now no guidelines defining the situation of financial emergency in the entire country or a state or a union territory or a panchayat or a municipality or a corporation have been framed either by the finance commission or by the Central government.

Such an emergency must be approved by the Parliament within two months by a simple majority. It has never been declared. A state of financial emergency remains in force indefinitely until revoked by the President. The President can reduce the salaries of all government officials, including judges of the supreme court and high courts, in cases of a financial emergency. All money bills passed by the State legislatures are submitted to the President for approval. He can direct the state to observe certain principles (economy measures) relating to financial matters.

Disputes with Union/other states

States can make agreements between themselves without violating applicable laws in respective states. When a dispute arises with another state or group of states or Union Territory or central government, Supreme Court shall adjudicate in such disputes per Article 141 of the constitution. However, article 262 excludes Supreme Court jurisdiction with respect to adjudication of any dispute in the use, distribution or control of the interstate river waters per Article 262.

Under Article 263, President can also establish an interstate council for serving the public interest to coordinate/resolve the disputes between states and the Union and for better implementation of policies.

Territories of India

Article 1 (1) of the Indian constitution says that India (Bharat) shall be Union of States which are elaborated under Parts V (The Union) and VI (The States) of the constitution. Article 1 (3) says territories of India constitute territories of states, union territories and other acquired territories. The concept of union territory was not there from the beginning of the constitution and it was incorporated by the Constitution (Seventh Amendment) Act, 1956.^[8] In the constitution wherever it refers to Territories of India, it is applicable to the whole country including union territories. Where it refers to only India, it is applicable to all states only but not to union territories. Thus, union public service commission role is not applicable to the union territories as it refers to India only in the Part XIV.

Jammu and Kashmir state

The state of Jammu and Kashmir has a separate set of applicable laws under Article 370 read with Appendix I & II {The Constitution (Application to Jammu and Kashmir) Order, 1954} of the Indian constitution. Only matters related to defence, foreign relations and communications of Jammu and Kashmir are under the jurisdiction of Union government. The laws enacted by the parliament (including amendments to the Indian constitution) applicable to rest of India are not valid in J&K state unless ratified by its state assembly.^[9] The Government of India can declare a state of emergency in Jammu and Kashmir and impose governor's rule in certain conditions. The state has its own constitution other than applicable Indian constitution.^[10] Part XII of the J&K state constitution makes provision to amend its constitution with two-thirds majority by the state assembly. Part VI (The states) and Part XIV (Services) of the Indian constitution is not applicable to J&K state per Article 152 and Article 308.

Criticism and issues

The Government of India Act 1935 aimed to establish India as a Federation of States. It emphasized division of powers, independent and apolitical Governors and Governors-General and introduced provincial autonomy for the first time in India. On 26 January 1950, India adopted a new constitution.

The unitary bias of the constitution

Article 1 (1) of the constitution says India shall be a union of states and its citizens shall have at least two tier governance. So the people of a UT have every right to opt for statehood in India. However, the amended (in 1956) Article 3, allows the union government power with prior consent of the President (common head of states and union governments) to (a) form a new state/UT by separating a territory of any state, or by uniting two or more states/UTs or parts of states/UTs, or by uniting any territory to a part of any state/UT. (b) the power to establish new state/UT (which were not previously under India's territory) which were not in existence before.

Appointment and role of governors

The appointment of Governor of States in India is vested with the President but only on the advice of the Union Government. The governors of states are generally not residents of the state.

In the case of a breakdown of constitutional machinery in a state, Article 356 brings about state emergency which dissolves the state government and results in President's rule during which the Union Government can make laws for a state. There is no emergency at the centre which can dissolve the Union government unlike Government of India Act 1935 Misuse of Article 356 was rampant in the decades following the adoption of the new constitution especially during the prime ministry of Indira Gandhi.^{[11][12][13][14]} In 1991, Supreme court passed a landmark judgement which acknowledged misuse of the article and laid down principles for the Union government to follow before the state emergency can be invoked.

The Lieutenant Governors of Union Territories of India are designed as administrators and are once again appointed by the President on the advice of the Union government. These Lieutenant Governors can override policies made by the local government.^[15]

Economic federalism

States are at liberty to manage their finances as long it is not leading to financial emergency per Article 360. Instead, the Government of India is trying to impose uniform taxation laws throughout India and trying to take over of tax collection mechanism of states without regards for the positive and negative inherent aspects of each state which are to be addressed by each state from time to time.^{[16][17]} Recently Supreme court upheld the constitutional right of states to impose Entry Tax which is against the principle of GST.^[18]

Control of industries, which was a subject in the concurrent list in the 1935 act, was transferred to the Union List. The Union government in 1952 introduced the repulsive Freight equalisation policy which resulted in the resource drain and backwardness of a number of Indian states. The sufferers of this policy were the states of West Bengal, Bihar (including present-day Jharkhand), Madhya Pradesh (including present-day Chhattisgarh) and Orissa. These states lost their competitive advantage of holding the minerals, as the factories could now be set up anywhere in India. This was not the case in the pre-independence era when the major business houses like the Tatas and the Dalmias set up industries in these states, and most of the engineering industry was located in the state of West Bengal. Even after the removal of the policy in the early 1990s, these states could not catch up with the more industrialised states. In 1996, the Commerce & Industry Minister of West Bengal complained that "the removal of the freight equalisation and licensing policies cannot compensate for the ill that has already been done"^[19]

GoI laws permit a private/public limited company to raise loans internally and externally to its capacity based on its performance/repayment reputation. Whereas states are unconstitutionally limited by the GoI to limit the borrowings when they have not defaulted/led to a financial emergency. The employees' salary and pension expenditure of many state governments are exceeding their total revenue, but no financial emergency by the President is imposed to restrict the expenditure for enhancing the productivity of the government employees. Article 47 of Directive Principles of the state policy stipulates prohibition of intoxicating drinks which

are injurious to health but it is not imposed even after the constitution is adopted 65 years ago. In contrary, many states promote liquor sales exponentially and collect a major chunk of their tax revenues from liquor sales for meeting expenditure on developmental works.

The political economy issues

GoI is devolving central funds to the states under specifically identified schemes (like NREGA, etc.) whose implementation by the states is subject to the satisfaction of the GoI which is highly controversial and against Article 282.^[6] The controversy arises from the fact that the grants for centrally sponsored schemes and central plan schemes are under complete control and discretion of the ruling party. The ruling party does not use it to help the states in need or where poor people are concentrated, but to pursue its own partisan and political goals.^{[20][21]} This distributive tendency of the ruling party is known as pork-barrel politics.^[22] The nomenclature of schemes is specifically designed to convey that the central government is the source of these progressive policies. This is done to prevent leakage of benefit to state governments.

Comparison of federalism in Government of India Act 1935 and Constitution of India 1950

Government of India Act 1935^[23]	Constitution of India^[24]
Defines India as a Federation of States	Defines India as a Union of States
Princely states could choose to join or stay out of the federation via the <u>Instrument of Accession</u>	States have no right to leave the Union. The Instrument of Accession only applies for the state of <u>Jammu & Kashmir</u> via Article 370.
Princely states could have their own constitution	Only Jammu & Kashmir has its own constitution.
Many states had the right to mint supplementary coins, use state flags, follow own civil and criminal codes and maintain state paramilitary forces	With the exception of Jammu & Kashmir, no state can use a flag or follow a separate criminal code. Only Goa has a different civil code. Paramilitary forces are controlled by Union government only. No state can mint currency
The <u>Emperor of India</u> and <u>Governor-General of India</u> are apolitical heads of state	The <u>President of India</u> is an indirectly elected head of state.
Governors of provinces are appointed by the Governor-General and apolitical	Governors are appointed by President on the advice of the Union government.
Governors of provinces need not be residents of the state	Governors of states need not be residents of the state.
Right to create, modify or dissolve provinces is solely vested in the hands of the Governor-General of India	Right to create, modify or dissolve states is solely vested in the hands of the Parliament of India.
Powers are divided into Federal, Concurrent and Provincial lists	Powers are divided into Union, Concurrent and State lists
Residuary powers are vested with the Governor-General of India	Residuary powers are vested with the <u>Parliament of India</u>
A provincial emergency is declared by the Governor-General and the Governor alone can make laws for the province during this period. Provincial assembly remains dissolved.	State emergency is declared by the President on the advice of the Union government and the Parliament alone has the power to make laws for the state during the period. State assembly remains dissolved.
A central emergency is declared by the Governor-General and he alone can make laws for the federation during this period. Central legislative assembly remains dissolved.	There is no concept of central or Union emergency. Parliament should always be functional.
Judicial matters like clemency petitions shall be decided by the Governor-General on the advice of judicial councils	Judicial matters shall be decided by the President on the advice of the Union government.
Railways and Industries are subject matters in concurrent list	Railways and Industries are subject matters in Union List.
Freedom of movement throughout the <u>British Empire</u> and right to own property and settle only in respective provinces	Freedom of movement throughout India and right to own property and settle anywhere in India except Jammu & Kashmir
Amendment in the Act is not possible unless made by the <u>Parliament of the United Kingdom</u>	Amendment of many articles in the constitution can be made by two-thirds of majority in the Parliament. Some articles would need the assent of half of the state legislatures as well.

Comparison with USA and EU

Indian federalism comparison with United States (USA) and European Union (EU)

USA	EU	India
A state can not come out of the Union	It is a loosely held federation of sovereign countries with monetary union only. A state can leave the union at any time	Territorial integrity is not part of the basic structure of the constitution. Territory is ceded to <u>Bangladesh</u> under the 9 and 100 constitutional amendment acts. ^{[25][26]}
Merging or splitting of a state not allowed except with the consent of the states affected and the Congress	Merging or splitting of a country possible with the citizens consent of respective countries	Constitution provides provision for merging with another state or splitting of a state into few states and such powers are vested with the Central Government alone under Article 3.
Head of the Union is directly elected by its citizens through popular electoral college. It is a presidential democracy	No head of the Union created.	Head of state (<u>President of India</u>) is indirectly elected whereas head of the Union government (<u>Prime minister</u>) is usually a leader of the party with majority or largest party in the <u>House of the People</u> who is not directly elected by the people throughout the country and can be either directly elected by the citizens from a particular Lok Sabha constituency as a member of <u>House of the People</u> or can be indirectly elected as the member of <u>Council of States</u>
Heads of the States are directly elected by their citizens.	Heads of constituent units are directly or indirectly elected	Head of state (<u>governor</u>) is appointed by the Union Government whereas head of the state government (<u>chief minister</u>) is usually a leader of the party with majority or largest party in the <u>Vidhan Sabha</u> who is not directly elected by the people throughout the state and can be either directly elected by the citizens from a particular <u>Vidhan Sabha</u> constituency as a member of State Legislature.
Free movement of labour and goods permitted across the states	The main purpose of the Union is for the free movement of labour and goods across the states	Free movement of labour and goods permitted across the states per <u>Articles 301 and 303</u> . ^[27] <u>Interstate Migrant Workmen Act 1979</u> protects the interests of migrant workmen.
A single currency, single foreign policy and common armed forces under the control of union government	A single currency, individual foreign policy and individual armed forces	A single currency, single foreign policy and common armed forces under the control of Union government.
Every state has constitutional rights to impose taxes and raise debt.	EU body has no power to raise taxes and works as a common <u>central bank</u> of all countries except for the <u>United Kingdom</u>	Every state has constitutional rights to impose certain taxes and raise debt. Part of Union government revenue is devolved to the states for public purposes.
Predominantly, people speak one language and follow one religion under a secular constitution	Multilingual people with predominantly following one religion under secular constitutions	Multilingual and multiracial people following multi religions under a secular constitution.
Highly	Highly developed	Developing and largest democratic country with one sixth of the world

developed democratic country	democratic countries	population.
Highly efficient executive and dedicated lawmakers.	Highly efficient executive and dedicated lawmakers.	Th effectiveness of executive and lawmakers hampered by inefficient functioning and corruption. Uneasy relationship of the executive with judiciary with attempts to bring latter under its control. Instances of attempts by Central Government to try to topple opposition-ruled states by unconstitutional means. ^{[28][29][30]}
High standard and prompt justice delivery set up.	High standard and prompt justice delivery set up.	Substandard and delayed justice delivery set up in a constitutional democracy. ^{[31][32][33]} Judges of Supreme Court or High Courts do not give any reasons for not taking up a case for proceedings and many important cases which needs constitutional interpretation keep on pending for many years under the pressure of executive. ^[34] Highest Judiciary does not take any responsibility morally and sometimes issue name sake written apologies in their judgements. ^[35]

See also

- Lawmaking procedure in India
- President's rule
- President of India
- Governors of states of India
- Part I of the Constitution of India
- List of amendments of the Constitution of India
- List of Acts of the Parliament of India

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