CHAPTER - 3
FEDERALISM & CONSTITUTIONAL PROVISIONS OF
PRESIDENT’S RULE

A federal political system is an association of States for some common purpose with limited delegation of power to a Central authority. Each federal political system is unique in the sense that the relationship between federal (national) government and state (regional) government is determined not just by constitutional rules, but also by a complex of historical, geographical, political, social, cultural and economic circumstances.

K.C. Wheare described the federal principle as “The method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.”

According to R.L. Watts, “The principle of organization whereby a compromise is achieved between concurrent demands for union and for territorial diversity within a society, by the establishment of a single political system, within which general and regional governments are assigned co-ordinate authority such that neither level of government is legally or politically subordinate to the other.”

Carl J. Friedrich observes, “Federalism is a set of political communities that coexist and interact as autonomous entities, united in a common order with an autonomy of its own.”

Daniel J. Elazar observes, “In its simplest form, federalism means national unification through the maintenance of subnational systems. In a larger sense, it is a mode of political activity that requires the extension of certain kinds of cooperative relationships throughout any political system it animates.”

ESSENTIAL FEATURES OF FEDERAL STATE

There is a consensus of opinions among constitutional experts, political scientists and scholars that a federal State involves the following essential features.

1. **A Dual Polity**: A federal state has two Governments – federal (national) government and state (regional) government. The federal government and the state governments obtain their authority from the Constitution. The state governments have no right for separation from the federation. The federal and state governments have their own legislative, executive, administrative and judicial systems which function within their own jurisdiction.

2. **A written Constitution**: The powers and responsibility of federal and state governments are defined in a written Constitution. State Governments do not depend upon the federal government, but assumes their powers through Constitution itself. The relationship between federal government and state governments is therefore conducted within a formal legal framework.

3. **Rigid Constitution**: The autonomy of federal and state government is usually guaranteed by the Constitution. Neither is able to amend the Constitution unilaterally.

4. **Division of Powers**: The Constitution itself distributes legislative, executive and financial powers between federal and state governments. However, the specific fields of jurisdiction of each level of government and the capacity of each to influence the other vary considerably.

5. **Independent Judiciary**: The formal provisions of the Constitution are interpreted by an independent and impartial judiciary, which thereby arbitrates in the case of disputes between federal and state governments.\(^5\)

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UNITARY SYSTEM vs. FEDERAL SYSTEM

A unitary system of government places all legal power in the central government. Lower units of government (states) are created by the Center. They derive their power from the Centre and exist for its administrative convenience, e.g., United Kingdom system. On the contrary, a federal system is one in which powers are divided between a central government and certain units of local government, typically states. Each level of government exercises some powers independently of the other. Federations take many forms, and the division of powers between the Center and the states may be very unequal, e.g., federal system of U.S.A.

ORIGIN AND DEVELOPMENT OF INDIAN FEDERALISM

The British East India company started the process of centralisation in India for fulfilling its imperial interests. The Home Government in England exercised control over it by means of various laws passed in 1773, 1784, 1793, 1813, 1833, 1853, and by appointment and removal of top personnel of the Government of India and of the Provinces. After the Crown assumed power directly in 1858, there was only a facade of apparent association of Indians in the law-making process as indicated by passing of various Acts in 1862, 1892 and 1909.

The enactment of the Government of India Act, 1919 introduced the responsible government in the provinces under ‘dyarchy’ which clearly demarcated the sphere of Provincial Governments from that of the Centre. The provincial governments were also allowed to exercise administrative, legislative and financial powers. The Nehru Committee (1928) also stated in its report that India, like the Commonwealth of Australia, should be called ‘the Commonwealth of India. It also referred to two schedules enumerating such subjects over which the legislative power of Parliament and of every provincial council would extend. A Supreme Court was also to be established with original jurisdiction in such cases in which the Commonwealth and the Provinces were a party. However, the idea of a federal set-up

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7 Verma, S.L. (1987), Federal Authority in the Indian Political System, RBSA Publishers: Jaipur, p. 120.
for the whole of India was suggested explicitly for the first time by the Simon Commission (1927-29) and then later on by the Butler Committee (1930). Hence the federation of India consisting of both the Princely States and the British India, was proclaimed for the first time by the Government of India Act, 1935. It proposed division of powers between the Union and the Provinces. Schedule VII consists of three lists (i) Federal List consists of 59 items, e.g., defence, external affairs, currency, railway, etc.; (ii) Provincial List consists of 54 items, e.g., public peace and order, jail, local government, public health and education, etc., and (iii) Concurrent List consists of 36 items, e.g., civil and criminal procedure, marriage and divorce, newspapers, etc., while residuary powers are provided to the Governor-General. The Federal Court has jurisdiction to decide the constitutional conflicts between the Union and the Provinces. It proposed a strong Centre with wide discretionary powers to the Governor-General and the State Governors which greatly restricted the autonomy of the provinces. However, the federal scheme of the Act of 1935 could never be implemented owing to lack of consent of the ruler of the Princely States. It was also opposed by the major political parties—the Indian National Congress and the Muslim League. The Second World War in September, 1939, paralysed the process of federalism in India. In its war-time proposals for constitutional reform, the British Government adhered to the federal structure but with the difference that in order to conciliate the Communal elements as well as the Princely States, it favoured a federation with a weak Centre having maximum autonomy for the units. The Cabinet Mission Plan of May 16, 1946, proposed a federal Constitution for the whole of India in which the jurisdiction of the Central Government would be limited to defence, external affairs and communications and relatively strong units having considerable degree of autonomy, with all residuary powers. Thus, under the Cabinet Mission Plan the members of the Constituent Assembly of India were elected and began its work. The Constituent Assembly set up a Union Powers Committee to define the respective jurisdiction of the Centre and the States in the proposed federation. The Union Powers Committee in its report submitted on August 20, 1947, said, ‘The soundest framework for Indian Constitution is a federation with a strong Centre.’

Was the Constitution of India to establish a federal or unitary system? In this regard, the members of the Constituent Assembly had two schools of thought. The first school of thought favoured that the proposed Indian federation is a federal system. Among them, T.T. Krishanamchari observed, "The concept of this Constitution is undoubtedly Federal. But, how far Federalism is going to prove to be of benefit to this country in practice will only be determined by the passage of time and it would depend on how far the various forces inter-act conceding thereby to the provinces greater or lesser autonomy than what we now envisage." K. Santhanam (Madras: General) also observed, "We have got a Constitution which is federal in character and the federalism of it is so well protected by the Judiciary that it cannot be broken except by a change of the Constitution. Therefore, I do not think that Provincial Autonomy as such has suffered materially."  

The second school of thought pointed out that the proposed federation of India was a Unitary system. The second school of thought included P.T. Chacko, P.S. Deshmukh, B.M. Gupte and Sitaram S. Jajoo. These members made their observations as follows. P.T. Chacko (United State of Travancore and Cochin) observed, "I am of opinion that in substance it is unitary Constitution. Take for example the legislative powers of the Centre. Specified powers are given to the States and the residuary powers are given to the Centre unlike the Constitution of the USA or the Commonwealth of Australia."  P.S. Deshmukh (C.P. & Berar: General) also observed, "We should have a unitary form of government, but I have the satisfaction that although we have not incorporated a full-fledged and full-blooded unitary form of government, our Constitution is more unitary than federal and from that point of view I think it is a much greater improvement from the time we set about this task." B.M. Gupte also observed "Our State was not a Federal State but a decentralised Unitary State. Subsequent provisions, namely article 365 and article 371 have vindicated my description... The units are kept completely dependent in financial matters on the good graces of the Centre and it is this kind...

of semblance of independence with complete dependence upon the Centre for finances that is in my opinion the most objectionable feature".13

At the end of debates, B.R. Ambedkar, the Chairman of the Drafting Committee of the Constitution, assured the members that the Constitution of India is basically a federal Constitution as it fulfills all the requirements of a federal system. He observed, “The chief mark of federalism as I said lies in the partition of the legislative and executive authority between the Centre and the Units by the Constitution. This is the principle embodied in our Constitution. There can be no mistake about it. It is, therefore, wrong to say that the States have been placed under the Centre. Centre cannot by its own will alter the boundary of that partition. Nor can the Judiciary... these overriding powers do not form the normal feature of the Constitution. Their use and operation are expressly confined to emergencies only.”14 He also clarified that the Draft Constitution can be unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system.15

The Constituent Assembly accepted most of the federal provisions from the Government of Indian Act, 1935. Also, the Constituent Assembly adopted the federal system in the Draft Constitution of India on the model of federal system of Canada.

The Indian federal system is of unique type in its origin and development. Several factors contributed to the particular pattern of federalism that emerged in India after 1947. First, the British colonial pattern of centralisation had a substantial impact on the thinking of the Indian political leadership, and their immediate colonial experience tended to influence their decision. Second, issues of States’ rights were primarily subordinate to the larger issue of communal rights and communal status between Hindus and Muslims. The partition of the country itself seemed to have demonstrated the inherent dangers of separatism. Third, the Indian provinces carved out by the British were primarily administrative units rather than

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linguistic, cultural, or ethnic units. Therefore, they lacked the natural basis of identity that emerged later with the creation of unilingual states. Fourth, the chaos of partition, communal frenzy, the India-Pakistan war, and the problem of integrating the princely states into the Indian Union all combined to create an atmosphere that favoured a centralized form of federalism. Fifth, the goals of economic development and modernisation seemed to require a strong central authority capable of directing the economy. Sixth, the existence of a highly centralised, dominant, mass party (Congress) and the absence of strong state and regional parties supported a centralised formula.16

NATURE OF INDIAN FEDERAL SYSTEM
The Constitution of India provides for a federal system with certain non-federal features to maintain the unity of the country and to ensure the economic development of whole of the country. The Constitution of India describes India as a Union of States, because the formation of the federation is not a result of an agreement between Union and States, and the States have no right of separation from the Union. As Article 1 provides, "India, that is Bharat, shall be a Union of States".17 The Indian federal system is a unique system in its origin, structure and functioning. We can describe the unique features of Indian federal system as follows.

First, the Constitution of India has been framed by the members of the Constituent Assembly, which were representing the people of India. They also adopted the Constitution on the behalf of the 'people of India'. Thus, the Union of India cannot be said to be the result of any compact or agreement between autonomous States.

Second, the Constitution of India lays down the constitution for the States as well, and, no State, except for Jammu & Kashmir, has a right to determine its own Constitution.

Third, the States have no sovereign entities and they have no right to separation from the Union of India. However, the Union’s Parliament is competent to form new States, in changing their names or boundaries. Thus, the Union of India is not destructible but the States are destructible [Article 4 (2)]. The Constitution does not require that consent of the Legislature of the State concerned is necessary for enabling Parliament to make such laws; only the President has to ‘ascertain’ the views of the Legislature of the affected States to recommend a Bill for this purpose to Parliament. Even this obligation is not mandatory insofar as the Legislature expresses its views if at all.

Fourth, the residuary powers are assigned to the Union’s Parliament by the Constitution. [Article 248]. The distribution of powers under schedule VII of the constitution is in favour of the Union Government. The Union List consists of 99 items; it is not only the longest, but also covers all the important items. The State List consists of 61 items of local importance, while the Concurrent List consists of 52 items of common interest.

Fifth, the Union’s Parliament is given power to legislate the subjects of the State List under certain circumstances: concerning national interests, on the demand of two or more state assemblies, on implementing the international treaty or agreement, and when emergency is imposed under Articles 352 and 356.

Sixth, there is provision in the constitution for the exercise of control by the Union both over the administration and legislation of the States. Legislation by a State shall be subject to disallowance by the President, when reserved by the Governor for his consideration [Article 201]. The Governor of a State is appointed by the President of the Union and holds office ‘during the pleasure’ of the President [Articles 155-156].

Seventh, in the matter of amendment of the Constitution, the part assigned to the State is minor, as compared with that of the Union. Except in a few specified matters affecting the federal structure, the States need not even be consulted in the matter of amendment of the bulk of the Constitution, which may be effected by a Bill in the Union’s Parliament, passed by a special majority.
Eighth, there is no theory of 'equality of State rights' underlying the federal scheme in the Constitution, since it is not the result of any agreement between the States. Under the Constitution, there is no equality of representation of the States in the Council of States.

Ninth, the Indian Constitution does not introduce any double citizenship, but only one citizenship, viz., the citizenship of India, and birth or residence in particular State does not confer any separate status as a citizen of that State.

Tenth, the Constitution provides for the creation of All-India Services, and they are common to the Union and the States [Article 312]. A member of an All-India Service can be dismissed or removed only by the Union Government even while serving under a State.

Eleventh, the Supreme Court stands at the apex of integrated system of judiciary. It will administer both the Union and State laws as they are applicable to the cases coming up for adjudication. There is also a uniformity in fundamental laws, civil and criminal, throughout the country.

Twelfth, the Chief Election Commissioner and other Election Commissioners are appointed by the President [Article 324]. The Commission conducts, supervision and control of the elections not only to Parliament, but also the State Legislatures.

Thirteenth, The machinery for Accounts and Audit [Article 148] is also integrated. The Indian Audit and Accounts Service is a Central Service; they audit and control the accounts of the Union Government and the State Governments.

Fourteenth, the Constitution of India empowers the Union to entrust its executive functions to a State, by its consent, and a State to entrust its executive functions to the Union, similarly.

Fifteenth, when a Proclamation of Emergency under Articles 352, 356 and 360 is made, the Union gets power to give directions to the States on all matters, and the Union's Parliament is empowered to legislate on State List.
Sixteenth, the Union Government is competent to issue directions to the State Governments to ensure due compliance with the legislative and administrative action of the Union Government [Article 256-257], and to supersede a State Government which refuses to comply with such directions [Article 365].

Seventeenth, the provision for giving grants-in-aid and loans from the Union Government to the State Governments provide the opportunity to Union to influence the States.

Eighteenth, the Constitution vests powers in the Union Government and its agencies to resolve conflicts that arise between the Union and the States, e.g., the Finance Commission [Article 280], the Inter-State Council [Article 263], etc.

There are two aspects relating to Indian federal theory and practice:

A. Legal Aspect of Indian Federal System

The legal and constitutional experts have two opinions about the nature of the Constitution of India. The first opinion is that the Constitution of India is a federal Constitution. But the second opinion puts forth that the Constitution of India is a unitary Constitution.

The First Opinion – Indian System is a Federal System

The first opinion is that the Indian system is a federal system. The constitutional experts Charles H. Alexandrowicz, R.L. Watts, and Rasheeduddin Khan had supported this opinion. Charles H. Alexandrowicz describes that “India is undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and States”.

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R.L. Watts observed that in practice the Indian system has the federal character. The actual working of the Indian federal system since 1950 has reflected the simultaneous development of strong centralising and decentralising tendencies. The predominance of the centrally dominated Congress Party in both central and state politics, the dedication to economic and social planning under center’s direction, the administrative hegemony of the Indian Administrative Service, the willingness of the Union government on a number of occasions to invoke its emergency powers, and the emphasis upon national defence in the face of external threats from Pakistan and China, have fortified the authority of the Union government. On the contrary, at the same time there have also been evidences of powerful centrifugal tendencies. The Union government has to depend upon the states for much of its administration and in the implementation of economic policies and programmes. There has been a pressure on the Union for a nation-wide reorganisation of states’ boundaries, and for postponing the imposition of a single common national language. Moreover, the role of state governments in decision making has increased and they play important role in carving out the central leadership. The general effect of the interaction of the two conflicting and highly dynamic forces for integration and regionalism since 1950 has thus been to intensify in practice the federal character of politics in India.  

Rasheeduddin Khan observed about the Indian system that India is not a nation, in the conventional sense of the term. India is a Federal -Nation, a political federation of the Union type, that is, a system in which the structural-functional balance is in favour of the Centre. This federation has been superimposed by the Constitution over a classic socio-cultural federalism whose survival and continuity in the duration of time, continental dimension, social complexity, and cultural diversities make it the world’s oldest, largest, and most persistent plural society.  

The Supreme Court also expressed its view in the S.R. Bommai Case (1994) that the federalism is a basic feature of the Constitution of India. B.P. Jeevan Reddy and S.C. Agrawal, JJ., held that “The federalism in the Indian Constitution is not a

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matter of administrative convenience, but one of principle-the outcome of our own historical process and a recognition of the ground realities."

The experts describe the federal features of the Constitution of India as follows:

First, the Constitution of India sets up a dual polity with the Union Government at the Centre and the State governments at the periphery. Each government is endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. Thus, Indian federal system is territorial federal system. Moreover, the state governments have no right for separation from the federation in any circumstances.

Second, the Constitution of India is a written document. The Constitution provides the distribution of powers between the Union and the State governments. The Union and State governments cannot intervene in each other's jurisdiction.

Third, the Constitution of India is a rigid Constitution. The Union Parliament cannot amend the basic provisions of the Constitution by amendment process arbitrarily. The Parliament can amend the basic provisions of the Constitution with the positive approval of more than one half State Legislative Assemblies.

Fourth, the Schedule VII of the Constitution provides for distribution of the powers between union and state governments. The Union Government can legislate in respect of 99 subjects, the States in respect of 61 subjects, with a concurrent jurisdiction in respect of 52 other subjects. However, the residuary powers are given to the Union Government and not to the state.

Fifth, the Supreme Court is a guardian of the Constitution and has supreme power of interpretation of the Constitution. It has also the judicial review power. This is the highest Court of appeal in the Union-State jurisdictional conflicts.

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23 S.R. Bommai vs Union of India, All India Reporter, 1994, Supreme Court, p.1919.
It is obvious from the above arguments that the Constitution of India fulfils all requirements of federal Constitution. In fact, the Constitution of India is a federal Constitution with a strong Centre.

**The Second Opinion – Indian System is not a Federal System**

The second opinion is that the Indian system is a non-federal system. The constitutional experts K.C. Wheare, Ivor Jennings and K. Santhanam had supported this opinion.

K.C. Wheare described the Indian system as a quasi-federal. The Constitution of India has federal features though it does not give rise to a federal Union. There is, however, a division of legislative powers between the Union’s Parliament and the State Legislative Assemblies. This division of powers can only be changed by the consensus between the Union’s Parliament and more than one-half of the State Assemblies. On the contrary, the powers granted in the Union List and in the Concurrent List cover almost all subjects of importance and leaving out for the States things of subordinate concern. The Union’s Parliament can create new states; it can increase or cut short the area of any existing state, and can change the boundaries or name thereof. Thus, the very existence of the states depends on the Union’s Parliament. There are also emergency provisions which enable Union government and its parliament to convert the union of India into a Unitary state, if it considers the situation warrants it. If the Constitutional machinery fails in a State, then the President of India is empowered to direct that state government, in effect, to be taken over by the executive and parliament of the Union. And there are other similar powers of intervention and directions in the Constitution which reduce the independence of the States. It can only be concluded that the Constitution of India is quasi-federal. It is to be noted that the powers of reorganisation and intervention possessed by the Union have been exercised in practice. For example, the States’ boundaries were reorganised primarily on linguistic lines in 1956; a new State of Andhra Pradesh was created in 1953; the Union has usually dismissed the elected governments of various States, e.g., Assam (1958), Kerala (1959), when China invaded India in 1962 a Proclamation of Emergency was issued by the President and approved by the Parliament of Union. It seems reasonable to
conclude that in practice the government, like the Constitution of India is quasi-
federal, not strictly federal.\textsuperscript{25}

K. Santhanam has called the Indian system Paramount federation, in which the Union had
paramount powers over the States.\textsuperscript{26} Ivor Jennings also described the Indian
system as, "A federation with a strong Centralizing tendency."\textsuperscript{27} These experts
emphasized on the non-federal features of the Constitution of India as follows:

First, the Union Government is competent for the formation of new States, changing
their names or boundaries. The Union Parliament assumes these powers under
Articles 3 and 4 of the Constitution.

Second, the distribution of powers under Schedule VII of the Constitution is in
favour of the Union Government. The Union List consists of 99 items, is not only
longest, but also covers all the major and important items including defence,
foreign affairs, currency, income tax, general excise duty, railways, airways,
posts and telegraphs, broadcasting, etc. The State List consists of 61 items, e.g.
public order, police, sales tax, local government, public health, agriculture etc.
While the Concurrent List consists of 52 items, like education, socio-economic
planning, contracts, marriage and divorce, civil procedure, labour welfare etc. The
Union Parliament also has supremacy on the Concurrent List and it has made Union
government more powerful. Thus, Indian federalism is horizontal with a strong
unitary bias.

Third, the residuary powers under Article 248 were given to the Union's Parliament,
and State legislative assemblies have no part in these powers.

\textsuperscript{25} Wheare, K.C. (1963), \textit{Federal Government}, Oxford University Press:

\textsuperscript{26} Santhanam, K. (1984), "The Changing Pattern of Union-State Relations in
India", cited in Abhijit Datta, (ed.) (1984), \textit{Union-State Relations}, Indian
Institute of Public Administration: New Delhi, p. 16.

\textsuperscript{27} Jennings, Ivor (1953), \textit{Some Characteristics of Indian Constitution}, Oxford
Fourth, the Union’s Parliament is given power to legislate the subjects of State List under certain circumstances, i.e., national interests, on the demand of two or more state assemblies, to implement the international treaty or agreement and when emergency is imposed under articles 352 and 356.

Fifth, the amendment power under Article 368 of the Constitution is given only to the Union Parliament. The role of State Legislative Assemblies is minimal in this regard. The State Legislative Assemblies cannot initiate the amendment process. Most of the provisions of the Constitution are amenable by the unilateral action of the Parliament. Under certain circumstances the President can also modify the provisions relating to distribution of powers between the Union and the States. Moreover, the Indian federal system can be easily converted into a Unitary system particularly in the times of emergencies [Articles 352-360]. Thus, Indian federal system exhibits its nature of flexible federal system.

Sixth, the discretionary control of grants to the states far exceeds the amounts which were transferred through divisible taxes (income tax, general excise duties) and grants-in-aid under Article 275, and the decisions of the Planning Commission have a far greater impact on what the States can do than the recommendations of the Finance Commission do. Under Article 282 the Union government allocates vast amounts of development funds to the States as part of the Indian Five Year Plans drawn up by the Planning Commission. The resources available under the plan are substantial because of the significant taxing power of the Union Government and its control over foreign aid and deficit financing.

Seventh, the Supreme Court stands at the apex of integrated system of judiciary and it has power of interpretation of all Laws and of superintending the lower courts. There is also a uniformity in fundamental laws, civil and criminal.

Eighth, a single citizenship of whole of the country. There is no provision of dual citizenship – one national citizenship and one state citizenship.

Ninth, there is a single Constitution of the whole country. There is no provision for States to hold their own Constitution except for Jammu and Kashmir.
Tenth, the All-India Services and the Paramilitary forces function under the direction and control of the Union Government.

Eleventh, the Union Government can intervene in the affairs of the states by using emergency provisions under Articles 352, 356 and 360.

Twelfth, Under Articles 256, 257 and 365, the Union Government may take Union Executive powers that give direction to State governments and invoke substantial penalties for non-compliance.

Thirteenth, the State Governors are appointed by the President of India and they enjoy their office till the pleasure of the President. In practice, the Union Government uses the office of governors for their partisan interests. Usually, the Governors act as agents of the Union Government and not as the impartial constitutional heads of the states. 28

It is obvious that the Constitution of India is a federal Constitution with a strong Centre. Thus, in Indian federalism, in terms of the constitutional structure, there was a tilt in favour of the Centre at the cost of the states. 29 It is a mixture of the federal and non-federal elements. It is framed to work as a federal system during normal times, but gets changed a Unitary system in war, insurrection or the breakdown of constitutional machinery in the states. As Durga Das Basu pointed out, The Constitution of India is neither purely federal nor purely unitary but is a combination of both. It is a Union or composite State of a novel type. 30

We can show the federal and non-federal features of Indian federal system by the following chart on the next page.

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Indian Federal System

Federal Features

Constitution
1. Supreme
2. Written
3. Rigid

Division of Powers
1. Union List
2. State List
3. Concurrent List

Supreme Court
1. Guardian of the Constitution
2. Umpire between Union and States

Unitary Features

1. Highly unfair division of powers (Schedule VII).
2. Dependence of the States on financial assistance given by the Centre.
3. Alteration in the boundaries of the States (Articles 3 & 4).
4. Centre’s heavy powers in making amendment of the Constitution (Article 368).
5. Unequal representation of States in Rajya Sabha.
6. Directions of the Union to be carried out by the States (Articles 256 & 257).
7. Executive authority of the States not to impede or prejudice Union administration.
8. Presidential veto over State legislation being absolute (Article 201).
9. Appointment of the State Governor (Article 155).
10. Centre’s paramount control over State even in normal times.

Non-Federal Features

Uniformity

2. Single citizenship.
4. Singleness in higher services (IAS, IPS, CAG, CEC, etc).
5. Integrated judiciary.

Federal and Non-Federal Features of Indian Federal System

The enactment of the 73rd and 74th Amendment Acts, 1992 in the Constitution of India, which is enforced in 1993, has paved the way for creation of statutory institutional structures for realising the objective of self-governance under the Panchyati Raj and the Nagar Palika systems. These amendments have given statutory recognition to a three-tier system of governance: Centre, State and Local Body. George Mathew observed that the new agenda is to strengthen the federal climate with greater autonomy and local initiative alongwith less centralised bureaucratic control.31

The salient features of Constitution (73 Amendment) Act, 1992 are summarised as follows.

**First,** the Constitution envisages a three-tier system of Panchayats: the village level (Gram Panchayat), intermediate level (Panchayat Samiti) and district level (Zila Parishad) in a State. However, the Intermediate Panchayat will get established in those states where the population is above twenty lakhs. Gram Sabhas are to be activated where these exist in villages and new ones to be set up where these do not exist.

**Second,** all the seats in Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area. Chairpersons of district and intermediate level Panchayats are to be elected by their elected members from among themselves. However, State legislature concerned may also provide in addition for representations of State legislators and member of Parliament, and also chairpersons of village Panchayats in intermediate Panchayats and of the latter in district Panchayats.

**Third,** seats are to be reserved for Scheduled Caste and Tribes in proportion to their population; and for women not less than 1/3rd at each level. Reservations may also be made by State Legislature for other backward classes.

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Fourth, normal term of every Panchyat is five years. Elections have to be held before the expiry of this term. If dissolved before the expiry of normal term, elections are to be held within six months of dissolution.

Fifth, a State level Election Commission is to be set up by the Governor of State Concerned. The State Legislature has the power to legislate on all matters relating to elections to Panchayats.

Sixth, the State Legislature concerned may devolve powers and functions to Panchayats as may be necessary to enable them to function as institutions of self government and prepare and implement plans of economic development and social justice. They are also to implement schemes entrusted to them including matters listed in the Schedule XI. This schedule consists of 29 items, e.g., agriculture, land improvement, minor irrigation, cottage industries, roads, primary education, primary health, social welfare, and public distribution system, etc.

Seventh, the State Legislature concerned may authorise by law a Panchayat to levy, collect and appropriate taxes, duties, tolls, etc., assign a share of State taxes, etc. to it and provide for making grants-in-aid to it.

Eighth, the State Governor is to constitute a Finance Commission after every five years to review the financial position of Panchayats and make recommendations for its improvements.

Ninth, a District Planning Committee is to be set up comprising representatives of Panchayats to prepare District Plan and to perform other functions relating to district planning as assigned by the State Legislature.32

The main provisions of the Constitution (74th Amendment) Act, 1992 summarised as follows.

First, the Constitution envisages three types Municipalities: (i) there are to be Nagar Panchayats in areas in transition from rural to urban areas (ii) Municipal

Councils are to be in small urban areas and, (iii) Municipal Corporations in larger urban areas. In large municipal councils Ward Committees are to be set up.

Second, the members of a municipality would generally be elected by direct election. Also provision may be made by State Legislature for representation of specialists and experienced person as non-voting members of municipalities. For one or more wards comprised within the territorial area of a municipality having a population of three lacs or more it would be obligatory to constitute Ward Committees.

Third, seats are to be reserved for Scheduled Castes and Tribes in proportion to their population, and for women not less 1/3rd at each level. Reservations may also be made by State Legislature for other backward classes.

Fourth, normal term of every Municipality is five years. Elections have to be held before the expiry of this term. If dissolved before the expiry of normal term, elections are to be held within six months of dissolution.

Fifth, a State level Election Commission to be set up for the election of Municipalities by the Governor of the State concerned. The State Legislature has the power to legislate on all matters relating to elections of Municipalities.

Sixth, the State Legislature may devolve powers and functions to Municipalities as may be necessary to enable them to function as institutions of self government and prepare and implement plans of economic development and social justice. They are also to implement schemes entrusted to them including matters listed in the Schedule XII. This schedule consists of 18 items, e.g., urban planning, regulation of land use, roads and bridges, water supply, public health, primary education, slums, etc.

Seventh, the State Legislature may authorise by law a Municipality to levey, collect and appropriate taxes, duties, etc., assign a share of State taxes, etc to it and provide for making grants-in-aid to it.
Eighth, the State Governor is to constitute a Finance Commission after every five years to review the financial position of Municipalities and make recommendations for its improvements.

Ninth, at the District level a District Planning Committee and in every metropolitan area a Metropolitan Planning Committee are to be set up comprising representatives of Municipalities to prepare District Plan and Metropolitan Plan, and to perform other functions relating to District Planning as assigned by the State Legislature.

Tenth, the Finance Commission appointed by the President under Article 280 will make recommendations in regard to the measures needed to augment the Consolidated Fund of a State to supplement the resources of the Municipalities in the State on the basis of the recommendations made by the State Finance Commission. 33

Thus, the 73rd and 74th Constitutional Amendment Acts, 2002 on Panchayati Raj and Nagar Palikas establish the third tier of Indian federal system. Now Indian federal system has become three-tier: Union level (Union Government), State level (State Government) and Local level (Local Government). We can show of this three-tier federal system by the chart appears on the next page.

33 ibid. pp. 232-42.
CONSTITUTION OF INDIA

Union Government

President (Constitutional Head)

Parliament

Rajya Sabha

Lok Sabha

Legislature

Local Government

Rural Area

Gram Panchayat

Panchayat Samiti

Zila Parishad

Urban Area

Nagar Panchayat

Municipal Council

Municipal Corporation

State Government

Governor (Constitutional Head)

Council of Ministers headed by Prime Minister (Head of Government)

Supreme Court

High Court

Judiciary (Interpretation)

Structure of Indian Federal System

B. Functional Aspect of Indian Federal System

The functional aspect of Indian federal system gave priority to the objectives of the government, e.g., maintaining the unity and integrity of the country, and proper utilization of resources to ensure the economic development. The development of the network of the agencies and forums have enlarged the Centre-State relations in India. We can classify these agencies and forums into three categories: (1) Intergovernmental agencies, e.g., National Development Council (1952), Inter-State Council (1990), and Ministerial and Secretaries Level Meetings; (2) Federal Agencies having implications for states, such as the Planning Commission (1950), the Finance Commission (Article 280), the Independent Regulatory Authorities in electricity, telecommunication sectors, the Central Vigilance Commission, the Central Bureau of Investigation, the Central Reserve Police Force, etc.; and (3) Inter-State Conferences of Chief Ministers, Governors’ Conferences, Inter-Governmental Ministerial Conferences, Chief Secretaries’ Conferences, Zonal Councils, National Integration Council, National Water Resource Council and National Commission on Population, etc.34

These Intergovernmental Agencies and forums provide good platforms for discussing the Centre-State relations and to strengthen them. Also, there is cooperation between the Union Government and the State Governments on various fields. For instance, the State governments cooperate with the Union Government for seeking sanction of its economic plans and development projects, and to gain maximum grants-in-aid, etc., while the Union Government requires the cooperation of the State Governments for the implementation of its policies and for enhancing the benefits of the economic reforms. Incorporating this interdependence in his views, Granville Austin described the Indian federalism as a cooperative federalism. He observed, “Cooperative federalism produces a strong Central, or general, government, yet it does not necessarily result in weak provincial governments that

are largely administrative agencies for central policies. Indian federalism has demonstrated this.\textsuperscript{35}

We can analyse the functional aspects of Indian federal system under the following categories.


During the period 1950-1967, the Union Government effectively dominated the State governments. This condition was developed by various factors. The dominance of a single political party, the Indian National Congress, was there both at the Centre and in the States, except for brief intervals in a few states, e.g., Kerala (1957-1959). Also, the leadership of Jawaharlal Nehru, who assumed the posts of party president and the prime minister and his decision having popular support led to the dominance of the Centre. An additional factor was a centralised economic planning. These factors, together with the initial enthusiasm of the Indian people for the nation-building activities undertaken by the Union Government, created a unique situation. Some critics conclude that India was in fact a Unitary state with subsidiary features.\textsuperscript{36}

The fact, the Congress party’s Central Election Committee prepared the lists of candidates for the Lok Sabha and for the State legislatures in the states it governed. The Working Committee heavily influenced the formation of State ministries and chief ministers. The Parliamentary Board, through diplomacy of pressure, worked to resolve disputes within State Congress parties and between the central leadership and state governments. The Congress Party reduced the system almost to unitary government\textsuperscript{37} in the early years of independence.

The Union Council of Ministers created the Planning Commission in 1950 and the National Development Council in 1952 by its executive orders, and they are extra-


constitutional advisory bodies. Both the bodies formulate the five years plan for the Union and the States and centralise the economic power with the Centre. In fact, the Planning Commission came to be looked upon as the 'Super Cabinet'. The Union Government toppled the four state governments, e.g., Punjab (1951), Andhra Pradesh (1954), Kerala (1959) and Orissa (1961).

On the contrary, the Centre also attempted to fulfil the aspirations of the states: The states were recognised by the State Reorganisation Act, 1956 on the linguistic basis and the Centre also accommodated the question of language by the adoption of three language formula. The cooperation between the Union and the States was also seen during this period. Although the State leaders were dependent on the Union Government to stay in power, the Union Government, too depended on the State leaders for policy implementation and political support. Thus, the dependence of the Union Government on the states in critical policy areas resulted in cooperative federalism based on a bargaining process between the Union and the States. Until 1967 the bargaining process of Centre-State relations took place primarily within the framework of the dominant Congress Party.

However, under the Lal Bahadur Shastri regime (1964-1966) there came a little change in Centre-State relations. Now the powerful Chief Ministers played a significant role in the decision making at the Centre. Consequently, the dominance of the Centre over the States became reduced. Shastri promoted the politics of consensus. So the Centre-State relations ran smoothly during this period. Article 356 was used only on two occasions, e.g., Kerala (1965) and Punjab (1966).

The Centre established its dominance over the States during the period 1950-1966. The states never could dare to challenge the hegemony of the Centre owing to

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41 Siwach, J.R. (1979), op.cit, pp. 177, 283.
one party dominant system and the personality influence of the Central leadership. It led to the strong Centre and weak states in Indian federal system. Thus, we can consider the period 1950-1966 as of ‘Paramount Federalism’.

2. Cooperative and Bargaining Federalism


The fourth general elections of the Lok Sabha in 1967 marked the end of one party dominance and an era of coalition politics started in the country. It led to cooperation and bargaining between the various factions and regions in the country. Coalition ministries were formed in various States for capturing the power without the ideological consensus among the coalition partners. Also, defections and counter-defections led to the political instability in the States like Punjab, Uttar Pradesh, Bihar, West Bengal, Haryana and Kerala. Moreover, the leadership of Indira Gandhi was challenged by many Congress stalwarts causing defections and split of the Congress party in 1969.42

In fact, the Congress Party changed its attitude after suffering the set back in 1967 and 1969, and it was called upon to run the Union Government in cooperation with the Opposition-controlled State governments. Similarly, the non-congress State ministries adopted a pragmatic approach to the Union Government and received positive response from the Union Government. The Centre and the States were interdependent on each other during this period. The State leaders were dependent on the Union Government to stay in power and obtain the grants-in-aid for economic development; the Union Government was also dependent on the State leaders for policy implementation, etc. As Morris-Jones pointed out, the National Development Council meetings are a great occasion for the Prime Minister to preach the Centre’s view of general policy. Nevertheless, they also serve the states; here the Chief Ministers of States discuss their common needs and difficulties. Neither Centre nor States can impose decisions on the other. The MPs also count and matter in the Politics of Planning. Thus, plan formulation seems to be a convincing form of cooperative federalism – so long as we understand this phrase to be including a hard

42 Chand, Phul (1990), op.cit, pp. 490-91.
competitive bargaining. The same is true of financial relations including role of Finance Commission and Centre's discretionary power of 'matching' grants (Article 282), and discretionary powers of the Governor, etc. Morris-Jones observed, "Whereas the emphasis in the Constitution is on demarcation, that of practical relations is on cooperative bargaining."

On the contrary, there was almost a unanimous demand for greater State autonomy. Communists in Kerala and C.N. Annadurai (DMK) in Tamil Nadu strongly supported this demand. At the meeting of the NDC (1987) several Chief Ministers were opposed to the Planning Commission's proposal for the levy of the Agriculture Income Tax. Nearly half a dozen Chief Ministers had disfavoured any plan holiday in 1967. The States also protested against the creation, in March, 1969, of two new Central Services, viz., the Indian Education Service and the Indian Agriculture Service. During this period, the Centre-State Relations exhibited tension on a number of issues like the arbitrary role of Governor, misuse of Article 356 by the Centre, the posting of CRPF in a state without consulting the State government, Articles 256-257, and allocation of financial resources between the Centre and the States, etc. Thus, the State governments have been demanding the restructuring the Centre-State relations. The major demands raised by the States are as follows: First, the Governor should be appointed in consultation with the government of the State concerned, or the post of Governor be abolished and like that. The dismissal of state governments in West Bengal (1967), Haryana (1967), Rajasthan (1967), Punjab (1967), Bihar (1968 and 1970), Orissa (1971), and Maharashtra (1978) also reinforced this demand. Second, the CRPF should be deployed in a State with the consent of the State Government. For instance, the deployment of CRPF was highly protested against by the state governments in West Bengal (1967) and Kerala (1968). Third, the allocation of the resources by the Centre to the States should be fair and more amounts should be provided to the States. The setting up of Rajamannar Committee by the Tamil Nadu Government was a significant development during this period. The Committee submitted its report in 1971 and gave its important suggestions in favour of State autonomy, like deletion of Articles 356, 357, 365 and

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It may be mentioned here that the period 1967-1971 was full of tensions, cooperation and bargaining in Centre-State relations. In this period, the Indian federal system is entering a period of weak Centre and its implications are remarkable. The major implications are as follows. First, the end of centralised economic planning schemes. Second, a weak Centre would not be able to assume automatic leadership of the functions mentioned in the Concurrent List. Third, the non-congress government giving priority to the development of their States than in the well-being of the nation as a whole. Fourth, weakening of central authority also reinforced existing separatist tendencies, increasing the States’ demand for greater autonomy. Fifth, the Centre is being unable to provide positive policy direction to the States. Sixth, the weakness of the Centre and the States has led to growth in the comparative power of bureaucracy.

(ii) NF government’s regime (1989-90)

The Janata Dal – led NF government emerged after the ninth general elections of the Lok Sabha in 1989. The NF was a coalition government and it led to strengthening of multi-party system in Indian federal system. The emergence of multi-party coalition politics at the Centre (after 1989) changed the scenario as to federal system. The formation and stability of the Union Government has been dependent upon the support of the regional parties. Thus, the Union Government cannot easily intervene in the States’ affairs. The coalition partners protest against the Centre’s intervention in the affairs of the States, specially of dislodging the State Governments by the use of Article 356 as a weapon. The NF government tried to strengthen the Centre-State relations under the influence of its regional coalition partners, e.g., the DMK of Tamil Nadu, the AGP of Assam, the TDP of Andhra Pradesh and the Left Parties, etc. Consequently, the NF government set up the Inter-State Council in 1990 and it also

tried to develop the consensus between the Centre and the States for the implementation of Sarkaria Commission's recommendations (1998).\textsuperscript{46} However, Article 356 was used on two occasions, Jammu and Kashmir (1990)\textsuperscript{47} and Karnataka (1990)\textsuperscript{48} during the NF regime. Thus, the NF government's regime may be considered as of cooperative and bargaining federalism.


The UF government was again a coalition government at the Centre during the period 1996-1998. The UF government provided an alternative of the national political parties-the Indian National Congress (I) and the BJP. The UF government provided an opportunity to regional political parties, e.g., TDP, DMK, etc., to participation in the Union Government. The regional parties played an important role in the Union Government. For instance, Chandrababu Naidu of the TDP (Andhra Pradesh) played a decisive role in the decision making in the Union Government as a convener of the United Front. The State governments enjoyed the autonomy in various fields. For instance, the President's Rule under Article 356 was used only on two occasions, e.g., Gujarat (1996)\textsuperscript{49} and Uttar Pradesh (1996).\textsuperscript{50} However, the UF government's recommendation for the imposition of President's Rule in Uttar Pradesh on October 17, 1997 was re-considered and withdrawn and was not resubmitted again at the behest of the then President, K.R. Narayanan.\textsuperscript{51}

The State government ruled by some coalition partner bargains with the Union Government in return for its continuous support to the latter. The Union Government also cooperates with the regional coalition partner for its continuous support. These tendencies promote the federal democracy in the country. However, the UF

\textsuperscript{47} The Hindu, Madras, 19 July, 1990.
\textsuperscript{48} Hindustan Times, New Delhi, 11 October, 1990.
\textsuperscript{49} Times of India, New Delhi, 20 September, 1996.
\textsuperscript{50} Times of India, New Delhi, 17-19 October, 1996.
government could not provide a stable government at the Centre and the Lok Sabha elections had to be frequently organized, in 1996, 1998 and 1999. During the UF government’s regime, the Centre became weak. For instance, the Prime Minister, H.D. Deve Gowda, could not solve the Cauvery river water dispute between Karnataka and Tamil Nadu even when his own party was ruling in Karnataka. On the whole, the UF government’s regime (1996-1998) is considered as of cooperative and bargaining federalism.


The BJP-led NDA government headed by A.B. Vajpayee (1998-2004) was a combination of 24 parties. The regional parties and their leaders often played a decisive role in the making or unmaking of governments at the Centres, e.g., the support of the TDP caused the formation of NDA government at the Centre. The coalition partners always bargained about their support to the Union Government for instance, TDP bargained with the NDA government for the post of Speaker of Lok Sabha. Mamta Benerjee of the Trinmool Congress also tried to bargain with the NDA government for the portfolio of Railway. The then President, K.R. Narayanan, showed autonomy and discretion when he asked the Union Council of Ministers to reconsider their advice regarding the imposition of President’s Rule in Bihar in September, 1998. Also, the BJP-ruled state government in Gujarat could not promote its encouragement to the government employees in joining the RSS, after the clarification sought by K.R. Narayanan. Moreover, President Narayanan also sought legal opinion about the Regulation of the Public Religious Building and Places Bill, 2000, passed by the BJP government in Uttar Pradesh. The judiciary also showed a great leap forward in the direction of federalization of Centre-State relations. Consequently, the NDA government, who sought to impose President’s Rule in Tamil Nadu, Bihar and West Bengal in view of the demand of its coalition partners (AIADMK, Janata Dal (United), Trinmool Congress), could not over-look the attitude

of the then president, K.R. Narayanan, and of the Bommai Judgment (1994).\textsuperscript{54} It is noteworthy that the coalition partners could not evolve healthy conventions of governance in federal system and they weakened the decision-making power of the Union government. The political capacity of Union Government to arbitrate in inter-state disputes have gradually weakened. For instance, the NDA government could not solve the Sutlej-Yamuna Link Canal Water dispute between Punjab and Haryana even when the ruling parties in both states – the Akali Dal in Punjab and the Indian National Lok Dal in Haryana – were coalition partners in the NDA government at the Centre.\textsuperscript{55}

The NDA government used the Article 356 on three occasions, Goa (1999),\textsuperscript{56} Bihar (1999)\textsuperscript{57} and Manipur (2001)\textsuperscript{58}. It could not repeatedly misuse of Article 356 for fulfilling its partisan ends, because its major coalition partners e.g., TDP, Akali Dal, National Conference, etc., were against the Centre’s intervention in the States’ affairs specially of dislodging the State governments by the use of Article 356 as a weapon. In addition to it, the NDA government did not have majority in the Rajya Sabha. For instance, the President’s Proclamation regarding the imposition of President’s Rule in Bihar in 1998 could not be ratified in the Rajya Sabha, because NDA government was not having majority in the Rajya Sabha.\textsuperscript{59} Consequently, the Centre became weak and the States became strong during the period (1998-2004). It led to the cooperative and bargaining federalism in India.

(v) The UPA government’s regime (Since 2004)

The Congress (I)-led UPA government, headed by Manmohan Singh, in power since 2004 at the Centre is a coalition of 16 political parties and groups. It has


\textsuperscript{56} Deccan Herald, Bangalore, 11 February, 1999.

\textsuperscript{57} The Hindu, Chennai, 12-13 February, 1999.

\textsuperscript{58} The Hindu, Chennai, 2-3 June, 2001.

provides a chance to the regional parties of participation in power in the Union Government, of obtaining the grants-in-aids for economic development of their State and of enjoying the States’ autonomy. Also, the Union Government fulfils their demands in return of their regular support to the coalition government. For instance, the UPA government gave important portfolios to RJD, NCP and DMK. Moreover, the NCP leader Sharad Pawar raised demand that Governors should be appointed from the parties of the UPA partners. This Union Government provided ‘special benefits’ to its favourite state governments of Bihar and Jammu & Kashmir. But it did not provide sufficient money for drought-hit state of Rajasthan in 2004-05. In practice, the regional coalition partners show a narrow attitude on some occasions and they give priority to fulfilling the regional interests over the national interest, which is not justified. C.P. Bhambhri (2005) observed that greatest advantage of a coalition system is that regional parties have participated in power at the Centre...

The UPA, like the NDA, has been accommodative of their regional partners and a politics of federal give and take has come to stay in India. At the same time, Indian federal system will always be confronted with challenges because coalition partners have a ‘localist’ approach which comes into conflict with an ‘all India national approach’.

However, the President’s Rule was imposed on two occasions, in Goa on March 4, 2005 and in Bihar on March 7, 2005. But, the Union Government did not arbitrarily interfere with the States’ affairs. The Union Government and State governments showed mutual cooperation on some occasions, e.g., the implementations of the Value Added Tax in 2005. But on some occasions the State governments protested against some controversial issues. For instance, the BJP-ruled State governments of Rajasthan & Madhya Pradesh protested against the restructuring the NCERT syllabus. But, on the whole, the Centre-State relations have run smoothly in the UPA government’s regime. The present UPA regime since 2004 may be considered as of cooperative and bargaining federalism.

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61 The Hindu, Delhi, 5 March, 2005.
62 The Hindu, Delhi, 8 March, 2005.
3. Cooperative & Normative Federalism

(i) The Congress (I) government’s regime (1971-1977)

The Congress (I) Party led by Indira Gandhi obtained 2/3rds majority in the mid-term elections to the Lok Sabha in 1971 and it made significant changes in Indian federal system. Indira Gandhi established dominance on both the Congress (I) party organisation and the Congress (I) ruled State governments. Usually, the Chief Minister were personal nominees of Prime Minister; Indira Gandhi, these chief ministers would receive guidance from the Prime Minister as to formation of the ministry, and several chief ministers resigned at the behest of the Prime Minister, who otherwise had independent base in their respective states. This condition led to the strong Centre and the weak states. Moreover, some strong decisions were taken during this period for strengthening the condition of the Union Government. For instances, the 24th, 25th and 42nd Constitutional Amendments gave absolute power to the Union’s Executive, and it shifted the balance of powers duly in favour of the Centre. The proclamation of national emergency (Article 352) on the basis of internal disturbance reduced the States’ autonomy.\(^{63}\) The President’s Rule was imposed on fourteen occasions, viz., Gujarat (1971), Punjab (1971), West Bengal (1971), Bihar (1972), Andhra Pradesh (1973), Orissa (1973), Manipur (1973), Uttar Pradesh (1973), Gujarat (1974), Nagland (1975), Uttar Pradesh (1975), Tamil Nadu (1976), Gujarat (1976), Orissa (1976).\(^{64}\)

On the contrary, the Union Government cooperated with the State governments in their economic developments, poverty abolition and social welfare, etc. Thus, the period 1971-1977 was of tension and cooperation in Centre-State relations. It may be considered the period of cooperative and normative federalism.


The Congress (I) party obtained a thumping majority in the Lok Sabha elections in 1980 and it made Indira Gandhi more powerful to freely deal with State governments. During the period 1980-1984 the nine non-congress ruled State governments of

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\(^{63}\) Jain, H. M. (1990), op.cit., pp. 52-53.

Punjab, Rajasthan, Orissa, Madhya Pradesh, Uttar Pradesh, Maharastra, Bihar, Gujarat and Tamil Nadu were dismissed in retaliation, on the ground that the governments of these States lost the mandate of electorates in the Lok Sabha elections in 1980. The mass dismissal of the nine state governments by the Centre had no justifications. This arbitrary decision reduced the States' autonomy and it was also against the principles of federal democracy. The President's Rule was imposed in remaining seven cases, viz., Manipur (1981), Assam (1981), Kerala (1981), Kerala (1982), Assam (1989), Punjab (1983) and Sikkim (1984).\(^\text{65}\)

The Opposition political parties, e.g., CPI, CPI-M, Akali Dal in Punjab, DMK in Tamil Nadu, etc, have been demanding the restructuring the Centre-State relations and more power to the State governments. The widespread secessionist activities in Punjab, Jammu & Kashmir, Assam and North-East also pressurised the Union Government to review the Centre-State relations. Consequently, the Union Government set up the Sarkaria Commission in 1983 to review the working of the Centre-State relations and to suggest remedial measures.\(^\text{66}\)

(iii) The Congress (I) government's regime (1985-89)

The Congress (I) government led by Rajiv Gandhi (1985-1989) with 3/4th majority in the Lok Sabha tried to cleanse the Indian politics and it enacted the Anti-Defection Act, 1985. The Union Government also introduced the 64th Amendment Bill, 1989, in the Lok Sabha to grant the constitutional status to Local Government, but it failed to become an Act for want of necessary support in the Rajya Sabha. Notwithstanding all this, the President's Rule was imposed on six occasions, viz., Jammu & Kashmir (1986), Punjab (1987), Tamil Nadu (1988), Nagaland (1988), Mizoram (1988), Karnataka (1989) during this regime. But Article 356 was not used as a weapon to destabilise the State governments ruled by the opposition parties.\(^\text{67}\) Thus, there was cooperation and tension in Centre-State relations during the period 1985-1989.

\(^{65}\) ibid, pp. 97-99.

The Congress (I) government led by P.V. Narasimha Rao was a minority government at the Centre. The Union Government introduced the economic liberalisation policy in July, 1991. The State-led, centralised and planned economic development was replaced by a market-led, liberalised and globalised model of political economy. It demanded an effective role of the State governments in the process of economic reforms. Consequently, State Governments have become free to attract private investment and gain the foreign loans. Now foreign investors have to deal with State Governments for establishing their projects.68 Consequently, the mutual cooperation between the Centre and the States has increased in this period. Despite this all, the President’s Rule under Article 356 was used on eleven occasion, viz., Meghalaya (1991), Manipur (1992), Nagaland (1992), Uttar Pradesh (1992), Madhya Pradesh (1992), Rajasthan (1992), Himachal Pradesh (1992), Tripura (1993), Manipur (1993), Bihar (1995), and Uttar Pradesh (1995).69 This tendency creates tension in the Centre-State relations. Consequently, the State governments ruled by Opposite parties have protested against the arbitrarily use of Article 356 for political ends. They have also demanded the State autonomy specially more share in the central pool on the recommendations of Sakaria Commission (1988).

The Supreme Court also gave a landmark judgment (1994) in the S.R. Bomai Case that the Presidential Proclamation regarding Article 356 is judicially reviewable, and, that the strength of the State Ministry’s should be tested on the floor of the House and not in Raj Bhavan or anywhere else.70 Similarly, the judicial activism controlled the arbitrary actions of the executive and it paved the way for federal democracy. The Election Commission, too, has emerged as an autonomous constitutional agency since 1991. Chief Election Commissioner, T.N. Seshan (1991), started the strict enforcement of existing laws and check the illegal activities of


70 S.R. Bommai vs. Union of India, All India Reporter, 1994, Supreme Court, pp. 1930, 1937.
political parties. It promoted the federal democracy in the country. The 73rd and 74th Constitutional Amendments in 1992 provide the Constitutional status and independent financial basis to the Panchayats and the Municipalities as a third tier of Indian federalism. In due course the Indian federal structure will become a three-tier federal system.\textsuperscript{71}

4. Competitive & Bargaining Federalism

(i) Janata Party government’s regime (1977-1979)

The 1977 elections of the Lok Sabha was a turning point in Indian federal system. The Janata Party came into power at the Centre and in the ‘Hindi heartland’ States, i.e., Uttar Pradesh, Bihar, Haryana, Punjab and Rajasthan. The Janata Party government was a coalition government at the Centre and the persons with different ideologies were there in the Union council of ministers. However, the Janata Party government took an arbitrary decision in April, 1977, of the mass dismissal of nine Congress Party-ruled State Governments along with the dissolution of their respective Assemblies, viz., Punjab, Haryana, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, Rajasthan, West Bengal, Bihar, Orissa. The Union Government put forth its logic that these nine Congress ruled state governments had lost the support of the people in the Lok Sabha elections in 1977. This arbitrary decision of the Union Government destroyed the State autonomy and it showed the negative attitude to the principles of federal democracy of the union government. The President’s Rule was imposed in three more cases, viz., Manipur on May 16, 1977, Tripura on November 5 1977 and Karnataka on December 31, 1977.\textsuperscript{72}

On the contrary, the Janata Party ruled State governments, e.g., U.P., Bihar, Rajasthan, etc., capitalised on the Union Government and received financial assistance to the Union government. There was a competition among the State


\textsuperscript{72} Siwach, J.R. (1979), Politics of President's Rule in India, Indian Institute of Advanced Study: Shimla, pp. 423, 214, 322, 225.
Governments to receive more and more financial assistance from the Union Government.

(ii) Janata Dal (Socialist) government’s regime (1990-91)

The Janata Dal (Socialist) government headed by Chandrashekhar was a minority government at the Centre. The Janata Dal (Socialist) government showed negative attitude to the principles of federal democracy. During the Janata Dal (Socialist) regime the President’s Rule was imposed on four occasions, viz., Assam (1990), Goa (1990), Tamil Nadu (1991) and Haryana (1991). The Union Government toppled the AGP government in Assam and the DMK government in Tamil Nadu (1991) for partisan reasons. Moreover, the DMK government was toppled without the report of the then State Governor, S.S. Barnala. It has had negative consequences on the Indian federal system.

It may be mentioned here that the State autonomy has been maximum during the periods of multi-party competitive politics, whereas under one party dominance the federal principle gets reduced to a vanishing point. Thus, Indian federal system has vacillated all the way from a bargaining and cooperative system to a paramount, normative, democratic centralism, and now looks forwards to cooperative and bargaining type in the present era of coalition government.

ARTICLE 356 AND INDIAN FEDERAL SYSTEM

The process of centralisation of power with the Centre is a legacy of British colonial rule in India. The British East India Company started the centralisation of administration in India by enacting the Charter Act of 1833 for fulfilling its imperial interests. British Parliament introduced the Governor’s Rule under Section

73 The Telegraph, Calcutta, 28 November, 1990.
74 Times of India, New Delhi, 16 December, 1990.
76 The Tribune, Chandigarh, 7 April, 1991.

The founding fathers of the Constitution of India felt necessary the provisions regarding President's Rule to preserve the unity and integrity of the country and for proper functioning of constitutional machinery in the States. It is stressed that the use of Article 356 was meant to be an exception rather than a rule. As B.R. Ambedkar, Chairman of Drafting Committee of the Constitution, assured, "Such Articles will never be called into operation and that they would remain a dead letter."79

In spite of the hopes of the founding fathers of the Constitution, Article 356 was used 101 times till 2001 and in most of the cases, this power has been used to fulfil the partisan interests by ruling party or coalition at the Centre. B.D. Dua observed, "By combining an emergency governance and a federal system, the political leadership tried to get the best of the two possible worlds, though, in time, the Indian system could be alleged to have become a case of pathology of federalism."80

The provisions regarding President's Rule is a Unique feature of Constitution of India which is not to be found in any other federal constitution except that of Pakistan. S.R. Maheshwari observed, "The suspension of the constitutional provisions relating to a responsible government in the State is by all accounts an extraordinary feature which is not to be found in any other federal constitution except that of Pakistan."81

The repeated uses and misuses of Article 356 greatly disturs the balance of power in Indian federal system. In most of the cases, Article 356 has been used to dislodge the duly elected state governments ruled by a party or coalition other than the party in power at the Centre on the ground of breakdown of law and order

81 Maheshwari, Shri Ram (1977), President's Rule in India, Macmillan: New Delhi, p. 2.
machinery in the State concerned, even though the law and order is a subject of State List. It disturbs the distribution of powers between the Union and State Governments in the federal set-up. It reduces the States’ autonomy also.

In a democratic system people of every State have right to fulfil their aspirations through self-governance. But the repeated misuses of Article 356 snatches the democratic right of self-governance of the people of the State. During President’s Rule, the State comes under bureaucratic-governance. As Soli J.Sorabjee observed, “The people in every State desire to fulfil their own aspirations through self-governance within the framework of the Constitution. Hence interference with the self-governance also amounts to the betrayal of the democratic aspirations of the people which is a negation of the democratic principle which run through Constitution.”

In fact, the extensive misuse of Article 356 is an unnecessary burden on the State concerned with unwanted involvement in mid-term elections causing more financial strains over public money. It also defies the people’s mandate by suspending or dissolving the State legislatures.

It seems that the State Legislative Assemblies were kept in suspended animation to enable the formation of own party Government in a State by the ruling party or coalition at the Centre. The suspension of State Assembly can give rise to the defections and horse-trading of MLA’s, which is unfortunate for Indian federal democracy. J.R.Siwach pointed out, “In view of the interest of the ruling party at the Centre, the Assemblies have been put in a state of suspended animation without taking into consideration the remaining term of the Assembly or the number of the Ministries that have fallen.”

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During President's Rule the Indian federal system turns into a Unitary system and the State administration comes under direct control of the Union Government through the Governor and of the bureaucrats of the State concerned. It shows that the States Governors have used their discretionary power to fulfil the partisan ends of the ruling political party or coalition at the Centre while sending their report to the President of India regarding the imposition of President's Rule. For instance, Governor of Assam, D.D. Thakur (1990), K. P. Singh in Gujarat (1996), S.S. Bhandari in Bihar (1999). Some times, for instance, they do not invite the single largest party in the State Assembly to form the government in the State Romesh Bhandari in Uttar Pradesh (1996), Buta Singh in Bihar (2005); at some other times they do not give a chance to Opposition party or coalition to form an alternative government; they can intentionally delay the formation of government so that the ruling party at the Centre can practice horse trading and muster the required strength for the formation of its own party government, etc. In some cases, the State Governors themselves cherish a lust for power. So they create the atmosphere of political instability and prepare ground for imposition of President's Rule in the state. The Governor plans to acquire the executive powers in the State and in these cases the Governor becomes a real Executive head of the State. He acts like the popular ministry in the State. He takes all major policy decisions, orders transfer of bureaucrats on a large scale, holds public meetings, deputes the loyal officers on the key posts, gives orders to officers for fulfilling the interests his political boss in ruling party/coalition at the Centre. These examples include, S.S. Razi in Jharkhand (2005), and Buta Singh in Bihar (2005) etc.

The office of the Governor has a vital link between the Centre and the States. Instead Union Government of either ideology, have preferred to select and use Governors as 'agents of the Centre' rather than as the vital links between the Centre and the States in the Indian federal democracy. In practice, the Governor is guided

86 Times of India, New Delhi, 18-20 September, 1996.
88 Times of India, New Delhi, 17-19 October, 1996.
89 The Hindu, Delhi, 8 October, 2005.
neither by his own judgement and discretion, nor by the real political situation prevailing in the State concerned, but they dictates from the Centre. Usually, State Governors act as agents of the Union Government and not as the impartial constitutional heads of the States. Granville Austin observed that misuse of President's Rule seemed toying with the Constitution, amounting to an attack on participative governance within a State and between the State and the Union government. Its misuse undermined the credibility of an office under the Constitution designed to serve national unity and effective federalism: the governors.91

Under the President’s Rule, the Union Parliament is made competent to enact legislation on any subject of the State list and for approval of budget for the State concerned. Therefore, provisions regarding President’s Rule are inconsistent with and a negation of federal principles. As Rajeev Dhavan observed, “The power to impose President’s Rule on a State through Article 356 of the Constitution is an awesome and arbitrary power. With its use, local democracy disappears. Federalism is collapsed. The State becomes a political fiefdom of the Union...It has been made for wholly party political reasons, which is a blot on Indian democracy.”92

THE PROVISIONS REGARDING PRESIDENT'S RULE
The provisions regarding President’s Rule have been introduced in Part XVIII of the Constitution. The Constitution provides for carrying on the administration of a State in case of a failure of the constitutional machinery. Article 355 imposes a duty on the Union Government to protect every State from external aggression and internal disturbance and to ensure that government of every State is carried on in accordance with the provisions of the Constitution. According to Article 355, “It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution.”93

This duty is very wide. The duty of the Union under Article 355 is of three types:

(i) The duty of the Union to protect every State against external aggression.

(ii) The duty of the Union to protect every State from internal disturbance.

(iii) The duty of the Union to ensure that the government of the State is carried on in accordance with the provisions of the Constitution.

When an 'external aggression' or 'internal disturbance' paralyses the State administration creating a situation drifting towards a potential breakdown of the constitutional machinery of the State, all alternative courses available to the Union Government for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation. Article 355 also casts a duty on the Union Government to ensure that the government of the State is carried on in accordance with the provisions of the Constitution. The remedy for breakdown of constitutional machinery has been provided in Article 356.

Thus, in a situation where the government of a State is unable to protect the people of the State against external aggression or internal disturbance, but would not request the union government to intervene because of political reasons, or is itself particeps criminis, the duty of the Union Government becomes even more imperative. Article 355 is self-contained and independent of Article 356 and self-operative. Article 356 is not the only one to take care of a situation of failure of constitutional machinery. In case of failure of constitutional machinery in a State, the Union Government can also act under Article 355, i.e., without imposing President's Rule. Also, Union Government can issue certain directions under Articles 256, 257 and 353. Article 355 precedes Article 356 and, therefore, it must be read and acted upon before rushing to take extreme action under the latter provision. 94

It is noteworthy that the law and order (public order), is a subject of State List and is primarily the responsibility of the State Government. The States' powers are subject to the supremacy of Union's law under the VII schedule of the Constitution and the Union's overall responsibility for the security and peace of the country as a whole. If any state government fails to maintain the law and order in a State and it resists Center's intervention as to deployment of paramilitary forces

or does not cooperate when the Centre offers assistance in exercise of its Constitutional duty and obligation under Article 355, then the Centre can take action under Article 356 and it would be justified.\(^{95}\)

Article 356 provided power to the President to impose President's Rule in case of failure of constitutional machinery in a State. The President shall be authorised to assume powers of the Governor or any other authority in the State other than the Legislature, and to declare that the powers of the State Assembly shall be exercise by the Union Parliament. The President can also suspend any provisions of the Constitution relating to any authority of the State concerned, but he cannot assume any power of the High Court. According to Article 356(1) "If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation:

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State,

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend in whole or in part the operation of any provision of this Constitution relating to High Courts."\(^{96}\)

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Legal expert, Rajeev Dhavan, observes that a narrow interpretation of the provision of President’s Rule is that it must be used only in serious cases and not as an excuse to make possible the political management of the politics of a State. The wider interpretation is that the exercise of the powers given under Article 356 are political in nature and can be controlled through parliamentary safeguards.

Such a Proclamation may also be made by the President under Article 365 of the Constitution, where any State has failed to comply with, or to give effect to, directions given under Articles 256 and 257 by the Union Government. According to Article 365, “Where any State has failed to comply with, or to give effect to, any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution.”

Thus, the President of India is empowered to impose President’s Rule in the State under Articles 356 and 365 where a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The Proclamation of failure of constitutional machinery in a State is not so much concerned with external aggression or internal disturbance, as with political breakdown, i.e., failure to comply with the Union directives under Article 365. Therefore, the Union Government can take proper action under Articles 355 and 365, before use of Article 356. In this connection a constitutional expert, Subhash C. Kashyap, suggested that Article 356 be read with Articles 355, 256, 257, 353 and 365.

THE APPROVAL AND DURATION OF PRESIDENT’S RULE

The Proclamation regarding the President’s Rule shall have to be approved within two months by both Houses of the Parliament. Clause (3) of Article 356 says,

97 Dhvan, Rajeev (1979), President’s Rule in the States, N.M. Tripathi: Bombay, p.124.
“Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.”  

The approved Proclamation of the President’s Rule shall expire in six months from the date of its issuing. Such Proclamation shall remain for a maximum period of three years. Clause (4) of Article 356 says, “A proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of issue of the Proclamation:

Provided that if and so often a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.”

The Proclamation of the President’s Rule shall extend after one year in these two conditions (i) a Proclamation of emergency under Article 352 is in operation and (ii) the Election Commission certifies that it is difficult to hold general elections to the State Assembly. Clause (5) of Article 356 says, “Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless:

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding

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THE PROCESS OF THE IMPOSITION OF PRESIDENT'S RULE

The Governor addresses to the President his report, which initiates action under Article 356 of the Constitution. The document is first received by the President's Secretariat and seen by the President, who forwards it to the Prime Minister for advice. The Prime Minister marks it to the Home Minister for examination and initiation of necessary action. The report comes up for discussion in the Union Council of Ministers with a note by the Home Ministry. It is for the Prime Minister to decide whether the report should first be taken up in the Political Affairs Committee of the Union Council of Ministers or straightway come before the parent body. The more recent practice is to place the Governor's report in the Union Council of Ministers itself. The Prime Minister who presides over the meeting gives a summary of the political development in the State including, of course, the Governor’s recommendation and also suggests a course of action. The meeting is generally brief and the Union Council of Ministers endorses the views of the Prime Minister. The decision of the Union Council of Ministers is conveyed immediately to the President, who, then, issues the Presidential Proclamation clamping Article 356 on the State and by another order, issued simultaneously, delegates his powers to the Governor of the State, both the notification and the order being announced by the Ministry of Home Affairs. We can show the process of the imposition of President’s Rule by the following chart on the next page.

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102 ibid, pp. 101-2.
GOVERNOR'S REPORT

RECEIPT BY PRESIDENT

CABINET DECISION

PRESIDENT'S PROCLAMATION

MINISTRY ABOLISHED

ASSEMBLY SUSPENDED

MINISTRY REMOVED

ASSEMBLY ABOLISHED

(SIMULTANEOUSLY OR

SUBSEQUENTLY)

MINISTRY REMOVED

ASSEMBLY ABOLISHED

SPEAKER REMOVED

PARLIAMENT'S

APPROVAL

PRESIDENT REVOKING THE RULE

CABINET DECISION

RECEIPT BY PRESIDENT

GOVERNOR RECOMMENDING REVOKING OF THE RULE

ENACTMENT OF THE DELEGATING POWERS ACT

SETTING UP OF CONSULTATIVE COMMITTEE

PASSING OF STATE BUDGET

* Source: Shri Ram, Maheshwari (1977), President’s Rule in India, Macmillan: New Delhi, p. 16.
THE CONDITIONS OF THE IMPOSITION OF PRESIDENT'S RULE

As is evident from the provisions of Article 356, three conditions have to be fulfilled before the President exercises his power under it. The conditions are as follows:

(i) A report from the Governor of the State, or otherwise;

(ii) Satisfaction of the President as to the existence of a situation arisen in which the Government of a State cannot be carried on in accordance with the provisions of the Constitution, i.e., the constitutional machinery in a State has failed, and

(iii) Proclamation by the President.

The first requirement of any action under Article 356(1) is a report from the Governor of the State concerned, because he is executive head of the State and he takes the oath, prescribed by Article 159, to preserve, protect and defend the Constitution. The Supreme Court made it clear in the S.R. Bommai case (1994) that the Governor's report may not be conclusive but its relevance is undeniable. Action under Article 356 can be based only and exclusively upon such report. So the report of the Governor should contain some facts, on the basis of which the President would be able to form his opinion whether or not a situation contemplated in the Article has arisen.

The word 'Otherwise' in Article 356 gives a 'prima facie' impression that in all cases, and irrespective of the grounds which cause the 'situation' required under the Article for the President's action, the President may frame his 'satisfaction' even on the receipt of information from the Union Council of Ministers and without a report from the Governor.

The power conferred by Article 356 is a conditional power; it is not an absolute one. The existence of relevant material is a precondition to the formation of satisfaction. In the State of Rajasthan Case (1977) the Supreme Court made it clear that, "The satisfaction of the President is a condition precedent to the exercise of power under Article 356, Clause (1) and if it can be shown that there is no satisfaction

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104 S.R. Bommai vs. Union of India, All India Reporter, 1994, Supreme Court, p. 1928.
of the President at all, the exercise of the power would be constitutionally invalid." 105
In the S.R. Bommai Case (1994) the Supreme Court also held, "The Court will not go into the correctness of the material or its adequacy. It's enquiry is limited to see whether the material was relevant to the action". 106 The exercise of the power is made subject to the approval by both the Houses of Parliament. Clause (3) is both a check on the power and a safeguard against abuse of power.

Clause (1) of the Article 356 requires the President to be satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. There is no explanation given in the Constitution about the situation of failure of constitutional machinery in a State. However, a very specific and categorical answer is contained in Article 365 where it says that when a State fails to comply with the Union’s directions (under Articles 256 and 257), it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. The non-compliance or violation of the Constitution should be such as to lead to or give rise to a situation where the government of the State cannot be carried on in accordance with the provisions of the Constitution of India.

Since State Governor cannot himself take any action of the nature contemplated by Article 356(1), he reports the matter to the President and it is for the President to be satisfied on the basis of the said report or otherwise. In fact, the President, under the Constitution, being what may be called a Constitutional head, is obliged to act upon the aid and advice of the Council of Ministers [whose aid and advice is binding upon him by virtue of clause (1) of Article 74]. However, the President may send this advice to the Council of Ministers for its reconsideration. But the President must act according to the advise tendered after such reconsideration by the Council of Ministers [Article 74(1)]. The satisfaction referred to in Article 356(1) really means the satisfaction of the Union Council of Ministers with the Prime Minister as its head. The advice tendered by the Council of Ministers

under Article 74 (1) to the President shall not be required into in any Court (Article 74 (2)).

On the contrary, the Supreme Court made it clear in the S.R. Bommai case (1994) that Article 74 (2) incorporating the Union Council of Ministers’ advice to the President in relation to imposition of President’s Rule in a State is not a bar against the judicial scrutiny of the material on the basis of which the President had arrived at his ‘satisfaction’. The Supreme Court held that “Since reasons would form a part of the advice tendered to President, the Court would be precluded from calling for their disclosure but Article 74 (2) is no bar to the production of all the material on which the ministerial advice was based.” For instance, the President A.P.J. Abdul Kalam (2005), refused to disclose the letter, in which the then President, K.R. Narayanan, had given advice to the Council of Ministers headed by A.B. Vajpayee (NDA) on the widespread communal riots in Gujarat consequent upon the Godhra Carnage (February, 2002), in view of confidentiality of advice under Article 74 (2). The UPA Government did not take strong steps for disclosing of K.R. Narayanan’s letter. This is not justified.

It is indeed difficult, nor is it advisable, to catalogue the various situations which may arise and which would be comprised within clause (1) of Article 356. It would be more appropriate to deal with concrete cases as and when they arise. M.V. Pylee observed, “What are the ingredients of such a situation? Unless these are specifically detailed, the vagueness will continue and it is bound to be exploited to suit the political expediency of the Party in the power at the Centre.”

IMPACT OF PRESIDENT’S RULE

1. Legislative Impact

When a Proclamation under Article 356 has been issued in respect of a State, the President may declare that the powers of the Legislature of the State shall be

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107 Government of India (1991), Article 74 (1) and (2), The Constitution of India, Legislative Department: New Delhi, p. 20.
109 Chenoy, Kamal Mitra (2005), Personal Interview with the author, School of International Studies, JNU, New Delhi, 15 September, 2005.
110 Pylee, M.V. (1960), op.cit, p.511.
exercisable by or under the authority of Parliament. Article 356 (1) (b) says “The President may by Proclamation declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament”.\textsuperscript{111}

When the President declares that the powers of the Legislature of the State will be exercised by the Parliament, he has three options, namely, (a) he may remove the Ministry but keep the State Legislature under suspension, (b) he may remove the Ministry and abolish the Legislature but the Speaker of the Assembly may continue in office, (c) he may remove the Ministry and may merely suspend the Assembly by the first Proclamation but may later on dissolve it.

Regarding the delegation of powers by Parliament to the President, Parliament can delegate to the President only the ‘law-making’ powers and not all powers of the State Legislature. This is so because under Article 356(1) (b) Parliament itself does not exercise ‘all the powers’ of State Legislature. Parliament cannot delegate to the President the financial functions of the State Legislature. Article 357 (1) (c) stated that, “It shall be competent for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament”.\textsuperscript{112}

It should be noted that even without the delegation of legislative powers under Article 357(2)(a) the President will have the powers of law-making in respect of the matters mentioned in the State List. According to Article 357 (2) (a), “Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by a Competent Legislature or other authority”.\textsuperscript{113}

\textsuperscript{112} ibid, p. 102.
\textsuperscript{113} ibid, p. 102.
This would be so because the executive power of the Union extends to the matters in respect of which the Parliament has power to make laws and the President by Proclamation declares that the powers of the State Legislature shall be exercisable by or under authority of Parliament. The President, however, automatically gets the power of making laws by issuing ordinance in respect of matters mentioned in the State list.

But when the Legislative powers are not delegated by Parliament to the President under Article 357 (1) (a), the President may make laws for the State where the constitutional machinery has failed by issuing Ordinances under Article 213, and whenever, he does so, he will have to place it on the table of Parliament. Because it is Parliament which exercises the power of the State Legislature under Article 357(1)(a).

If the powers are delegated by the Parliament to the President, he may, if authorised, further delegate them to any other authority, may be to the Governor or someone else and while doing so, he may impose conditions, which he may deem fit.

Whenever, Parliament or the President or someone else exercises the Legislative powers of the State Legislature under Article 357, he may make laws which he could not have been competent to make, had the Proclamation under Article 356 not been issued.

It may be mentioned here that -

(1) Under Article 357(1)(a) the President can make Laws even when the Parliament is in session.

(2) Under Article 357(1)(a) the President gets the law-making power in respect of the matters mentioned in the State List.

(3) Laws made under Article 357(1)(a) are to be operative only in the State where the constitutional machinery has failed. No such positive approval is needed in the case of laws made under Article 357(1)(a). Laws made under this Article
are to operate unless both the Houses of Parliament either disapprove of them or suggest certain modifications therein.\textsuperscript{114}

2. \textbf{Administrative Impact}

When a Proclamation is made under Article 356, the President may assume to himself all or any of the functions of the Government of the State. Article 356 (1) (a) states that "The President may by Proclamation assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the legislature of the State."\textsuperscript{115}

In practice, the President generally delegates the power to the Governor of the State where President’s Rule has been imposed. But this rule is subject to the superior authority of the President, which means of the Council of Ministers. The Council of Ministers at the Union is answerable to Parliament in all matters concerning the administration of the State concerned.

Thus, a State administration during the President’s Rule under Article 356 virtually comes directly under the directions and control of the Union Government. Under President’s Rule the duly elected State Government is dismissed and Executive authority of the concerned State delegated to the Governor and his Civil Servant Advisors. Usually Consultative Committee of the Members of Parliament of the State concerned is made, which gets associated with the administration of State. But this Committee is purely an advisory body and has no powers. The Parliament also has a very nominal role when it passes the State budget, because Parliament does not have sufficient time to discuss the details of State administration. Hence, President’s Rule is essentially a bureaucratic rule.\textsuperscript{116} In practice, the State Governor and his advisors function like a Council of Ministers of the State concerned. “This is

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\textsuperscript{115} Government of India (1991), Article 356 (1)(a), \textit{The Constitution of India}, Legislative Department: New Delhi, pp. 100-101

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a plain outwitting of democracy because neither the Governor nor his advisors are
elected by the people and as such they do not represent the people."117

3. **Financial Impact**

Under President's Rule the President is authorised to carry out expenditure from the
Consolidated Fund of the State. Article 357 (1) (c) states, "The President is competent
to authorise, when the House of the People is not in session, expenditure from the
Consolidated Fund of the State pending the sanction of such expenditure by
Parliament."118

If the President makes a law, after the law-making powers have been
delegated to him, a positive approval of Money Bills form Parliament is absolutely
essential. Since the financial powers, cannot be delegated to the President, its logical
corollary is that it becomes absolutely essential that a particular tax should be
imposed immediately. The President, it seems, can do so only by issuing an
Ordinance under Article 213. Whenever he does so, the Ordinance shall have to be
placed before the Parliament for its positive approval. Article 213(1) states that "If at
any time, except when the Legislative Assembly of a State is in session, or where
there is a Legislative Council in a State, except when both Houses of the Legislature
are in session, the Governor is satisfied that circumstances exit which render it
necessary for him to take immediate action, he may promulgate such Ordinances as
the circumstances appear to him to require".119

S.R. Maheshwari pointed out that a study of the laws and the budgets passed
for the States under Article 356 discloses that radical changes in the policy,
especially those having political implications and major taxation measures, are
generally not contemplated during the continuance of President's Rule.120

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Practices," *Indian Journal of Public Administration*, vol. XLVI, no. 1,
Legislative Department*: New Delhi, p. 102.
119 ibid, Article 213 (1), p.54.
120 Maheshwari, Shri Ram (1977), *President's Rule in India*. Macmillian, New
Delhi, p. 135.
It may be concluded that Article 355 imposes duty upon the Union Government to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution. The President can act under Article 355, i.e., without imposing President’s Rule, but it has not been done in practice. Article 356, however, provides power to the President to impose President’s Rule in case constitutional machinery fails in a State. Article 365 also empowers the President to impose the President’s Rule where any State has failed to comply with, or to give effect to, any directions under Articles 256 and 257 issued by the Union Government. These provisions make Union Government competent for the use of legislative, administrative and financial powers of the State concerned. During President’s Rule the Indian federal system turns into a Unitary system and the State administration comes under direct control of the Union Government. The State Governor becomes the real ruler of the State concerned and no more remains a mere ceremonial head. Therefore, these provisions are a negation of the principles of federalism. As A.S. Narang (2005) points out, in its present form Article 356 is not only dangerous for State autonomy, but also is against the basic norms of democratic governance.\textsuperscript{121}