

PSIR_PAPER I_Section B_Unit_VII

Federalism in India

Federalism is a modern arrangement of political systems in which authority and responsibility is divided between two or more layers of the government. It is intended to decentralize power in order to govern better.

In other words, a federation has two levels of government; One is the government for the entire country that is usually responsible for a few subjects of common national interest; the others are governments at the level of provinces or states that look after much of the day-to-day administering of their state.

There are several federal governments : the US, Switzerland, Australia, Canada, Russia, Brazil, India and Argentina.

On the Contrary, there is a unitary government which keeps centralization of power through a chain of commands like Britain, France, Japan, China, Italy, Belgium, Norway, Sweden, and Spain.

The term 'federation' is derived from a Latin word 'foedus' which means 'treaty' or 'agreement'. Thus, a federation is a new state (political system) which is formed through a treaty or an agreement between the various units.

Federalism involves the combination of 'shared rule and self rule'. 'Shared-rule' refers to horizontal sharing power and responsibility to govern territory and its people together. The regional units participate in decision making and law-making of the central government not only the region but the entire nation like the Rajya Sabha (the second chamber); The Self-Rule refers to regional autonomy like Autonomous District Council in the VIth Scheduled areas.

Federal v Unitary Government

1. In the federal government, there shall be dual Government (that is, two layers of government viz. national government and regional government) whereas in the unitary government, there is a single government, that is, the national government which may create regional governments.
2. In the federal government, there is written Constitution that would be supreme whereas in unitary government the constitution may be written (France) or unwritten (Britain)
3. In the federal government, there shall be separation of powers between the national and regional government whereas no such division of powers can be found in unitary government. All powers are vested in the national government

4. In a federal state, there is supremacy of the Constitution whereas in a unitary government the Constitution may be supreme (like in Japan) or may not be supreme (like in Britain).
5. In federal arrangement, the Constitution is often rigid in terms of power distribution between the Federal government and its units whereas in unitary government, the Constitution may be rigid (like in France) or flexible (like in Britain).
6. There shall be independent judiciary in federal set up whereas in a unitary set-up, judiciary may be independent or may not be independent
7. In the federal arrangement, there shall be bi-cameral legislature in which the upper house shall represent the interests of constituent units whereas in Unitary arrangement the legislature may be bicameral (Britain) or unicameral (China).

How can a Federation be formed?

- A federation can be formed in two ways, that is, by way of integration of various states like many states of the US come together to form a big and strong federal government. This type of '*coming together*' federations include the USA, Switzerland and Australia. In this first category of federations, all the constituent States usually have equal power and are strong vis-à-vis the federal government.

- In the second case, a big unitary state is converted into a federation by granting autonomy to the provinces to promote regional interest (for example, Canada). In this case, a large country decides to divide its power between the constituent States and the national government. India, Spain and Belgium are examples of this kind of '*holding together*' federations. In this second category, the central government tends to be more powerful vis-à-vis the States. Very often different constituent units of the federation have unequal powers. Some units are granted special powers.

India as a Federation

- The Constitution of India provides for a federal system of government in the country. The framers adopted the federal system due to two main reasons:
 - to share power among states and communities in such a large size of the country and
 - to accommodate socio-cultural diversity.
- The framers of the constitution realized that the federal system not only ensures the efficient governance of the country but also reconciles national unity with regional autonomy.

Basis of Indian Federalism

- The Indian federal system is based on the 'Canadian model' and not on the 'American model'.
- The 'Canadian model' differs fundamentally from the 'American model' in so far as it establishes a very strong centre.
- The Indian federation resembles the Canadian federation

- in its formation (i.e., by way of disintegration)
- in its preference to the term 'Union' (the Canadian federation is also called a 'Union'); and
- in its centralising tendency (i.e., vesting more powers in the centre vis-a-vis the states).

Essential of federation

- There are four essential elements of a federation including a written constitution, dual form of government including central and state government, separation of powers, independent judiciary. Further, bicameralism is a feature of any federal polity in which the Upper House represents interest of the constituent units. However, the mere presence of bicameralism is not evidence of federalism, for instance, the UK has bicameralism but the UK is not a federation.

Therefore, now we can say that federalism is a system of arrangement of sharing power and authority on one hand and sharing responsibility on the other between two or more layers of government. it can also be defined as shared rule and self rule. shared rule refers to sharing between center and states. whereas self rule refers to local self-government.

- The US is the first federation in the world wherein various states have come together to share power and responsibilities. That's why the US federation is also called 'coming together' with federalism. Later on many countries evolved into federalism like Canada , Australia , Russia , India and so on.
- Unlike US federalism, Indian federalism is not the outcome of mutual agreement between several states. Indian federalism evolved to hold India together and this is why Indian federalism is called 'holding together' federalism.

Evolution of Indian Federalism

- In the constituent assembly , there was a consensus that there shall be one constitution for free India and the institutional and political arrangement shall be based on federalism. The constitution shall provide few powers like power related to currency, communication , defence and external affairs to the federal government and rest of the remaining powers shall be vested in the states including residuary powers.
- But the partition of India eventually changed the mind of the constitution makers and the Indian constitution was framed in such a way that it gives very strong power to the center. Even Ambedkar was in support of a strong union so that further partition of India could be prevented.
- Even the word federation or federalism has not been included in the constitution. Article 1 of the constitution says that India, that is Bharat, shall be a union of states.

Why is India a Union of states?

- Ambedkar argued that the Indian constitution preferred the word union over federation due to two reasons:

- Firstly, the Indian federation is not a result of an agreement among states like in the case of the US federation.
- Secondly, states in India have no right to separate from the union. On the contrary, the union has power to alter, diminish and create the boundaries of states.
- The constitution in India is framed in such a way that it is unitary in spirit but federal in appearance.
- The constitution reflects federalism due to four essential features of Indian polity namely written constitution, dual government along with a third layer of local government as well, separation of powers through 7th schedule and independent judiciary. Further, the Union Legislature has two houses, namely the Rajya Sabha and the Lok Sabha. The Rajya Sabha represents the interest of states.

Salient Features of Indian Federation

The federal features of the Constitution of India are explained below.

1. **A Dual Government:** The Constitution provides a dual polity consisting the Union at the Centre and the states at the periphery. Further, the 73rd and 74th Constitutional Amendment to the Constitution established the local self-government which has autonomy to work on local issues. The 11th and 12th schedules divide power between the state government and the local government.
The Union government deals with matters of national importance like defence, foreign affairs, currency, and communication.
The state governments, on the other hand, look after the matters of regional and local importance like public order, agriculture, health, local government and so on.
2. **Written Constitution:** India's constituent Assembly has written a very large and comprehensive document which has originally 395 Articles divided in 22 chapters and 8 Schedules. Presently, there are more than 450 Articles divided into 25 Parts and 12 Schedules.
3. **Separation of Power:** The Constitution has made a provision of separation of power between the Centre and the states in terms of the Union List, State List and Concurrent List in the Seventh Schedule. The Union List consists of 98 subjects (originally 97), the State List 59 subjects (originally 66) and the Concurrent List 52 subjects (originally 47). Both the Centre and the states can make laws on the subjects of the concurrent list, but in case of a conflict, the Central law prevails. Any item which does not appear in either of the three lists, shall be called as residuary item. According to **Article 248**, the Parliament has exclusive power to make law with respect to any matter not enumerated in the Concurrent List or State List.
4. **Supremacy of the Constitution:** The Constitution is the supreme (or the highest) law of the land. The laws enacted by the Centre and the states must conform to its provisions. Otherwise, they can be declared invalid by the Supreme Court or the high courts through their power of judicial review. Thus, the organs of the government (legislative, executive

and judicial) at both the levels must operate within the jurisdiction prescribed by the Constitution.

5. **Independent Judiciary:** The Constitution establishes an independent judiciary headed by the Supreme Court for two purposes: one, to protect the supremacy of the Constitution by exercising the power of judicial review; and two, to settle the disputes between the Centre and the states or between the states. The Constitution contains various measures like security of tenure to judges, fixed service conditions and so on to make the judiciary independent of the government.
6. **Bi-Cameralism:** The Union Parliament has two houses, namely, the Rajya Sabha and the Lok Sabha. The Rajya Sabha represents the federal chamber in which members are elected from the state assembly. The Rajya Sabha protects the interest of the state.

Unitary Features Of The Constitution

the Indian Constitution possesses the following unitary features:

1. **Strong Centre:** The central government has overwhelmingly more power, namely, legislative, administrative and financial. It is highly inequitable.
2. The Parliament, **under Art. 2 and Art.3** can by unilateral action change the area, boundaries or name of any state. Moreover, it requires only a simple majority and not a special majority. Hence, the Indian Federation is “an indestructible Union of destructible states”. The American Federation, on the other hand, is described as “an indestructible Union of indestructible states”.
3. **Emergency Provisions:** The Constitution explains three types of emergencies-national, state and financial. During an emergency, the Central government becomes all powerful and the states go into the total control of the Centre. It converts the federal structure into a unitary one without a formal amendment of the Constitution. This kind of transformation is not found in any other federation.
4. **Single Constitution:** Usually, in a federation, the states have the right to frame their own Constitution separate from that of the Centre. In India, on the contrary, no such power is given to the states.
5. **Flexibility of the Constitution:** Rigidity ensures stability in the constitutional arrangement. Flexible constitution can be amended unilaterally and in this regard the Indian constitution is rigid as well as flexible. In India, the bulk of the Constitution can be amended by the unilateral action of the Parliament, either by simple majority or by special majority.
6. **No Equality of State Representation:** The states are given representation in the Rajya Sabha on the basis of population. Hence, the membership varies from 1 to 31. In the US, on the other hand, the principle of equality of representation of states in the Upper House

is fully recognised. Thus, the American Senate has 100 members, two from each state. This principle is regarded as a safeguard for smaller states.

7. **Single Citizenship** in India like Canada, makes a difference with other federations like the US, Switzerland and Australia wherein there is dual citizenship, namely state citizenship and national citizenship.
8. **Integrated Judiciary-** In the US, there is a dual Court system. In each state, there is the Supreme Court and at the federal level, there is a Federal Court.
9. **All-India Services**, the Office of Governor, Integrated Audit Machinery, Parliament Authority over State List and the Central Government controls over administrative measures through the Office of Governor makes India a weak federal state.
10. **Appointment of Governor:** The governor, who is the head of the state, is appointed by the President. He holds office during the pleasure of the President. He also acts as an agent of the Centre. Through him, the Centre exercises control over the states. The American Constitution, on the contrary, provided for an elected head in the states. In this respect, India adopted the Canadian system. But in the US and Australia, the states are autonomous within their fields and there is no provision for any such reservation.
11. **Integrated Election Machinery:** The Election Commission conducts elections not only to the Central legislature but also to the state legislatures. But this body is constituted by the President and the states have no say in this matter. The position is the same with regard to the removal of its members as well. On the other hand, the US has separate machineries for the conduct of elections at the federal and state levels.

Critical Evaluation

- **K.C. Wheare, an Australian Scholar on Federalism at Oxford University**, described India as a “quasi-federal” state. He remarked that “Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features”. This is particularly because the Indian constitution has federal character as well as unitary character.
- **Morris Jones, a noted political scientist**, termed Indian federal as a “bargaining federalism”. It means states in India bargain with centers for aid, developmental projects and financial gains.
- **Ivor Jennings** has described it as a “federation with a strong centralising tendency”.
- **Alexandrowicz** stated that “India is a case sui generis (i.e., unique in character).
- **Granville Austin** in his book ‘**Indian constitution: Cornerstone of nation**’ called Indian federalism as a “cooperative federalism”. It refers to cooperation between the union government and the state government for maintaining law and order and for implementing public policies.

Different shades of Federalism in India

A. Cooperative Federalism

- Cooperative Federalism refers to minimizing friction and promotes cooperation among various constituent governments so that they can pool their resources to achieve desired national goals.
- In this context, the central government officials here cooperate with officials appointed by the states or vice-versa primarily in two spheres, (i) to promote socio- economic development like centrally sponsored schemes, grants, aid. (ii) to administer territories jointly like IPS and state police work together or Inter-State Council or Zonal Council work together to govern better. Inter-governmental cooperation seems important for better outcomes. In addition, there are en numbers of cooperation between the centre and states like election, CAG auditing, University Grant Commission and so on.
- The current NDA government has promoted cooperative federalism to solve the problems of the nation and of its people.
- Since 2015, the **Niti Aayog** has promoted cooperative federalism as well as competitive federalism.
- NITI Aayog has been constituted to actualise the important goal of cooperative federalism and to enable good governance in India. On the premise that strong states make a strong nation, NITI Aayog acts as the quintessential platform for the Government of India by bringing States together as ‘Team India’ to work towards the national development agenda.
- NITI Aayog has taken many initiatives to foster cooperative federalism through structured support initiatives and engagement with the States/UTs on a continuous basis. These include
 - meetings between the Prime Minister/Cabinet Ministers and all Chief Ministers like Inter-State Council Meetings
 - subgroups of Chief Ministers on subjects of national importance like Zonal Council meetings
 - sharing of best practices for effective result of governance;
 - policy support and capacity development of State/UT functionaries;
 - launching of the Aspirational Districts Programme for development of backward districts;
 - theme-based extensive engagements in various sectors;
 - framing model laws for land leasing and agriculture marketing reforms; and area-specific interventions for the North-Eastern and Himalayan States and island development.

NITI Aayog has been providing relevant technical advice to the Centre, States and UTs. NITI has also established models and programmes for the development of infrastructure and to reignite and establish private-public partnership, such as the Centre-state partnership model Development Support Services to States and Union Territories (DSSS); and the Sustainable Action for Transforming Human Capital (SATH) programme.

Development Support Services to States and Union Territories (DSSS)

Do you Know DSSS-

Vision of DSSS is to achieve transformational and sustained delivery of infrastructure projects. The key objective behind the initiative is to create PPP success stories and reboot infrastructure project delivery models so that a sustainable infrastructure creation cycle can be established.

DSSS has the following key objectives:

- Establish Centre-State partnership model for cooperation
- Reimagine and transform delivery of infrastructure projects by creating a marquee project shelf that demonstrates successful implementation of high impact projects
- Establish PPPs as governance tools supporting larger development agenda
- Address key structural issues that States face in conceiving, structuring and implementing infrastructure projects
- Build institutional and organisational capacities of States and State-level institutions to conceive, conceptualise, structure and implement infrastructure projects

The DSSS initiative involves providing project-level support from concept plan to financial closure to States/UTs.

more projects were taken up under the DSSS initiative, especially in the North-Eastern States, substituting some of the original projects. An MoU was also signed with the newly constituted Union Territory of Ladakh to develop a strategic plan and provide support for specific projects, especially for tourism, solar energy and others, which are to be taken up under the public-private partnership mode. At present, 7 projects, including 2 originally selected and 5 additional ones, are underway under DSSS-I.

Do you Know SATH Project

Furthering the agenda for cooperative federalism, NITI Aayog has launched SATH, a program providing 'Sustainable Action for Transforming Human capital' with the State Governments. The vision of the program is to initiate transformation in the education and health sectors. The program addresses the need expressed by many states for technical support from NITI .

Project SATH-E, ‘Sustainable Action for Transforming Human Capital-Education’, was launched in 2017 to identify and build three ‘role model’ States for the school education sector. After an elaborate selection process, Jharkhand, Odisha and Madhya Pradesh were chosen.

The first phase of SATH-E was completed in March 2020. Significant strides were made in learning enhancement programmes (remediation), governance reforms, teacher training, recruitment, assessment and accountability, school consolidation, IT-enabled monitoring of schools, coaching of academic coordinators (BRCs/CRCs), among others.

A few of the achievements are as follows:

1. Learning enhancement programme/remedial teaching with workbook support for approximately 2.3 crore students implemented.
2. Academic monitoring of schools and students streamlined, with nearly 1.5 lakh inspections carried out every month.
3. Comprehensive rewards and recognition programmes, including external certifications, initiated.
4. Assessment reforms, including spot testing and learning tracking formats, introduced.
5. Multiple rounds of teacher training undertaken.
6. In Madhya Pradesh, 30% of the students moved from lower-level foundational literacy, numeracy learning cohorts to the highest learning level for grades 3–8 in two years of the ‘*Dakshta Unnayan*’ learning enhancement programme.
7. In Odisha, average improvement of 10–15% observed in learning outcomes due to the ‘*Ujjwal-Utthan*’ learning enhancement programme.
8. In Jharkhand, 12% improvement across most competencies was recorded through the ‘*Gyan Setu*’ learning enhancement programme.
9. With the onset of the Covid-19 pandemic, SATH-E adapted itself as ‘Digi-SATH’ to provide undeterred support via digital mediums.
10. Under the Digi-SATH initiative, MP’s ‘*Hamara Ghar Hamara Vidyalaya*’ and ‘Digi-LEP’ (or ‘Digital Learning Enhancement Programme’), Odisha’s ‘*Shiksha Sanjog*’ and ‘*Shiksha Sampark*’, and Jharkhand’s ‘*Hamara Doordarshan Hamara Vidyalaya*’ have been providing online education and teacher training.

Based on the requests received from all the three State Governments, the second phase of the project, SATH-E 2.0, was commenced by NITI Aayog for 2 years, from October 2020

B Competitive Federalism

- Traditional understanding of competitive federalism is a spirit of competition and rivalry between the Centre and State, like the US, Canada and Australia. In their formative stage, there were intergovernmental disputes and units were very conscious about their power and rights. It was true for India too.
- With passage of time, competitive federalism transformed in cooperative federalism due to three reasons; (i) war or threat of war wherein survival becomes very important like India-China war, (ii) the technological advancement which made communication faster; and (iii) the emergence of social welfare in response to public demand for which states were not able to meet these demands from their own resources.
- In the post-LPG, states are competitive in order to attract new investments from the MNCs and make industrial policies accordingly. Most states like Haryana, Maharashtra, Gujarat, Andhra Pradesh, Karnataka and Tamil Nadu have attracted most of the investment whereas states like Bihar, Rajasthan, MP, UP, Assam and Odisha have attracted less than 30 % foreign investment. This led to developmental disparities between the Blue-Corridore states beginning with Delhi-Gurugram and passing through Bombay-Surat-Hyderabad-Bangalore and Chennai. It is just contrast with red-corridor areas that prevail in economically weak states.
- Recently the NiTI Aayog has given new meaning to competitive federalism which refers to promotion of competition among states in order to achieve socio-economic developmental goals.
- Niti Aayog has promoted competition for sustainable development goals, swachta abhiyan , aspirational districts programme and so on.
- NITI Aayog endeavours to promote competitive federalism by facilitating improved performance of States/UTs. It encourages healthy competition among states through transparent rankings, in various sectors, along with a hand-holding approach. Some of the indices launched by NITI Aayog are School Education Quality Index, State Health Index, Composite Water Management Index, Sustainable Development Goals Index, India Innovation Index and Export Competitiveness Index. NITI Aayog also releases delta rankings for the performance of Aspirational Districts every month.
- The ranking of States in various social sectors based on quantitative objective criteria encourages them, and even districts, to improve their performance. NITI Aayog works closely with all stakeholders, including the State/UT Governments, concerned Ministries/Departments in developing indicator frameworks, review mechanisms and capacity-building.
- Yet we should keep in mind the traditional notion of competition among states or states and centre still persists as states want more autonomy and there is competition for resources like GST. The conflict regarding states' share in Taxes or Gants-in-Aid are examples of traditional notion of competitive federalism.

C. Confrontational Federalism

- Since the 1990s, the government formation at the center as well as at states have been changing. At the center, there has been a coalition government but regional parties are governing states like TMC in Bengal, DMK in Tamil nadu , BRS of Telangana and so on.
- regional parties governing states often come into confrontation with the center due to several reasons. For example, the Tamil nadu government confronted the union government on the NEET examination. West Bengal confronted the center with respect to appointment of an IAS officer, India's agreement with Bangladesh and giving few villages clusters and land as well as sharing Testa Water with Bangladesh.
- The Telangana government conflict with the center gives us another picture of India's federalism popularly known as confrontational mode of federalism.
- GNCTD Act, 2021 and GNCTD Act 2023 reflect confrontation between the Central government and Delhi Government. The parliamentary intervention for terminating Judicial decisions violates the doctrine of separation of power which is the basic structure of the Constitution.
- When the Central government implemented a national lockdown during Covid-19, the Kerala government adopted a resolution against the Central government's circular.

Federalism of USA

- In the US, the relationship between the federal government and its constituent units are similar. It means that each state has its own supreme court in the name of the high court, its territory is indestructible and each state has 2 representatives in the senate house of parliament.
- Louis Tillin describes US federalism as *symmetrical federalism* and that of India's and Canada's federalism as *asymmetrical federalism*.

India's asymmetrical Federalism

There are following reasons to call India as asymmetrical federalism.

- Unlike the US, Indian states do not have symmetrical representatives in the upper house of parliament. Uttar Pradesh has 31 members but Goa has only 1 member.

- all constituent units in India's federalism are not states. A few are union territories and majority ones are states. within union territories, 2 of them are having state assemblies namely delhi and puducherry. Also, only UT of Delhi has its own high court.
- Article 371 gives special powers and autonomy to the north eastern states of india.
- schedule 5 of constitution deals with tribal areas in 10 mainland states whereas schedule 6 deals with tribal areas of assam, tripura , meghalaya and mizoram.
- it is not that each state has its own high court. A few states have their own high courts like UP, Bihar , Karnataka and so on. whereas few states share a common high court like in case of punjab and haryana , All north eastern states all together, goa and maharashtra and so on.

Centre-State Relations

The Centre-state relations can be studied under three heads.

- Legislative relations.
- Administrative relations.
- Financial relations.

Legislative Relations between Center and States

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and the states.

A Territorial Extent of Central and State Legislation-Art 245

- The union legislature (Parliament) can make laws for the whole or any part of the territory of India. The territory of India includes (a) the states, (b) the union territories, and (c) any other territory included in the territory of India.
- A state legislature can make laws for the whole or any part of the state. The laws made by a state legislature are not applicable outside the state, except when there is a sufficient nexus between the state and the object. **Doctrine of Territorial Nexus** is invoked in such cases.

Doctrine of Territorial Nexus is applied to find out whether a particular state law has extra-territorial operation. The SC in **Shrikant Bhalchandra v. State of Gujarat (1994)** held that the extra-territorial operation involves consideration of two elements:

- (a) The connection must be real and not illusionary
- (b) And liability sought to impose under the Act must be pertinent or relevant to that connection.

- The Parliament alone can make 'extraterritorial legislation'. Thus, the laws of the Parliament are also applicable to **the Indian citizens and their property** in any part of the world.

On the other hand, state law can affect persons, properties or things within the state and not outside of the state. A state law can be challenged in the Court on the ground of extra-territorial operation. It means a state law having operation outside of the state is not valid.

- The President can make regulations for the peace, progress and good government of the five Union Territories- the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu and Ladakh. A **regulation** so made has the **same force and effect as an act** of Parliament. It may also repeal or amend any act of Parliament in relation to these union territories.
- The governor is empowered to direct that an act of Parliament does not apply to a scheduled area in the state or apply with specified modifications and exceptions.
- The Governor of Assam may likewise direct that an act of Parliament does not apply to a tribal area (autonomous district) in the state or apply with specified modifications and exceptions. The President enjoys the same power with respect to tribal areas (autonomous districts) in Meghalaya, Tripura and Mizoram.

B Distribution of Legislative Subjects: Three Lists

- The Constitution as per article 246 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.
- The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the Union List. This list has at present 99 subjects (originally 97 subjects) like defence, banking, foreign affairs, currency, atomic energy, insurance, communication, inter-state trade and commerce, census, audit and so on.
- The state legislature has “in normal circumstances” exclusive powers to make laws with respect to any of the matters enumerated in the State List. This has at present 61 subjects (originally 66 subjects) like public order, police, public health and sanitation, agriculture, prisons, local government, fisheries, markets, theatres, gambling and so on.
- Both, the Parliament and state legislature can make laws with respect to any of the matters enumerated in the Concurrent List. This list has at present 52 subjects (**originally 47 subjects**) like criminal law and procedure, civil procedure, marriage and divorce, population control and family planning, electricity, labour welfare, economic and social planning, drugs, newspapers, books and printing press, and others.
- The 42nd constitutional Amendment Act of 1976 transferred five subjects to Concurrent List from State List, that is,
 - **education,**
 - **forests,**
 - **weights and measures,**
 - **protection of wild animals and birds, and**
 - **administration of justice; constitution and organisation of all courts except the Supreme Court and the high courts.**

- Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a state even though that matter is one which is enumerated in the State List. This provision has reference to the Union Territories or the Acquired Territories (if any).
- The 101st constitutional Amendment Act of 2016 has made a special provision with respect to goods and services tax. Accordingly, the Parliament and the state legislature have power to make laws with respect to goods and services tax imposed by the Union or by the State. Further, the parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods or services or both takes place in the course of inter-state trade or commerce.
- The power as per article 248 of constitution to make laws with respect to residuary subjects (i.e., the matters which are not enumerated in any of the three lists) is vested in the Parliament. This residuary power of legislation includes the power to levy residuary taxes. These powers are usually unwritten and may include subjects like information, OTT and so on.
- From the above scheme, it is clear that the matters of national importance and the matters which require uniformity of legislation nationwide are included in the Union List. The matters of regional and local importance and the matters which permit diversity of interest are specified in the State List. The matters on which uniformity of legislation throughout the country is desirable but not essential are enumerated in the concurrent list. Thus, it permits diversity along with uniformity.
- In the US, only the powers of the Federal Government are enumerated in the Constitution and the residuary powers are left to the states. The Australian Constitution followed the American pattern of single enumeration of powers. In Canada, on the other hand, there is a double enumeration- Federal and Provincial, and the residuary powers are vested in the Centre.
- The Government of India Act of 1935 provided for a three-fold enumeration, viz., federal, provincial and concurrent. The present Constitution follows the scheme of this act but with one difference, that is, under this act, the residuary powers were given neither to the federal legislature nor to the provincial legislature but to the governor-general of India. In this respect, India follows the Canadian precedent.
- The Constitution expressly secures the predominance of the Union List over the State List and the Concurrent List and that of the Concurrent List over the State List. Thus, in case of overlapping between the Union List and the State List, the former should prevail. In case of overlapping between the Union List and the Concurrent List, it is again the former which should prevail. Where there is a conflict between the Concurrent List and the State List, it is the former that should prevail.
- In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent List, the Central law prevails over the state law. But there is an exception. If the state law has been reserved for the consideration of the president and has not received his assent, then the state law prevails in that state. But it would still be competent for the Parliament to override such a law by subsequently making a law on the same matter.

C Parliamentary Legislation in the State Field

The above scheme of distribution of legislative powers between the Centre and the states is to be maintained in normal times. But, in abnormal times, the scheme of distribution is either modified or suspended. In other words, the Constitution empowers the Parliament to make laws on any matter enumerated in the State List under the following five extraordinary circumstances.

(i) 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 with respect to goods and services tax or 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. The resolution remains in force for one year; it can be renewed any number of times but not exceeding one year at a time. The laws cease to have effect on the expiration of six months after the resolution has ceased to be in force.

- This provision does not restrict the power of a state legislature to make laws on the same matter. But, in case of inconsistency between a state law and a parliamentary law, the latter is to prevail. For example, the 101st CAA created the GST council in this manner.

(ii) During a National Emergency Article 250

- The Parliament acquires the power to legislate with respect to goods and services tax or matters in the State List, while a proclamation of national emergency is in operation. The laws become inoperative on the expiration of six months after the emergency has ceased to operate.

- Here also, the power of a state legislature to make laws on the same matter is not restricted. But, in case of repugnancy between a state law and a parliamentary law, the latter is to prevail.

(iii) When States Make a Request Article 252

- When the legislatures of two or more states pass resolutions requesting the Parliament to enact laws on a matter in the State List, then the Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions. However, any other state may adopt it afterwards by passing a resolution to that effect in its legislature. Such a law can be amended or repealed only by the Parliament and not by the legislatures of the concerned states.

- The effect of passing a resolution under the above provision is that the Parliament becomes entitled to legislate with respect to a matter for which it has no power to make a law. On the other hand, the state legislature ceases to have the power to make a law with respect to that matter. The resolution operates as abdication or surrender of the power of the state legislature with respect to that matter and it is placed entirely in the hands of Parliament which alone can then legislate with respect to it.

- Some examples of laws passed under the above provision are Prize Competition Act, 1955; Wild Life (Protection) Act, 1972; Water (Prevention and Control of Pollution) Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976; and Transplantation of Human Organs Act, 1994.

(iv) To Implement International Agreements Article 253

- The Parliament can make laws on any matter in the State List for implementing the international treaties, agreements or conventions. This provision enables the Central government to fulfill its international obligations and commitments.
- Some examples of laws enacted under the above provision are United Nations (Privileges and Immunities) Act, 1947; Geneva Convention Act, 1960; Anti-Hijacking Act, 1982 and legislations relating to environment and TRIPS, Rights of the Persons with Disability Act, 2016.

(v) **During President's Rule Article 356**

When the President's rule is imposed in a state, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state. A law made so by the Parliament continues to be operative even after the president's rule. This means that the period for which such a law remains in force is not coterminous with the duration of the President's rule. But such a law can be repealed or altered or re-enacted by the state legislature.

D Centre's Control Over State Legislation

Besides the Parliament's power to legislate directly on the state subjects under the exceptional situations, the Constitution empowers the Centre to exercise control over the state's legislative matters in the following ways.

(vi) **The Governor's veto to hold the bill, Article (201):** The governor can reserve certain types of bills passed by the state legislature for the consideration of the President. The president enjoys absolute veto over them. For example, the Tamil nadu governor has not given assent to more than 13 bills passed by the state legislature. Similarly the Kerala governor and AP governor have exercised similar power.

- Bills on certain matters enumerated in the State List can be introduced in the state legislature only with the previous sanction of the president. (For example, the bills imposing restrictions on the freedom of trade and commerce).
- The Centre can direct the states to reserve money bills and other financial bills passed by the state legislature for the President's consideration during a financial emergency.

Administrative Relations

Articles 256 to 263 in Part XI of the Constitution deal with the administrative relations between the Centre and the states. In addition, there are various other articles pertaining to the same matter.

- Article 256 says that the executive power of every state shall be exercised as to ensure compliance with law made by parliament. It means it is the obligation of the state to exercise executive power under the ambit of law made by the parliament.
- Article 257 clause 1 says that executive power of every state shall be exercised in such a manner that it will not prejudice the executive power of the union government. It means that the union government can give direction to the state government.
- Article 257 clause 2 says that the union government can give directions to the state government to maintain and construct the means of communication important for military or defence. further the central government can declare national highways or national waterways and can construct and maintain means of communication for naval , military and airforce.
- Article 257 clause 3 says that the union government can give directions to states to protect railway track and properties in their state.
- Article 257 clause 4 says that the expenditure incurred for creation of infrastructure of national importance or in order to maintain the union's property shall be paid by the union government. In case of conflict regarding payment , the exact sum shall be decided by the CJI or by an arbitrator appointed by the CJI.
- Article 258 clause 1 says that the union government may extend the executive power to the state. it may be conditional or unconditional.
- Article 258 clause 2 says that states cannot make law on the subject for which the executive power has been extended to the state.
- article 258 clause 3 says that in order to exercise the executive power extended to the state , all expenditure incurred shall be paid by the union government. In case of conflict, the CJI or an arbitrator appointed by CJI shall fix the sum to be paid by the central government.
- Article 258A says that the governor with the consent of the union government can allow its officials to exercise administrative powers delegated by the union to the states.
- Article 259 has been recently deleted from the constitution.
- Article 260 says that the union government can undertake legislative , executive and judicial functions to foreign territories if India and concerned foreign territory have an agreement.
- article 261 says that public acts, records and judicial proceedings shall be determined by law made by parliament.
- article 262 deals with adjudication of **interstate water disputes**. This article empowers the parliament to make laws for the adjudication of water disputes between two or more states. the parliament may prohibit high court and supreme court from adjudication of interstate water disputes.
- Article 263 deals with **inter-state council**.

Public Services and Federalism in India

All-India Services

• Like in any other federation, the Centre and the states also have their separate public services called the **Central Services** and the **State Services** respectively.

In India, there are all-India services-IAS, IPS and IFS. Members of all-India services are recruited and trained by the Centre but they serve both the central government as well as State Government.

• These services are controlled jointly by the Centre and the states. The ultimate control lies with the Central government while the immediate control vests with the state governments.

• In 1947, Imperial Civil Service (ICS) was replaced by IAS and the Indian Police (IP) was replaced by IPS and were recognised by the Constitution as All-India Services.

• In 1966, the Indian Forest Service (IFS) was created as the third All-India Service.

• **Article 312** of the Constitution authorizes the Parliament to create new All-India Services on the basis of a **Rajya Sabha resolution (under Art.249)** to that effect.

• Each of these three all-India services, irrespective of their division among different states, form a single service with common rights and status and uniform scales of pay throughout the country.

• Though the all-India services **violate the principle of federalism** under the Constitution by restricting the **autonomy and patronage** of the states, they are supported on the ground that.

- they help in maintaining high standard of administration in the Centre as well as in the states

- they help to ensure uniformity of the administrative system throughout the country; and

- they facilitate cooperation, coordination and joint action on the issues of common interest between the Centre and the states.

Public Service Commissions

• The Chairman and members of a **state public service commission**, though appointed by the **governor of the state, can be removed only by the President.**

• The Parliament can establish a **Joint State Public Service Commission (JSPSC)** for two or more states on the request of the state legislatures concerned. The chairman and members of the **JSPSC are appointed by the president.**

• The Union Public Service Commission (UPSC) can serve the needs of a state on the request of the state governor and with the approval of the President.

• The UPSC assists the states (when requested by two or more states) in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

Inter-state water disputes

(Article 262)

- Article 262 of the Constitution provides for the adjudication of inter-state water disputes. It makes two provisions.
 - Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution and control of waters of any inter-state river and river valley.
 - Parliament may also provide that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such dispute or complaint.
- Under this provision, the Parliament has enacted two laws [the River Boards Act (1956) and the Inter-State Water Disputes Act (1956)].
- The River Boards Act provides for the establishment of river boards for the regulation and development of inter-state river and river valleys. A river board is established by the Central government on the request of the state governments concerned to advise them.
- The Inter-State Water Disputes Act empowers the Central government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states in relation to the waters of an inter-state river or river valley. The decision of the tribunal would be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court is to have jurisdiction in respect of any water dispute which may be referred to such a tribunal under this Act.
- out of 9 interstate water disputes tribunals, only 3 out of them have resolved the disputes concerned and 6 are still continuing. This shows that water is a very scarce resource and that is why it is a very much contested issue in India regarding use of water.
- In 2021, parliament passed the **dam safety act** and it also introduced inter state water disputes tribunals amendment bill which has not been recently passed to empower the center to resolve interstate water disputes.
- The critics have argued that both the dam safety act and **interstate water dispute tribunal bill** intends to give more powers to the center and it will harm Indian federalism.

Do you Know?

In our country, a water census has been conducted for the first time.

Problems with existing Interstate Water Dispute Tribunal

- These tribunals take a very long time to give a verdict. For example, the Narmada inter state water dispute tribunal has given its final verdict in 2007. It took approximately 40 years in the process.

- Although the award given by tribunal is final and beyond the examination of court, individuals approach the supreme court on the **basis of article 136** that is by **special leave petition** or **article 32 that is by writ jurisdiction**. Hence, interstate water disputes goes on longer.
- The composition of these tribunals is homogenous. It means all judges are from law background and there is a lack of experts who have extensive knowledge on water data. Therefore, when a tribunal gives a verdict , the state does not accept.

Interstate Water Dispute Tribunal Amendment Bill 2019

- This amendment bill seeks to replace interstate water disputes Act 1956. Also, the bill seeks to establish a dispute resolution committee (DRC). This so formed committee would consist of a chairperson, one expert who has at least 15 years experience on water issues and also one member from each state which is involved in the dispute. the member of each state involved in the committee shall be from the joint secretary level.
- The so formed committee would solve the water disputes through negotiations within a year extendable to 6 months. In a way the time limit is after extension by around 1.5 years.
- the committee would submit a report to the union government.
- The bill also seeks to create water data so that so formed committee can use this water data to solve the problem of water disputes.
- In case, the so formed committee fails to solve the water disputes, then it will refer the case to the union government and the union government would in turn refer this case to the interstate water dispute tribunal.
- This interstate water disputes tribunal would consist of a chairperson , 3 judicial members and 3 experts. This tribunal would then give its verdict within 2 years extendable to 1 year. In a way, the approximate time limit is 3 years.
- This bill is presently pending in parliament.

Inter-State Water Dispute Tribunals Set-up So Far

1.	Krishna Water Disputes Tribunal-I	1969	Maharashtra, Karnataka and Andhra Pradesh
2.	Godavari Water Disputes Tribunal	1969	Maharashtra, Karnataka, Andhra Pradesh, Madhya Pradesh and Odisha
3.	Narmada Water Disputes Tribunal	1969	Rajasthan, Gujarat, Madhya Pradesh and Maharashtra
4.	Ravi and Beas Water Disputes Tribunal	1986	Punjab, Haryana and Rajasthan
5.	Cauvery Water Disputes Tribunal	1990	Karnataka, Kerala, Tamil Nadu and Puducherry
6.	Krishna Water Disputes Tribunal-II	2004	Maharashtra, Karnataka and Andhra Pradesh
7.	Vansadhara Water Disputes Tribunal	2010	Odisha and Andhra Pradesh
8.	Mahadayi Water Disputes Tribunal	2010	Goa, Karnataka and Maharashtra
9.	Mahanadi Water Disputes Tribunal	2018	Odisha and Chhattisgarh

Inter-State Council

(Article 263)

- Article 263 contemplates the establishment of an Inter-State Council to effect coordination between the states and between Centre and states. Thus, the President can establish such a council if at any time it appears to him that the public interest would be served by its establishment. He can define the nature of duties to be performed by such a council and its organisation and procedure.
- Even though the president is empowered to define the duties of an inter-state council, Article 263 specifies the duties that can be assigned to it in the following manner.
 - enquiring into and advising upon disputes which may arise between states;
 - investigating and discussing subjects in which the states or the Centre and the states have a common interest; and
 - making recommendations upon any such subject, and particularly for the better co-ordination of policy and action on it.
- “The council’s function to enquire and advise upon inter-state disputes is complementary to the Supreme Court’s jurisdiction under Article 131 to decide a legal controversy between the governments. The Council can deal with any **non-legal controversy**, but its function is advisory unlike that of the court which gives a binding decision.”
- Under the above provisions of Article 263, the president has established the following councils to make recommendations for the **better coordination of policy and action in the related subjects**.
 - Central Council of Health and Family Welfare.
 - Central Council of Local Government
 - Four Regional Councils for Sales Tax for the Northern, Eastern, Western and Southern Zones.
- The first administrative reforms commission of 1966 suggested establishing an inter state council under article 263.
- The Sarkaria Commission on Centre-State Relations (1983-88) afterwards made a strong case for the establishment of a permanent Inter-State Council under Article 263 of the Constitution. It recommended that in order to differentiate the Inter-State Council from other bodies established under the same Article 263, it must be called the **Intergovernmental Council**. The Commission recommended that the Council should be charged with the duties laid down in clauses (b) and (c) of Article 263 (see above).
- In pursuance of the above recommendations of the Sarkaria Commission, the Janata Dal Government headed by V. P. Singh established the Inter-State Council in 1990.

It is a **constitutional body** which consists of the following members.

- Prime minister as the Chairman
- Chief ministers of all the states
- Chief ministers of union territories having legislative assemblies that is of delhi and puducherry
- Administrators of union territories not having legislative assemblies
- Governors of States under President's rule
- Six Central cabinet ministers, including the home minister, to be nominated by the Prime Minister.
- Five Ministers of Cabinet rank or Minister of State (independent charge) nominated by the Chairman of the Council (i.e., Prime Minister) are permanent invitees to the Council.
- The council is a recommendatory body on issues relating to inter-state, Centre-state and Centre-union territories relations. It aims at promoting coordination between them by examining, discussing and deliberating on such issues. Its recommendations are not binding on the government.
- Its duties, in detail, are as follows.
 - investigating and discussing such subjects in which the states or the centre have a common interest;
 - making recommendations upon any such subject for the better coordination of policy and action on it; and
 - deliberating upon such other matters of general interest to the states as may be referred to it by the chairman.
- The Council may meet at least thrice in a year. Its meetings are held in camera and all questions are decided by consensus.
- There is also a **Standing Committee of the Council**. It was set up in 1996 for continuous consultation and processing of matters for the consideration of the Council. It consists of the following members.
 - Union Home Minister as the Chairman
 - Five Union Cabinet Ministers
 - Nine Chief Ministers
- The Council is assisted by a secretariat called the Inter-State Council Secretariat. This secretariat was set-up in 1991 and is headed by a secretary to the Government of India. Since 2011, it is also functioning as the secretariat of the Zonal Councils.
- The Tamil nadu chief minister requested the prime minister in recent times to hold the meeting of interstate council 3 times in a year because when this council got established , there was a provision that 3 meetings shall be held in a year. The Tamil Nadu CM also requested the PM to bring **all national issues** on the board of this council. He said that **all bills of national importance should be debated in this council** before introduction in the parliament.

- The PM has said that the interstate council has been created to promote and support cooperative federalism in india. It also activates zonal council meetings and debate on all issues of center state relations.
- There have been only 11 meetings of the interstate council held so far and the last meeting was held in 2016.

The Zonal Councils

- The Zonal Councils are the statutory (and not the constitutional) bodies. They are established by an Act of the Parliament, that is, the States Reorganisation Act of 1956. The act divided the country into five zones (Northern, Central, Eastern, Western and Southern) and provided a zonal council for each zone.
- While forming these zones, several factors have been taken into account which include: the natural divisions of the country, the river systems and means of communication, the cultural and linguistic affinity and the requirements of economic development, security and law and order.
- Each zonal council consists of the following members.
 - home minister of the Central government as chairman.
 - chief ministers of all the States in the zone.
 - Two other ministers from each state in the zone.
 - Administrator of each union territory in the zone.
- Besides, the following persons can be associated with the zonal council as advisors (i.e., without the right to vote in the meetings).
 - a person nominated by the Niti Aayog;
 - chief secretary of the government of each state in the zone; and
 - development commissioner of each state in the zone.
- The home minister of the Central government is the common chairman of the five zonal councils. Each chief minister acts as a vice-chairman of the council by rotation, holding office for a period of one year at a time.
- The zonal councils aim at promoting cooperation and coordination between states, union territories and the Centre. They discuss and make recommendations regarding matters like economic and social planning, linguistic minorities, border disputes, interstate transport, and so on. They are only deliberative and advisory bodies.
- The objectives (or the functions) of the zonal councils, in detail, are as follows.
 - To achieve an emotional integration of the country.
 - To help in arresting the growth of acute state-consciousness, regionalism, linguism and particularistic trends.
 - To help in removing the after-effects of separation in some cases so that the process of reorganization, integration and economic advancement may synchronize.

- To enable the Centre and states to cooperate with each other in social and economic matters and exchange ideas and experience in order to evolve uniform policies.
- To cooperate with each other in the successful and speedy execution of major development projects.
- To secure some kind of political equilibrium between different regions of the country.
- In addition to the above Zonal Councils, a North-Eastern Council was created by a separate Act of Parliament- the North-Eastern Council Act of 1971. Its members include Assam, Manipur, Mizoram, Arunachal Pradesh, Nagaland, Meghalaya, Tripura and Sikkim. Its functions are similar to those of the zonal councils, but with few additions. It has to formulate a unified and coordinated regional plan covering matters of common importance. It has to review from time to time the measures taken by the member states for the maintenance of security and public order in the region.
- These zonal councils are another means of solving interstate disputes apart from interstate councils.

Inter-State land Disputes in India

Border Dispute between Maharashtra and Karnataka

A Historical Legacy of Linguistic Reorganization

The border dispute between the Indian states of Maharashtra and Karnataka, specifically concerning the territories of Belgaum, Karwar, and Nipani, traces its origins back to the momentous reorganization of states based on linguistic lines in 1956. This contentious issue has remained unresolved for decades, leading to acrimony, legal battles, and even sporadic incidents of violence.

The Bombay Presidency and Mysore State Divide:

- In the pre-reorganization era, Belgaum was part of the Bombay Presidency, sharing its territorial jurisdiction with present-day Gujarat and Maharashtra. Karnataka, in contrast, formed a segment of the Mysore State.
- Linguistic Reorganization and Territorial Allocations: With the adoption of linguistic reorganization in 1956, Belgaum was assigned to Karnataka despite its predominantly Marathi-speaking populace. The resultant discrepancy in linguistic alignment became the crux of the enduring dispute.



- Maharashtra's Claim: The Linguistic Majority Argument Contesting the Allocation
 - Maharashtra consistently contests the decision, contending that Belgaum should rightfully belong to its territory due to its overwhelming Marathi-speaking majority.
 - **The Mahajan Commission (1966)**
The Central Government established the Mahajan Commission in 1966 to delve into the dispute. The commission's recommendations favored Karnataka's retention of Belgaum and 247 adjoining villages. However, Maharashtra rejected the commission Report.

Maharashtra's Supreme Court Plea (2004)

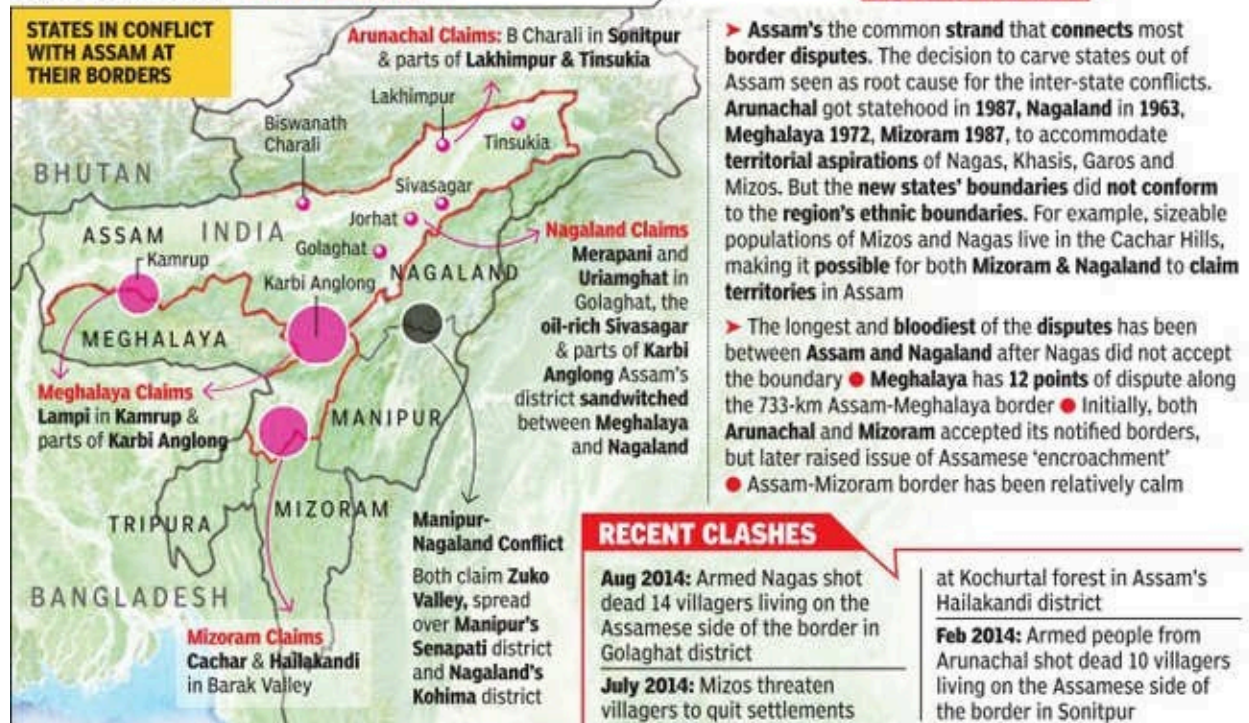
- In 2004, Maharashtra escalated the dispute by approaching the Supreme Court, seeking the transfer of Belgaum and other Marathi-speaking enclaves to its jurisdiction. The case is still pending before the SC.
- **Escalating Tensions:** Recent Resolutions and Incidents In more recent years, tensions have intensified. Both the Maharashtra and Karnataka state assemblies passed resolutions in December 2022, supporting legal actions to find a resolution. Unfortunately, sporadic incidents of violence and vandalism targeting individuals from the opposing state have been reported.

Dueling Arguments: Complexities and Validities

- Marathi-speaking Majority: Approximately 60% of Belgaum's population speaks Marathi, providing substance to Maharashtra's claim based on linguistic affinity.
- Karnataka's Boundary Stand: The Karnataka government asserts that the demarcation of boundaries in accordance with the **States Reorganisation Act** is a final and binding decision.
- Maharashtra's Persistence: The Maharashtra government refuses to abandon its assertion over Belgaum and the Marathi-speaking regions, further contributing to the dispute's longevity.

CROSSING THE LINE

Borderline



1. Between Assam and Mizoram there is a bloody clash between the security forces of Assam and Mizoram over competing claims on territory. The Home Ministry has intervened in it and resolved a few disputes and others are yet to resolve. Moreover, Meghalaya has pointed out dozens of areas on which both Assam and Meghalaya have claims.
2. Between UTs of Ladkhakh and Himachal, both have competing claims over serchu, a halt on Manali-Leh Highway.
3. Between Jhrkhan and Odisha, between Odisha and Andhra Pradesh.
4. Disputes between states over sharing of river water, for example, between Karnataka and Tamil Nadu over Cauvery Water;
5. The SC, under Art.131, has original jurisdiction to resolve the conflict between centre and states or among states.

Financial relations between Center and States

- Fiscal federalism refers to a healthy financial relationship between center and states. No federalism can work properly without a healthy financial relationship.
- The supreme court in the **coffee board v. CTO case** held that sources of revenue collected by the union government does not entirely mean for the center. it must be shared with states.
- Part XI of constitution and articles 268

to 293 deals with fiscal federalism in india.

- the parliament can make law to impose taxes on all subjects included in the union list. Similarly the state government can make laws to impose taxes on all subjects mentioned in the state list.
- The 101st CAA has placed GST in the concurrent list. The CAA has the following salient features;
 - Firstly it inserted article 246A which says that the central government as well as the state government have authority to make laws on GST.
 - This amendment act has replaced many indirect taxes and has merged them into a single tax called as GST. It has started a GST regime in india.
 - it inserted article 279A which created a GST council in india.
 - the decision in the GST council shall be held on the basis of consensus.
- In 2022, the SC in **Mohit Minerals Case** held that the union and state government have equal power to make law on GST. The court held that the GST council recommendations shall not be binding on states. The SC said that if the GST council recommendations were mandatory, it would disrupt the fiscal federalism between center and states. The court viewed that the federal system means accommodating the needs of a pluralistic society. it must be held in democratic manner. The court further held that democracy and federalism both are interdependent and interrelated and federalism provides stability in the democracy.
- The residuary powers regarding taxes lie in the hands of the union government like gift tax, taxes on crypto currencies, OTT, information and so on.
- there are differences between power to imposition, collection, appropriation and proceeding of taxes. It is done in the following manner;
 - There are certain taxes which are imposed by the union government but are collected and appropriated by the state government like tax on cheque.
 - There are certain taxes which are imposed and collected by the center but given to the states, for example taxes on interstate commerce.
 - There are certain taxes in which both the center and state government levy taxes and collect taxes like tax of GST. However, the union government earns more revenue in GST. The central

government distributes collective revenue according to recommendations made by the finance commission.

Do you Know?

Niti aayog is not a pillar of fiscal federalism but its earlier avatar Planning Commission was.

Grants-in-Aid to the States

Besides sharing of taxes between the Centre and the states, the Constitution provides for **grants-in-aid** to the states from the Central resources. There are two types of grants-in-aid, viz, statutory grants and discretionary grants.

A 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.

B 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.
- “These grants are also 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 fulfill plan targets; and to give some leverage to the Centre to influence and coordinate state action to effectuate the national plan.”

Goods and Services Tax Council

- The **GST Council** is a constitutional body responsible for making recommendations on issues related to the implementation of the Goods and Services Tax (GST) in India. As per **Article 279A (1)** of the amended Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A.
- As per Article 279A of the amended Constitution, the GST Council which will be a joint forum of the Centre and the States, shall consist of the following members: -
 - a) Union Finance Minister - Chairperson
 - b) The Union Minister of State, in-charge of Revenue of finance - Member
 - c) The Minister In-charge of finance or taxation or any other Minister nominated by each State Government - Members.

- The Council has been instrumental in deciding key issues related to the GST such as tax rates, exemptions, thresholds, and administrative procedures. During its meetings, the GST Council takes decisions through a consensus-based approach every decision of the GST Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting with a weightage of one-third of the total votes cast to the Centre and a weightage of two-thirds of the total votes cast to the States, promoting the spirit of the co-operative federalism.
- The 101st constitutional Amendment Act of 2016 provided for the establishment of a Goods and Services Tax Council or the GST Council. The 101st Constitutional Amendment inserted Art.246A and Art.279A.
- Article 279-A empowered the President to constitute a GST Council by an order and Art.246 empowers both the centre as well as state to legislate on GST.
- The Council is a joint forum of the Centre and the States. It is required to make recommendations to the Centre and the States on the following matters.
- The taxes, cesses and surcharges levied by the Centre, the States and the local bodies that would get merged in GST.
- The goods and services that may be subjected to GST or exempted from GST.
- Model GST Laws, principles of levy, apportionment of GST levied on supplies in the course of inter-state trade or commerce and the principles that govern the place of supply.
- The threshold limit of turnover below which goods and services may be exempted from GST.
- Any special rate or rates for a specified period to raise additional resources during any natural calamity or disaster.
- The Supreme Court in **Mohit Mineral Case (2022)**, the Supreme Court held that the recommendation of the GST council is not binding on states. The Court pointed out the Art. 246A empowers both the Centre as well as state to legislate on GST. The SC remanded the Union government that federalism is a companion of democracy.

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.
- Till 1960, the Commission also suggested the amounts paid to the States of Assam, Bihar, Orissa and West Bengal in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute products.
- The Constitution envisages the Finance Commission as the balancing wheel of fiscal federalism in India.
- The first finance commission was constituted in 1951 and KC Neogy was the first finance commissioner or chairman of india.
- The 15th finance commission is headed by NK singh.
- It is a multi member body and has one chairperson and 4 members. The 16th Finance Commission was constituted in November 2023.

Certain Essential Finance commission Recommendations

- The 10th finance commission recommended to give 29 % share of revenue to states.
- The 12th commission increased this amount to 32% and further the 14th commission increased this amount to 42%.
- The 14th commission also recommended a few criteria like **income distance , forest cover, geographical area and population** in order to give financial aid to the state. Income distance here means average income in a particular state.
- The 15th commission decreased revenue share from 42 to 41 % to the districts and 1% of revenue goes to J and K for development.
- The 14th commission recommended 50% of revenue distribution should be based on income distance, 7.5% revenue distribution should be given on the basis of forest cover, 15% of revenue should be given on the basis of area and 27.5% should be given on the basis of population.
- 15th commission recommended that 12.5 % of revenue should be given on basis of demographic performance, 45% of revenue should be given on basis of income distance, 10% of revenue should be given on basis of forest cover and ecology, 15% of revenue should be given on the basis of area and 15% revenue should be given on the basis of population.

Borrowing by the Centre and the States

The Constitution makes the following provisions with regard to the borrowing powers of the Centre and the states.

- The Central government can borrow either within India or outside upon the security of the Consolidated Fund of India or can give guarantees, but both within the limits fixed by the Parliament. So far, no such law has been enacted by the Parliament.

- Similarly, a state government can borrow within India (and not abroad) upon the security of the Consolidated Fund of the State or can give guarantees, but both within the limits fixed by the legislature of that state.
- The Central government can make loans to any state or give guarantees in respect of loans raised by any state. Any sums required for the purpose of making such loans are to be charged on the Consolidated Fund of India.
- A state cannot raise any loan without the consent of the Centre, if there is still outstanding any part of a loan made to the state by the Centre or in respect of which a guarantee has been given by the Centre.

Vertical and Horizontal shares in fiscal Federalism

- There were two pillars of fiscal federalism in India: the Finance Commission and Planning Commission. The Finance Commission determines (i) how much of the central's tax revenue should be given away to states (the vertical shares); and (ii) how to distribute that tax revenue among states (the horizontal Share). The Planning commission used to compensate or favor through plan financing and public sector investments. In the post-LPG and especially after abolition of the Planning commission in 2015, the Finance Commission remained virtually the sole architect of India's fiscal federalism.
- Currently the Centre gives away 41% of its tax pool to the states.
- The 15th FC constituted in 2017 (for the year 2021-22 to 2025-26) was asked to take 2011 census figures to determine the expenditure needs of the state. This was a departure from the earlier standard practice of the FC which used to take the 1971 census figure. Consequently, States in North India have more claims over tax as it has more population but is a bad performer in family planning. On the other hand, the southern state protested against this criteria i.e changing the base year and calling it a penalty for good performance.
- The 16th FC shall be constituted in November 2023 for the financial year of 2026-27 to 2030-31.

Cess and Surcharge and Fiscal federalism

- The Central government has authority over Cess and Surcharge.
- According to the Tamil Nadu Government White Paper, the central government has increased cesses and Surcharges in total collection of revenue whereas collection of tax remained stagnant. Consequently states are disadvantaged as they get shares only from collected tax not from Cess and Surcharge.

- The White Paper has said that the collection of Cess and Surcharge collection has doubled from 10% of the total collection in 2011 to 20 % of the total revenue in 2019-20.

PLUTUS IAS