

10

Federal Structure and Distribution of Legislative And Finance Power Between Union and States

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10.1 Federal System

- ▶ A federal system of government is one that divides the powers of government between the Central (Federal) Government and State and Local Governments.
- ▶ one is a central authority which looks after the major affairs of the country. The other is more of a local government which looks after the day to day functioning and activities of their particular region.
- ▶ For example, our Indian Constitution says that India too is a federal country. As you know we have two levels of parliament' at Centre the Union Government and at State level' we have the individual State Governments.
- ▶ India is a Union of States' The Constitution of India has divided the legislative, executive and financial powers between the Centre and the states, which gives the Constitution a Federal character whereas the judiciary is integrated into a hierarchical structure.
- ▶ The Centre-State relations are divided into three parts' which are mentioned below:
 - 1 Legislative Relations (Article 245 -255)
 - 2 Administrative Relations (Article 256 -263)
 - 3 Financial Relations (Article 268 -'293)

10.2 Features of Federal Government

The best way to comprehensively understand the federal is to learn about its features. Following are key features of Government

- ▶ It has two levels of government in the country. There can even be more. But the entire power is not concentrated with one government.
- ▶ Each level of government will have a specific power to laws, legislate and execute these laws. Both of the government will have clearly marked jurisdiction. It will not be that of the governments is just a figurehead government.
- ▶ Another important feature is that the constitution must guarantee this federal system of government. Which means the powers and duties of both or all government must be listed down in the constitution of that country hence guaranteeing a federal system of governance.
- ▶ Just one level of government cannot make unilateral changes or amendments to the important and essential provisions of the constitution. Such changes must be approved by all the levels of the government to be carried through.
- ▶ Now, there are two levels of government with separate jurisdictions and separate duties. Yet, there is still a possibility that a conflict may arise between the two Governments. The Courts must have the power to interfere in such a situation and reach a resolution.
- ▶ While there is power-sharing between the two-level of government, there should also be a system in place for revenue sharing. Both levels of government should have their own autonomous revenue streams. Because if one such government depends on the other for funds to carry out its functions, it really is not autonomous in its true nature.

10.3 Legislative Relations - Articles 245 - 255

Article 245 to 255 in part XI constitution deals with different aspects of legislative relations between Centre and States' These include:

- ▶ The territorial jurisdiction of law made by the Parliament and by the Legislatures of States.
- ▶ Distribution of legislative subjects.
- ▶ Power of the parliament to legislate with respect to a matter in the State List
- ▶ Centre's control state legislation

However, Seventh Schedule of the Constitution provides for the distribution of legislative powers between the Centre and the States.

The legislative subjects are divided into:

- List I (the Union List),
 - List II (the Concurrent List) and
 - List III (the State List)
- ▶ At present, there are 100 subjects in the Union list which includes subjects such as foreign affairs, defence, railway postal services, banking, atomic energy, communication, currency etc.
 - ▶ At present, there are 61 subjects in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc'
 - ▶ At present, there are 52 subjects in the Concurrent List' The list includes subjects such as education, forests, protection of wild animals and birds, electricity, labour welfare, criminal law and procedure, civil procedure, population control and family planning, drugs etc.
 - ▶ Article 245 empowers the centre to give directions to the states in a certain case in regards to the exercise of their executive power.
 - ▶ Article 246 states that Parliament has exclusive powers to make laws with respect to any of subject matters specified in List I, II and III of Seventh Schedule.
 - ▶ Article 247 vests the power of establishment of additional courts by Parliament for a matter related to Union List.
 - ▶ Article 248 states that the Parliament has exclusive power to make any law with respect to any matter not included in the Concurrent List or State List.
 - ▶ Article 249 empowers the Parliament to legislate with respect to a matter in the State List in the national interest.
 - ▶ Under Article 250, the Parliament becomes empowered to make laws on the matters related to State List when a national emergency (under Article 352) is in operation.
 - ▶ Under Article 252, the parliament is empowered to legislate for two or more States by their consent.

10.4 Administrative Relations

- ▶ Article 256 to 263 deals with the administrative relations between the Centre and the States.

- ▶ Article 256 states that the executive power of every State shall be so exercised as to ensure compliance with the laws made, by the parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

10.5 Cooperation Between the Centre and the States

- ▶ The constitution lays down provision to secure corporation and coordination between the centre and the state this include
- ▶ Article 261 states that 'full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.
- ▶ According to Article 262, the parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any Inter-State river or river valley.
- ▶ Article 263 empowers the President to establish an Inter-State Council to inquire into and advise upon disputes between States, to investigate and discuss subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.
- ▶ As per Article 307, Parliament may by law appoint such authority as it considers appropriate for carrying out the purposes of the constitutional provisions related to the interstate freedom of trade and commerce.

10.6 Centre-State Relations during Emergency

- ▶ During a National Emergency (under Article 352), the State Government become subordinate to the Central Government. All the executive functions of the state come under the control of the Union Government.
- ▶ During a State Emergency (under Article 356), the President can 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 authority in the State other than the Legislature of the State.
- ▶ During the operation of Financial Emergency (under Article 360), the Union may give directions to any State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose.

10.7 References

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