

BLOCK: III
FEDERALISM

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UNIT-I
CONSTITUTIONAL FOUNDATION

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1.1 Introduction

The Constitution of India provides for a federal structure of government with a strong centre and weak states but without using the word 'federation' anywhere in the Indian constitution. Article 1(1) of the Indian Constitution states "India, that is Bharat, shall be a Union of States." The word federation has not been used deliberately in the constitution. According to Dr. B.R. Ambedkar, the phrase 'Union of States' has been preferred instead of 'Federation of States' to indicate two things: One is that Indian Union was not a creation of any agreement among the states like the American federation; and the other is that no state has the power to secede from the union. If we look into its structure, it can be said that it is a federation. But again, the use of the word 'Union' connotes that it is not a federation in the

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truest sense of the term and it may mean unitary or a quasi-federation. 'Canadian model' of federation is followed in India instead of 'American model' which is basically different from the former in regard to the establishment of a very strong centre. Thus, the Indian federation resembles with the Canadian federation, but not with the American federation. According to Dr. Ambedkar, the Constitution of Union and States is a single frame from which neither can get out and within which they must work. There is the need of analyzing the characteristic features of our political system.

1.2 Objectives

This unit is an attempt to analyse the constitutional foundation of federalism in India. After going through this unit, you will be able to-

- Understand the nature of Indian federalism
- Differentiate the federal and non-federal features of Indian federalism
- Describe the reasons for creating a strong centre
- Discuss the centralizing tendencies of Indian federalism
- Comprehend the Relations between the Union and the State Governments

1.3 Concept of Federalism

Before going through the nature of Indian federalism we must know the theoretical meaning and definition of federalism provided by different scholars.

Professor Dicey defines, "A federal state is a political contrivance to reconcile national unity and power with the maintenance of state rights."

According to Montesquieu, "Federal Government is a convention by which several similar states agree to become member of a large one."

Hamilton defines a federal government as "an association of states to form a new state."

Professor K. C. Wheare states that by the federal principle, I mean the method of dividing powers so that the general and regional governments are each within a sphere, coordinate and independent.”

According to Herman Finer, “A federal state is one in which part of the authority and power is vested in the local areas while another part is vested in a central institution deliberately constituted by an association of the local areas.”

If we analyse the above definitions of federalism, we find some basic features of federalism such as association of states, division of powers between the centre and the constituent states etc.

1.4 Foundation of Indian Federalism

We know that the constitution of India provides for a strong central government which was the need of time during the period of independence. The makers of the Constitution firmly believed that we need a federal form of government for reconciliation of diverse people of British India and princely states on the one hand and a strong central government in order to expedite the process of socio-economic progress as well as to restrain the divisive tendencies of the constituent parts. During the time of independence, apart from the British India provinces there were more than 500 Princely States which were to be integrated with other states or to form in a new manner. The terribly difficult problem of integration of the princely states was solved in time through the great initiative and statesmanship of Sardar Vallabhbhai Patel (who is rightly called as the “Iron Man of India” for his contribution to the Indian national integration) with the co-operation given to him by Pandit Jawaharlal Nehru and Lord Mountbatten. Thus, as considered by the historians, the integration of States into India is undoubtedly a dominant phase of Indian history. The colonial government also felt the necessity of adopting a federal structure for India considering its vastness which was reflected in the Government of India Act, 1935. The makers of the constitution also followed the federal principles enshrined in this Act and thus this Act can be considered as the basic foundation of Indian federalism.

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1.5 Nature of Indian Federalism

There is controversy regarding the nature of Indian federalism. As discussed earlier, though India is called federal the word 'federation' cannot be found anywhere in the constitution. The constitution makers prefer to use the term 'Union' instead of 'Federation'. So, the matter of controversy is that whether India is a federation or not. Dr. Ambedkar, the Chairman of the Drafting Committee explained the significance of the use of the word 'Union' instead of 'Federation' while he placed the Draft Constitution before the Constituent Assembly on November 4, 1948. He stated, *"It is true that South Africa which is a unitary state is described as a Union, but Canada which is a Federation is also called a Union. Thus, the description of India as Union, to usage. But what is important is that the use of the word 'Union' is deliberate. I do not know why the word Union was used in Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India is to be federation, the federation not being the result of an agreement, no state has the right to secede from it. The federation is a Union because, it is indestructible"* (Constituent Assembly Debates, Vol. VII, p.43). India is a vast country almost like a continent having different nationalities which are divided in states for convenient administration belong to one single nation under a single constitution.

There is also difference of opinions among the constitution experts regarding the nature of Indian federalism. Some argue that India is extremely a federal state while Some others do not agree with this opinion. K. Santhanam and K. P. Mukherjee are of the view that Indian constitution is definitely unfederal or unitary. On the other hand, another constitutional expert and author D. D. Basu is of the opinion that it is neither purely federal nor purely unitary but a combination of the both.

Therefore, in order to understand the nature of Indian federalism we have to examine the salient features of the constitution and the structure of the state. If we give a superficial view to the structural features it would seem to be a true federation, but deep look into its functionalities will clarify the real nature of Unitarian federation. So, there is the necessity to examine the characteristics.

1.6 Characteristics of Indian Federalism

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The characteristics of Indian federalism can be discussed in two broad divisions. If you go through the provisions of the Constitution, you will notice that there are some intrinsic features required for federal polity and some others which can be found in a unitary state. In the following parts you can find all these basic features.

1.6.1 Federal Features

(i) Written Constitution: The constitution of a federation should be a written document where all the necessary principles for governing two types of governments are incorporated and they can refer to it in case of necessity. Indian constitution is a written constitution and it is the supreme law of the land. It is the source of power for both the centre and the federating states as there is no provision for separate constitution of the states. The relationship of all the three organs of the government viz. the executive, the legislature and the judiciary are discussed in detail in the constitution.

(ii) Rigidity and Supremacy of the Constitution: As a federation, the constitution of India is the supreme law of the land and neither the state governments nor the centre can violate it. The constitution is the source of power for both the union and the state governments. Indian constitution is not fully rigid and it is the mixture of rigidity and flexibility. Though some provisions can be amended very easily with simple law-making procedure some are rigid. Indian constitution is rigid to a great extent because special procedure is to be followed for amending such provisions of the constitution. It is the desire of the state governments that the centre should not be able to alter any clause of the constitution to turn the constitution in its favour.

(iii) Dual form of Government: Two sets of government is one of the basic elements of a federation. There is central or union government for whole of the federation and the state governments for the federating units or the states. They exercise their functions within their jurisdiction as per the provisions of the constitution.

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(iv) Bicameral Legislature: There should be bicameral legislature consisting of the first chamber for representation of the people and the second chamber for the constituent states. In India, the Lok Sabha or the House of the people is the first chamber and the Rajya Sabha or the Council of States is for representation of the states. Members of the Lok Sabha are directly elected by the people for a term of five years. The Rajya Sabha is a permanent body and one third of the members are elected in every two years from the states by indirect method for a term of six years.

(v) Independent and Impartial Judiciary: The judiciary must be independent and impartial in a federation. There may be dispute between the union and the state government/s or among the state governments. The Supreme Court of India plays a pivotal role in the impartial settlement of disputes as per the provisions of the constitution. It is also the guardian and interpreter of the constitution. It can interpret the provisions of the constitution in case of any doubt or controversy on any clause of the constitution.

(vi) Division of Powers: It is another important federal feature of the constitution of India. The powers of the federation are divided between the union and the federating units as per Article 246 of the constitution and the detailed list is being given in Seventh Schedule of the constitution. Three lists are enumerated in this schedule viz. List-I (Union List), List-II (State List) and the List-III (Concurrent List). The subject matters with national importance are included in the Union List and the subject matters which are important from the regional point of view are included in the State List while the common subject matters for both the union and the states are included in the Concurrent List.

1.6.2 Non-Federal Features

Apart from the federal features there are some non-federal features also which draw the attention of the constitution experts as their number is more than that of the federal features. The non-federal features are discussed below.

(i) Single Citizenship: The provision of single citizenship implies the unitary character of India. All the citizens irrespective of their state of birth enjoy Indian citizenship which is not ideal for a true federation. In an ideal federation

like the U.S.A., the people enjoy dual citizenship which means a person is a citizen of the USA and at the same time he or she is also the citizen of the particular state where inhabits.

(ii) System of Division of Powers Increases the Strength of the Union Government: The system of division of powers as provided in the Indian constitution shows that intentionally the union government is made more powerful than that of the state governments. The Union List contains many more subject matters than the State List. If any contradiction arises on the laws made by both the central and state government on any of the Concurrent List, the law of the central government prevails. Apart from that the residuary powers are given to the centre which should be given to the state as it is done in an ideal federation.

(iii) Provision of Emergency Powers makes it Unitary: The constitution of India empowers the President to make use of the emergency provisions. There are three kinds of emergency provisions that are National Emergency as per Article 352, Failure of Constitutional Machinery in a State which is popularly known as President's Rule as per Article 356 and Financial Emergency as per Article 360. In case of proclamation of national emergency powers by the President of India the state governments lose their autonomy and the whole country turns to be a unitary state. If any state comes under President's Rule by the use of Article 356, administration of the state goes to the hands of the centre.

(iv) Unequal Representation of the federating states in the Rajya Sabha: It is another important non-federal feature of the Indian constitution. The countries like America, Australia and Switzerland followed the principle of equal representation in upper house. The Senate which is the upper house in the USA, for example, is composed of one hundred members, representing each state equally by two members. Number of population and geographical size of the federating states are not considered in this regard. Regarding election of the representatives, it should not be considered that whether a federating state is large or small and highly populated or not, all the states should have equal representation. But in Indian case the Rajya Sabha or the Council of States which is the upper house of the parliament is not

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consist of equal representation of the states. Geographically large states or highly populous states like Uttar Pradesh, Madhya Pradesh, Bihar etc. are getting more representatives in comparison to the states which are geographically smaller and with less number of population like Assam, Nagaland etc.

(v) Centre's Power to Change the boundaries of States: In a federation the centre has no power to change the state boundaries in its will. But in India centre is the sole authority to alter the name of any state and the state boundaries. The Indian parliament can create a new state or change the boundary of the states at any time it chooses appropriate without any consent of the affecting state by amending the constitution with simple majority. It has been done several times starting from the creation of Andhra Pradesh out of the then Madras state during the early part of 1950's. This process continues up till the present times through the formation of State Reorganisation Commission in December 1953 and enactment of the State Reorganisation Act of 1956, there is not any state boundary in India which is left unchanged. Thus it is a non-federal feature of Indian federalism which is contrary to the principle of true federalism.

(vi) Absence of Separate Constitution for the States and no Right to Secede: The federating units should have their own constitution separately apart from the federal constitution. But in India the provision of separate constitution is not accepted and for both the centre and the states, there is only one constitution. The constituent states have neither the right to draft their separate constitution nor they have the right to secede from the union at their own will.

(vii) Governor as the Agent of Central Government: The Governors in the states are appointed by the President and he acts as the agent of the Central Government. It is against the ideal principle of federalism where the Governors of the states are elected by the people. The Governors in Indian states are appointed by the President and their tenure of office depends on the pleasure of the President as per Article 156 (1), who has also the power to remove them from their office. It is the duty of the Governor to inform the President about all the matters relating to state administration. During the

time of emergency, the Governor has to follow the directions issued by the President. This feature signifies the unitary bias of India.

(viii) Governor's Power in State Legislation: You are aware that the Bill passed by the state legislature will become a law only when it is signed or given assent by the Governor. But in exercise of the power conferred on the Governor by Article 200 and 201, he may withhold his assent to a Bill passed by the state legislature or may reserve the Bill for consideration of the President. In such a case the legislative power of the state comes under the clutches of the central government. This feature is unitary rather than federal.

(ix) Centralised Election Machinery: Elections for the whole country of India is under the control of Election Commission of India. It is the centrally organized constitutional body and the Chief Election Commissioner along with other office bearers are appointed by the central government and it has control over it. The commissioner is responsible for holding elections throughout the country. The state governments have nothing to do and have control over the Election Commission.

(x) Provision of All India Administrative Services: The All-India services like I.A.S., I.P.S. etc. are recruited by the UPSC and they are appointed to both the central as well as state governments. Their service conditions are determined by the central government but they hold important positions and higher ranks in the state governments. They are not fully under the control of the state governments and they have to follow the rules and regulations given by the central government. Through these officials the central government can keep notice of the state administration which is not acceptable for a federation.

(xi) Comptroller and Auditor General: The expenditure of all the government funds is to be accounted and audited properly and it is the responsibility of the CAG. It is an autonomous body appointed by the President and the state governments have no power in this regard. The State Accounts General is also appointed by the CAG. This system is also not in accordance with the federal principles.

1.7 Why there is a need of Strong Central Government?

The makers of the constitution provide for a strong central government. There are many reasons for opting for a strong centre. The following are the reasons given in favour of strong centre.

(i) Role of Indian National Congress: The Indian National Congress which led the movement against the British for Indian independence wanted to establish a strong central government. It believes that only a strong centre can lead India to the path of development. Indian National Congress was the single dominant party in the Constituent Assembly at that time. So, the party became successful for inclusion of the provisions for a strong central government in the constitution as per its wish.

(ii) Achieving Unity among the Indians: India is a nation of different nationalities with various castes, races, religion and languages. Diversity is a basic characteristic of the Indian society along with geographical diversity. Therefore, the constitution makers always tried to bring unity in diversity at any means. They realized that unity in diversity would be possible in India only with a strong central government.

(iii) Protection of Interest of the Minorities: A strong central government is necessary for providing protection to the minorities. In democratic system the majority people always play dominant role in the affairs of the state. At the same time, it must be noticed that the interest and the development of the minorities should not be hampered. In this regard the opinion of Dr. B. R. Ambedkar who represented a minority community can be mentioned here. He wanted to make the central government even more powerful than that provided by the Government of India Act, 1935. So, the constitution of India makes the central government very strong.

(iv) Controlling the Separatist Tendencies: The constitution makers were aware enough that there was possibility of the growth of separatist tendencies in India. On the basis of that apprehension, they made the provisions for a strong central government with unitary features. We have seen these kinds of movements led by some extremist organizations seeking secession of one or more states from the Indian republic. Some other groups have wanted either separate state or union territory or autonomous

administrative division within the territory of India. We can cite here the examples of Naxalite-Maoist insurgency in the states of West Bengal, Bihar, Jharkhand, Maharashtra, Andhra Pradesh, Telengana etc.; Khalistan movement in Punjab; insurgency movements in the North-eastern states; and the extremist movements in Jammu and Kashmir.

(v) Protection of National Interest and Integration: The members of the Constituent Assembly felt that national interest and integration cannot be protected without a strong central government. They opined that a weak centre would not be able to eliminate the sufferings of the people. The constitution makers believed that the socio-economic problems like poverty, illiteracy, unemployment, inequality of wealth prevailed in India can be handled by a strong centre only. Proper planning and co-ordination are necessary for tackling all these problems which can be done by a strong union government. So, they created a strong centre.

(vi) Impact of World Politics: During the time of making of the Indian Constitution there was a worldwide tendency that the central government must be strong. Also in the present days it has become a common feature of establishing a strong central government. India is not an exception to that and thus accordingly the union government in India was formed.

(vii) Removal of Obstacles to Integration of Princely States: At the time of independence, apart from the British provinces, there were more than 500 princely states which had to be integrated into existing states or new states had to be created. There was an apprehension among the constitution makers that the princely states might destroy the integrity of the Indian union. So, the framers of the constitution made the central government very strong in order to contain all kinds of elements of disintegration.

(viii) Diversities and Problems of India: India is not only a vast country with continental dimension but also a plural society having immense diversity of different castes, tribes, races, languages, communities and religion. There was the necessity to bring unity among all Indians keeping aside all diversities implementing the principle of 'unity in diversity'. Apart from diversities, problems of economic inequality, poverty, illiteracy etc. were acute at the time of independence. So, the framers of the constitution believed that

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bringing unity in diversity and solution of the acute socio-economic problems would not be possible without a strong central government.

1.8 Centralising Tendency in Indian Federalism

There are many provisions in the Indian constitution through which the constitution makers have made the central government more powerful. These kinds of provisions have already been discussed in this chapter under the head non-federal features or the unitary features. India is called as a unitary state rather than a federal state due to the abundance of these unitary features in the constitution. After analyzing these features, we can say that there are a number of areas where the centralizing tendency can be noticed. The areas are discussed below.

(i) Role of the federating units in the amendment of the constitution:

Unlike the other federations, there is only one constitution for whole of the Indian nation without separate constitutions for the federating units. Moreover, the state governments cannot take initiative for amendment of the constitution. In most of the amendments, approval of the state governments is not necessary. Thus, the centralizing tendency is present in the matter of amendment of the constitution where only the union government plays the central role. The state governments can neither play any important role in amendment of the constitution nor do they have separate constitution.

(ii) Division of powers: If we analyze the seventh schedule of the constitution where the subjects are distributed between the central and the state governments, we can notice the centralizing tendency. In this schedule the important subjects are included in the Union List while the less important subjects are included in the State List. The central government assumes the complete dominance over the Union List. Apart from that, it has supremacy over the Concurrent List also which is meant for both the central and the state governments. Because if any conflict arises between the central and the state government over any law enacted on the concurrent list subjects, the law made by the centre prevails. Besides, the residuary powers are given to the central government which is contrary to the federal principle.

The central government has supremacy over the state subjects also as it can make laws on the subjects included in the state list.

(iii) Administrative Powers: Like the legislative matters the supremacy of the centre is seen in the administrative matters also. Regarding administrative matters the central government can give necessary instructions to the state governments and the states are bound to abide by these instructions. In case of settlement of any dispute among the states the President may take initiative by construction of Inter-State Council. The state governments are to conduct the administrative functions in consonance with the functions of the central government. If any state fails to comply with such instructions of the central government, the President has the power to take away the administrative affairs of the state by the means of proclamation of President's Rule through Article 356.

(iv) States' Representation in the Parliament: There should be equal representation of all the federating units in the second chamber or the upper house of the parliament. This principle is followed in almost all the federations of the world. In India the Council of States that is Rajya Sabha is the second chamber where there is no equal representation of the constituent states. It seems that there is no equality among the states and this chamber cannot protect the interest of the states. This chamber represents the people rather than the states.

(v) Constitution Amendment: There is dominance of the parliament in the matters of amendment of the constitution. The state governments cannot initiate constitution amendment measures in the state legislatures. Most of the Articles of the constitution can be amended by the parliament alone by simple majority votes in the parliament. Approval of the states in the amendments initiated by the central parliament is necessary only in some meager amount of Articles. Thus the states can play little role in amendment of the constitution which is more or less flexible in nature.

(vi) Financial Affairs: Predominance of the central government is visible around the whole federation in financial affairs. In the matters of imposition and collection of different kinds of taxes the central government plays much important role in comparison to that of the central government. In most cases the state governments are dependent on the central government.

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(vii) Centralised and Integrated Judicial System: Centralization is adopted in the judicial system also. Existence of independent judiciary is not available for the states. Similar uniform laws are applied in the whole country and thus the central government has strong hold over them. The Supreme Court is at the apex of the judicial system which is responsible for safeguarding the constitution as well as laws of the land.

(viii) Supremacy of the Parliament rather than the Constitution: The parliament of India can amend almost all the parts except the basic structure. Therefore, it can be said that instead of supremacy of the constitution, there is the supremacy of the parliament. This characteristic shows the tendency of centralization in the Indian federalism.

(ix) Control of administration of the state through the Governor: The Governor is the head of the administration of a state. He is appointed by the President and retain in his post on the satisfaction of the President or the central government. The Governor can be transferred or removed at the choice of the President. The Governor is like the agent of the central government and he has to report to the central government about the administrative scenario of the state. He should notice whether the administration of the state is conducted as per the instruction of the central government or not. He can send a bill passed by the state legislature for the assent of the President. The President can proclaim emergency of failure of constitutional machinery in a state on the basis of the report given by the Governor. The discretionary powers given in the name of the Governor are actually used as per directions of the central government. Thus, the central government can influence on state administration through the Governor in various ways.

(x) System of Single Citizenship: Single citizenship is another provision through which the federal system tending towards centralization. Unlike most other federations, citizenship in India is not dual for both the state level citizenship and federal citizenship. The people of a state are the inhabitants of that particular state and not the citizens of the state. All the people of India are the citizens of India only.

(xi) States' Existence depends on the Central Government: The parliament of India can create new state, alter boundaries or can change the name of any state by majority vote in the parliament. In this regard it is necessary to take prior approval of the President for introduction of such Bill in the parliament. The President may seek opinion of the state concerned but the President may or may not accept the opinion. Thus, the existence of the states or their geographical boundary depends on the wish of the central government which makes the Indian federal system a centralized one.

(xii) Central Security Force: The central government can deploy CRPF personnel in any state without its consent for protection of the central institutes situated in that particular state or states. In this way the centre can establish control over the states through the means of Central Reserve Police Force.

(xiii) Emergency powers of the Presidents: It has already been mentioned that the President is empowered with emergency provisions which are consisted of three kind viz. national emergency, failure of constitutional machinery in a state or state emergency and financial emergency. The central government becomes very powerful at the time of use of these emergency powers by the President. Thus the emergency powers of the President can be considered as a major factor in the growing centralizing tendency of the Indian federalism.

(xiv) Uniform Law throughout the whole Country: Centralising tendency can be noticed in case of the prevailing laws of the federation. Uniform criminal laws are applied throughout the whole country. Moreover, as per the constitution of India, the civil laws should also be similar throughout the federation as per the provisions of the Indian Constitution. Uniform civil and criminal laws also pave the way for centralization in Indian federation.

Stop to Consider

Is India a Real Federation?

If we analyze the federal as well as the non-federal features of Indian, then we can surmise that India is not a true federation. The number of

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non-federal features supersedes the federal features. In the interest of protecting the unity and integrity of the nation the constitution makers devised for a strong centre incorporating the issues of centralizing tendency. If the state governments run the administration of the state in compliance with the union government there is no scope for the union to interfere in the matters of the states. The prevailing situation of that period induced the constitution makers to provide for a strong central government so that it can throw out any danger of the apprehension of disintegration of the union and save it from separatist tendency. The framers of the constitution were also aware about the probable growth of extremism arising out of the grievous problems of economic and social nature. Criticizing the nature of Indian federalism and the pronounced centralized bias of the constitution, Prof. K. C. Wheare termed it as 'Quasi-federal' which mean half federal or not fully federal. Some other critics opine it as a 'Cooperative federation' because the administration of the whole country is run with the mutual coordination between the Union and the State governments. The Sarkaria Commission has also emphasized on the growth of co-operative federalism. Despite the fact that Indian federalism is centrally dominated, there is an open emphasis on co-operation, harmony and partnership. Dr. Amal Ray observes that "If under a system of government both the central and the state authorities derive their status and powers from the constitution and not from the central law, and can ordinarily enjoy substantial autonomy within their respective jurisdictions set by the constitution, then there is no valid ground to deny federal character to that system of government". After examining all these counter observations, we can conclude that India is a unique federation with a strong Union government having some biased centralizing tendency. Dr. Ambedkar once remarked, "It is strong enough to hold the country together both in peace time and in war time. Indeed, I may say so, if the things go wrong under the new constitution, the reason will not be that we had a bad constitution, what we will have to say is, that the man was vile".

1.9 Relationship between the Union and the States

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An important aspect of any federation is that as there is dual polity there must be division of powers between the central and the state governments. The Indian constitution also makes such division as per the Seventh Schedule of the constitution. Both the governments exercise their powers and functions as per this division and at the same time they have to maintain relationship with each other. The legislative and administrative relations between the centre and the states are discussed in Part 11 of the Indian constitution and the financial relations are discussed in Part 12 of the constitution. If we analyse these relations, we will find that Indian political system is the mixture of federal and unitary system. The state governments are dependent on the central government in respects of legislative, administrative and financial matters and as such centralizing tendency is significantly visible. Therefore, Indian federalism can be termed as a cooperative federalism.

The centre-state relations are divided into the following three parts:

- (A) Legislative Relations (Article 245-255)
- (B) Administrative Relations (Article 256-263)
- (C) Financial Relations (Article 268-293)

(A) Legislative Relations

It has already been mentioned that there are three lists in the Seventh Schedule of the constitution viz. the Union List, the State List and the Concurrent List. There were originally 97 subjects in the union list at the time of making of the constitution and presently, there are 100 subjects. The Union list includes subjects such as foreign affairs, defence, railway, postal services, banking, atomic energy, communication, currency etc. There are 61 subjects (originally 66) in the State list. The list includes subjects such as police, public order, roadways, health, agriculture, local government, drinking water facilities, sanitation etc. In the concurrent list, there are 52 subjects (originally 47) which 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.

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Articles 245 to 255 in Part XI deals with different aspects of legislative relations between centre and states. The parliament i.e. the central legislature can make laws in respect of any subjects mentioned in the union list and the state legislatures have nothing to do with these subjects. Parliament has the exclusive power in enacting laws in respect of these matters enumerated in the union list.

The state legislatures can enact laws on any of the subjects enumerated in the state list. But the central government also has power to make laws in respect of the state list if the situation demands. Thus the central/ union government has control over the state list also. The state subjects are not exclusively for the states.

The subjects included in the concurrent list are meant for both the union and the state governments to make laws. But if any conflict arises between the union and the state governments over the laws made by them, the law enacted by the central government gets primacy over the state laws.

The residuary powers are vested on the union government. Only the union government has the power to make laws on any subject that are not enumerated in all the three lists.

Superior position of the Union Government in respect of Legislative Relations:

The distribution of powers as envisages in the constitution is not in tune with a real federation like the USA. Everywhere there is supremacy of the central government over the state governments. Supremacy of the union government is visible in the following matters:

- In case of any conflict between the centre and the states in making laws on a common subject the union law will come into force instead of the passed by the state government.
- The union legislature can make laws on any subject enumerated in the state list if the Rajya Sabha desires so, and pass a resolution supported by 2/3rd majority of members present and voting, declare a state subject as a subject of national importance.

- Under Article 250, the parliament can legislate on the state listed subjects for the whole or any part of the territory of India while a proclamation of emergency is in operation.
- Under Article 252, if any two or more state legislatures pass a resolution requesting the union parliament to make laws on a subject mentioned in the state list the latter can do it for the concerned states.
- Under Article 253, the union government has the power to make laws enlisted in the state list in order to implement international agreement signed with foreign state.
- The union government gets the power to make laws on the subjects of state list whenever a national emergency is declared under Article 352.
- During the constitutional emergency proclaimed by the President in a state or states, the union legislature gets the power to make laws over the state subjects in respect of the concerned states.
- The Governor can reserve certain Bills passed by the state legislature for Presidential assent. These include the jurisdiction of the High Court, amalgamation of two or more corporations for proper management, imposition of tax on water and electricity stored or generated from Inter-state rivers or river valleys etc.

The above points make it clear that the union parliament has superior position in the legislative matters. The constitution of India makes the union so powerful primarily for the reason that the unity and integrity of the nation is not jeopardized.

(B) Administrative Relations

Part XI, Chapter II of the constitution through the Articles 256 to 263 deals with the administrative relations between the centre and the states. The union and the state governments exercise their powers in respect of the distribution of powers as provided in the constitution and the administrative powers are connected with the legislative powers. As per Article 73 of the constitution the union parliament can exercise administrative powers also to the extent on which the union parliament can make laws.

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The administrative powers enjoyed by the state governments are connected with the subjects incorporated in the State list. The state governments can exercise administrative powers according to this list as per Article 162 of the constitution. Moreover, 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”.

The administration on the subjects mentioned in the Concurrent list is normally entrusted to the state governments. But the parliament by passing necessary laws can empower the central government to exercise control over these subjects. In such cases, the state governments can exercise power over the other subjects only and the central government may give necessary direction in this regard.

Primacy of the Central government in Administrative Matters:

Like the legislative matters the central government has supremacy over the administrative affairs also. It has supremacy in case of the following aspects:

- The State governments have to conduct administration in consonance with the laws made by the Union Government. Under Article 256, the state executive is required to ensure that all Union laws that apply to them are followed. The Union executive can give necessary directives to State executive to make sure they implement such laws.
- In exercise of the executive powers of the State governments they should not pose any impediment to the exercise of powers by the union government as laid down by Article 157 of the constitution. The Union government can give such directions to a state as deemed essential by the government of India for this purpose.
- The Union Government can give direction to the states for construction and maintenance of means of communication such as

highways, waterways or protection of railways for the reason of military importance.

- The President can, with the consent of a state, entrust either conditionally or unconditionally to that government or its officers to exercise the power of the Union.
- The parliament, by passing laws can empower the Union government, to settle disputes relating to inter-state rivers or river valleys.
- The Union government can give direction or deploy paramilitary forces like CRPF in any state in order to protect central property which is the responsibility of the state governments.
- The All India common services like the IAS, IPS etc. are recruited by UPSC but they are assigned to each state and hold higher posts in administration and they are ultimately controlled by the Union Government.
- The Rajya Sabha has the power to create a new All India Service or abolish any existing one by 2/3rd majority of the members present and voting (Article 312).
- If the President deems it necessary, can establish Inter-State Council, for securing coordination among the central and the state governments under Article 263. Main function of this council is to inquire into and advise upon disputes arising between states.
- During the proclamation of National Emergency by the President under Article 352, power of the Union Government increases and it gives directions to the state governments regarding execution of administrative power of the states.
- If President's Rule is declared in any state for failure of constitutional machinery, the administration of that particular state or states comes under the purview of the Union Government (Article 356).

From the above discussion we can conclude that there is supremacy of the Union Government in the distribution of administrative powers also. The Union Government plays the principal role for administration of the whole country while the State governments play only a subordinate role at the wish of the former.

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(C) Financial Relations

The financial relations between the Union and the State Governments are described in Part XII of the constitution which covers the distribution of revenue and other financial matters between them. The sources of revenues of both the governments are described from Articles 264 to 300.

There are certain items which are exclusively assigned to the Union Government. These items include subjects like customs and export duties, income tax, excise duty on tobacco, jute, cotton etc., corporation tax, taxes on capital value of assets of individuals and companies, estate duty in respect of property and other agricultural land, railways, post and telegraph, telephones, wireless, broadcasting and other forms of communications and taxes on any items covered in the union list.

There are some revenue items which are exclusively assigned to the states. These include land revenue, stamp duty except on documents included in the Union List; succession duty and estate duty in respect of agricultural land; taxes on goods and passengers carried by road or inland water; taxes on consumption or sale of electricity, tolls, taxes on lands and buildings; duty on alcoholic liquors for human consumption; taxes of entry of goods into local areas; taxes on luxuries, entertainment, amusement, betting, gambling etc.

There are some items on which taxes are levied by the Union but collected and appropriated by the states (Article 268-A). These kinds of items are: (a) stamp duties on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares etc.; (b) excise duties on medicinal and toilet preparations containing alcohol, opium etc.

There are some items on which taxes are levied and collected by the Union but assigned to States (Article 269). These are duty in respect of succession to property other than agricultural land; taxes on railway freight and fares, terminal taxes on goods or passengers carried by rail, sea or air etc.

There are some items on which taxes levied and collected by the Union but shared with the States (Article 270). The proportion of share is determined by rules and regulations. These include tax on income other than agricultural income, excise duties other than those on medicinal and toilet preparations.

Stop to Consider

Sarkaria Commission on Union-State Relations:

The centre-state relation in Indian federalism has always been a controversial issue for the trend of increasing powers of the Union government in annoyance of the state governments. Apart from the original provisions of the constitution that awarded vast powers, several amendments such as the 3rd, 6th, 7th and 42nd Constitution Amendments have again increased the powers of the Union government. The 3rd amendment empowered the centre to fix the price of foodgrains, the 6th amendment reduced the power of state government to levy sales tax, 7th amendment empowers the centre to appoint special officers to look after educational interest of linguistic groups and the 42nd mega amendment curtailed the powers of the states. Thus, all these Amendment Acts are some examples which have made the centre stronger.

On the other hand, there have been growing demands for more autonomy to the states not only due to political reasons but geographical, cultural and economic factors also inflict the states in this regard. Intensification of growing demand for autonomy by the states resulted in the decision by the central government to appoint a commission to look into the matter of centre-state relations.

Accordingly on March 24, 1983, central government announced the appointment of the Sarkaria Commission. Justice R. S. Sarkaria (Retd.) was made the Chairman and Mr. B. Sivaraman, the Cabinet Secretary, Mr. S. R. Sen, a former Executive Director of IBRD and Rama Subramaniam (Member Secretary) were nominated as other members. This Sarkaria Commission was to examine and review existing arrangements between the Union and States in regard to powers, functions and responsibility and make appropriate recommendations.

Sarkaria Commission submitted its report to the Union Government in October, 1987. The recommendations made by the commission are briefly mentioned below.

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- Strong central government should be retained in the interest of national unity and integrity.
- Rejected the demand for the transfer of certain state subjects to the Concurrent List.
- There should be greater Cooperation between the centre and the states.
- Active politicians should not be appointed as Governor in a state.
- Governor can use discretionary power in the matter of summoning the session of the state legislature.
- Suggested measures to prevent misuse of Article 356.
- Favoured implementation of three-language formula throughout the country.
- Rejected the demand for disbanding the All-India Services.

If we analyse the financial relations between the Union and the State governments, then we can assume that in case of financial relations too the central government acquires superior position because states are dependent on the centre in financial matters. The states are unable to meet their needs for all round development and as such they require grants in-aid from the centre.

Check Your Progress

1. Describe the nature of Indian Federalism.
2. Explain the federal features of the constitution of India.
3. Discuss the non-federal features of the constitution of India.
4. Illustrate the causes for devising a strong central government in India.
5. Describe how the centralizing tendency helps moving towards unitary system.

6. Describe the legislative relations between the Union and the State governments.
7. Explain the nature of administrative relations between the union and the state governments.
8. Discuss the Financial relations between the union and the state governments.
9. “The Centre-State Relations make it clear that India is a Unitarian federation.”- Elucidate.
10. Write a short note on Sarkaria Commission.

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1.10 Summing Up

After going through this unit, you are now in a position to understand not only the theoretical aspect federalism but also the foundation of Indian federalism starting from the Government of India Act of 1935 to the provisions of the Indian constitution. The Act of 1935 is considered as the main basis of Indian federalism which laid the foundation of the systems like strong centre, division of powers, bicameral legislature, residuary powers left to the centre and some other unitary features. The constitution of independent India also retains most of the features characterized in the Act of 1935. Accordingly the makers of the constitution made India a Union of states, which implies that the states have no right to secede from the centre. Due to political conditions prevailing in the country, the constitution makers compelled to make India a federation with a strong centre and weak states. Therefore, it is remarked that India is a unitary in spirit and federal in structure. The federal and non federal features discussed above vividly exposed all these uniqueness of Indian federalism. After reading this unit you have also understood the need and causes for creating a strong centre such as achieving unity among the Indians, controlling the separatist tendencies, protection of the interest of the nation and also the minorities etc. You might also have acquired the idea of the reasons for increase of powers of the central government through the head centralizing tendency. This unit has helped you to analyse the relationship between the union and the state governments.

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The paramount position of the centre in regard to the legislative, administrative and financial matters has become a noticeable feature of Indian federalism. You have also had the idea of the Sarkaria Commission which was constituted for the purpose of review and recommendations in regard to Union-State relations.

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UNIT-2
CONTESTATIONS AND INNOVATIONS:
FIFTH AND SIXTH SCHEDULE

Unit Structure:

- 2.1 Introduction**
- 2.2 Objectives**
- 2.3 Why Special Provisions in Indian Constitution**
- 2.4 The Fifth Schedule and Sixth Schedule in Indian Constitution**
 - 2.4.1 Fifth Schedule and Special Provisions**
 - 2.4.2 Sixth Schedule and Special Provisions**
- 2.5 Fifth Schedule and Sixth Schedule: A Comparison**
- 2.6 Contestation and Innovation: Fifth Schedule and Sixth Schedule**
- 2.7 Summing Up**
- 2.8 References and Suggested Readings**

2.1 Introduction

The Fifth Schedule under Article 244 (1) and Sixth Schedule under Article 244 (2) of the Indian constitution are special provisions for the administration and control of the Scheduled Areas and Tribal Areas in Indian states. The provisions of the Fifth Schedule shall apply to any state other than the state of Assam, Meghalaya, Tripura, and Mizoram whereas the provisions of the Sixth Schedule are only applicable to four Northeastern States of India, i.e., Assam, Meghalaya, Mizoram, and Tripura. Under a special provision within the framework of asymmetrical federalism in India, these two Schedules give special privileges to protect the cultural distinctiveness of Tribal groups. The Indian Constitution provides such protection to these tribal groups because of their economic disadvantages for long so that without any hindrance or any exploitation they could protect and maintain their tribal identity.

2.2 Objectives

The objective of this unit is to introduce you to the idea of the Fifth Schedule and Sixth Schedule in the Indian Constitution. After reading this unit you will be able to –

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- *Explain* the reason for the introduction of special provisions in India's asymmetrical federalism
- *Analyse* the special provisions under the Fifth and Sixth Schedule of the Constitution;
- *Identify* the areas of Indian State which are administered with special provisions under the Fifth Schedule and Sixth Schedule of the Constitution.
- Understand the difference between the provisions under the Fifth and Sixth Schedules of the Constitution

2.3 Why Special Provisions in Indian Constitution

The Constitution of India under Articles 244 (1) and 244 (2) through Fifth and Sixth Schedule gives special provisions for the administration and controlling of the “Schedule areas” and “Tribal areas” of Indian states. So why Indian constitution has given such special provisions to specific communities and states within Indian Union? To answer this question, India as the world's one of the largest democracies with multi-diversity has adopted an asymmetrical model of federalism to accommodate the diverse interest of different sections of people. As asymmetric federalism, the Indian state makes some special arrangements to accommodate all identities, minimise its regional differences, and protect the cultural, linguistic, and religious interests of the different minorities and aboriginal tribal communities. In India, the majority of the tribal groups have been living in isolation in the hilly and forest areas. They lived with their own tradition, culture, and customs without any intervention from outsiders. During British rule also, they had followed the same traditional and cultural roots to protect their own indigenous lifestyle without any disturbance from outsiders. The British had also introduced a policy of isolation and non-interference in their affairs by introducing separate administration under excluded and partially excluded areas. Because of this isolation and non-interference policy, these tribal populations remained underdeveloped and uneducated for a long time. Even after independence also these tribal groups were governed by their own customary laws and traditional rituals. Indian constitution under the Fifth and Sixth Schedule introduce some mechanisms and special privileges to protect their cultural identity and tradition. The Indian Constitution provides such protection to

these tribal groups because of their economic disadvantages so that without any hindrance or exploitation they could protect and maintain their tribal identity. Besides the Fifth Schedule and Sixth Schedule, Article 275 (1) of the Constitution also facilitates funds to such Scheduled and Tribal Areas from the Consolidated Fund of India for the welfare of such Tribal populations.

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STOP TO CONSIDER

Asymmetrical Federalism: Asymmetrical federalism refers to a federal system where power is unequally divided between states. Some states considerably have more autonomy or greater responsibilities in terms of political, administrative, and fiscal matters though they have same constitutional status in a federation.

Asymmetrical Federalism in India: India's federalism is a distinct case of asymmetrical federalism because of its multi-diverse nature in terms of language, culture, religion, ethnicity, etc. India has experienced two kinds of asymmetry i.e., political asymmetry and constitutional asymmetry. Political asymmetry exists in the context of states' representation in the territorial chamber i.e., Rajya Sabha. Unlike the USA, India does not follow the principle of equal representation from each state on the basis of demographic strength but on the basis of the size of the population of each respective state. Regarding constitutional asymmetry, there are some specific asymmetries regarding the administration of tribal areas, and inter-state regional disparities as per article 371 of the constitutions in the states like Gujarat, Maharashtra, Manipur, Nagaland, Assam, Andhra Pradesh, Arunachal Pradesh, Sikkim, and Goa.

2.4 The Fifth Schedule and Sixth Schedule in Indian Constitution

In this session we shall make an attempt to discuss the Fifth and Sixth Schedule of Indian Constitution.

2.4.1 Fifth Schedule and Special Provisions

Indian federalism has accommodated the tribal self-governance to improve their socio-economic development through several special provisions in

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Indian Constitutions under Five to Six Schedules. The Constituent Assembly had discussed and passed the Fifth and Sixth Schedules of the Indian Constitution on September 5-7, 1949. These two schedules provide a special governance mechanism for “Scheduled areas” mainly in 10 states of the Indian Union and certain “Tribal areas” in Northeastern states of the Indian Union. In general, the Indian Constitution under Parts 11-12 and Chapter 5-6 has mentioned the legislative, executive, and judicial authority of the states and Union Territories of India. Under Indian Constitution, Article 342 classified different tribes, tribal communities, and ethnic groups as Scheduled Tribes. Scheduled Tribes are entitled to several Constitutional protections that ensure their social, economic, and political well-being.

The Constitution of India under Article 244 (1) specifies the provisions for the Administration and Control of Scheduled areas. Article 244 (1) of the Indian Constitution defines “Scheduled Areas” as such are as the President may by order declare to be Scheduled Areas under the Fifth Schedule. The scheduled areas have more than 50 percent tribal population. The President is empowered to declare an area a Scheduled Area. The President can alter, add, or diminish the boundary of any Scheduled Area on the basis of his consultation with the governor of that specific state. Both the Centre and the State have their roles to play in the administration of the Scheduled areas. The Powers of the Governor is important in the application of the provision of the Fifth Schedule. The Governor of each State having Scheduled Areas will make a report to the President regarding the administration of the Scheduled Areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas. Under Article 244 (1) there are 10 states having Scheduled Areas that include: Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana.

For the administration and control of these Scheduled areas, there shall be a Tribes Advisory Council established in each state having Scheduled Areas. The Tribes Advisory Council consists of not more than twenty members of whom, as nearly as may be, three-fourths shall be the representatives of the Scheduled Tribes in the Legislative Assembly of the State. The Governor of

the state has the power to decide whether any central or state legislation implies over the state having scheduled areas. Governor can also repeal or amend any regulations made by Parliament or State legislature having scheduled areas but only with the assent of the President of India. The Tribes Advisory Council has advisory power to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor. The Governor may make rules prescribing or regulating-

(a) the number of members of the Council, the mode of their appointment and the appointment of the Chairman of the Council and of the officers and servants there of; (b) the conduct of its meetings and its procedure in general; and (c) all other incidental matters.

The Governor may, by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State, subject to such exceptions and modifications, as specified. The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. Such regulations may:

- (a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;
- (b) regulate the allotment of land to members of the Scheduled Tribes in such area;
- (c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

In making any such regulations, the Governor may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law after getting the assent of the President.

Thus, for the administration of the Scheduled Areas, the Fifth Schedule of the constitution provided an institutional mechanism through the formation of the Tribes Advisory Council which functioned as an advisory body for the welfare and advancement of the Scheduled Tribes.

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SAQ

Q. 1. Why Indian constitution has given such special provisions for “Schedule Areas” under Fifth Schedule? Discuss. (60 words)

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2.4.2 Sixth Schedule and Special Provisions

The Sixth Schedule of the Constitution under Article 244 (2) provides for the administration of tribal areas in Assam, Meghalaya, Tripura, and Mizoram to safeguard the rights of the tribal population in these states. Through the provisions of the Sixth Schedule, the tribal areas are to be administered as Autonomous Districts and Autonomous Regions. The Sixth Schedule of the Indian Constitution was basically introduced for the majority tribal-dominated areas of then undivided Assam after independence which was categorised as “excluded areas” under the Government of India Act, 1935. During that period, the tribal areas of the undivided area were under the direct control of the Governor. The Constitution Assembly passed this Schedule in 1949 for the purpose of safeguarding the rights of the tribal population through the formation of the Autonomous District Council (ADC).

Under Article 244 (2) of the Sixth Schedule of the Constitution, four Northeastern states, Assam, Meghalaya, Tripura, and Mizoram, get special power for the administration of tribal areas where the Governor in these states has given special discretionary power. The Governor has the power to create a new Autonomous District or Region and also Governor can alter the territorial jurisdiction or the name of any Autonomous District or Autonomous Region. Under the Sixth Schedule of the Constitution, these four Northeastern states have ten Autonomous District Councils. Originally, these Autonomous Councils consisted of two parts A and B, but at present, there are 10 Autonomous Councils/ District Councils in four parts as listed below:

Table 2.1: Autonomous Councils in the Northeastern States

SL No	State	Autonomous Council
1	Assam (Part I)	Bodoland Territorial Council
2		Karbi Anglong Autonomous Council
3		Dima Hasao Autonomous District Council.
4	Meghalaya (Part II)	Garo Hills Autonomous District Council
5		Jaintia Hills District Autonomous District Council
6		Khasi Hills Autonomous District Council
7	Tripura (Part II A)	Tripura Tribal Areas Autonomous District Council
8	Mizoram (Part III)	Chakma Autonomous District Council
9		Lai Autonomous Council
10		Mara Autonomous District Council

The governor of the states in the “Tribal areas” under the Sixth Schedule is empowered to organise and re-organise the autonomous districts. These autonomous districts are directly administered by the Governor. The Governor can choose to include or exclude any area and increase or reduce the area of any autonomous districts or Districts Councils. If there are different tribes in an autonomous district, the governor can divide the district into several autonomous regions. The governor has the authority to form new Autonomous Districts.

SAQ

Is your area coming under any Autonomous District Council? Discuss the significance of such Autonomous Councils in the administration of tribal areas in the Northeastern states. (100 words)

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The composition of Autonomous District Councils and Regional Councils are as follows

- There shall be a District Council for each autonomous district consisting of not more than thirty members, of whom not more than four persons shall be nominated by the Governor and the rest shall be elected on the basis of adult franchise.
- The elected members hold office for a term of five years (unless the council is dissolved earlier) and nominated members hold office during the pleasure of the governor.
- There shall be a separate Regional Council for each area constituted as an autonomous region.
- Each District Council and each Regional Council shall be a body corporate by the name respectively of “the District Council of (name of district)” and “the Regional Council of (name of region)”

The Sixth Schedule promotes tribal self-governance including the exercise of certain legislative, executive and judicial functions by Autonomous District Councils (ADC) in areas such as “management of forests, agriculture, community projects, co-operative societies, social welfare, village planning, inheritance of property, marriage, and social custom” (Bhattacharyya, 2003, p. 11). The administrative power and function of these Autonomous District Councils and Regional Councils differ from State to State. The power and functions of District Councils and Regional Councils have mentioned in the Sixth Schedule of the Constitution.

i) Legislative Power and Functions

With these special self-governance mechanisms under India’s federal framework, these councils under Para 3 of the Schedule are empowered to make laws, rules, and regulations in some areas like land management, forest management, water resources, agriculture and cultivation, formation of village councils, inheritance of property, the appointment of traditional chiefs and headmen, marriage and divorce, social customs, public health, etc. Such mechanisms give self-governance to them and protect the endangered tribal identity

and recognize their rights over their land and forests. It basically “intended to give self-management rights in matters pertaining to, inter alia, marriage, social customs, culture, land, religion and tradition “(Suan, 2018, p. 192). Under Para 10 of the Schedule, the Autonomous District Councils have the power to make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district. However, only with the assent of the Governor do such laws come into effect. Thus, the sixth schedule makes the Governor the head of the autonomous district council.

ii) Executive Power and Functions

Under Para 6 of the Sixth Schedule, the District Councils and Regional Councils can exercise some executive powers. The District Councils and Regional Councils have the power to establish, construct and manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport, and waterways in the districts. The Councils can also make regulations and prescribe the language and the manner of instruction in which primary education shall be imparted in the primary schools in the districts.

iii) Judicial Power and Functions

Under Para 4 of the Six Schedule, the District and Regional Councils have the power to constitute village councils or courts for the trials of suits and cases all of whom belong to Schedule Tribes within such Schedule Tribes areas in Autonomous Districts. No other courts except the High Courts and the Supreme Court shall have the jurisdiction over such suits or cases of the Council Courts. However, these Councils don't have the power to decide such cases that involves offenses punishable by death, transportation of life, or imprisonment for five or more years.

iv) Financial Power and Functions

The Six Schedule also provides certain financial powers to the District and Regional Councils. Under Para 8 of the Sixth Schedule, District and Regional Councils have the power to assess and collect

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revenue in respect of such lands in accordance with the principles for the time being followed by the Government of the State in assessing lands for the purpose of land revenue in the State generally. The Councils shall have the power to levy and collect taxes on lands and buildings, and tolls on persons resident within such areas. The Councils also have the power to levy and collect land revenue and impose taxes on professions, trades, callings and employments, animals, vehicles and boats, taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries and taxes for the maintenance of schools, dispensaries or road. Under Para 9 of the Sixth Schedule, the Councils have the power to grant licenses or leases for the extraction of minerals in respect of any area within an autonomous district. The District Councils also have the power to make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

Check Your Progress

- Q1. What are the provisions of the Fifth Schedule in the Indian Constitution? Discuss.
- Q2. Discuss the various provisions under the Sixth Schedule of the Indian Constitution?
- Q3. How does the Autonomous District Councils and Regional Councils formed under the Sixth Schedule? Discuss the various power and functions of Autonomous District Councils?

2.5 Fifth Schedule and Sixth Schedule: A Comparison

The Fifth Schedule and Sixth Schedule in Indian Constitution were discussed and passed by Constituent Assembly on 5-7 September 1949. The main purpose of introducing these two schedules is to provide an alternative or special arrangement for the purpose of tribal self-governance to protect the cultural identities of various tribal groups in the Indian States. These two

schedules provide a special governance mechanism for “Scheduled areas” mainly in 10 states of the Indian Union and certain “Tribal areas” in Northeastern states of the Indian Union. In general, the Indian Constitution under Parts 11-12 and Chapter 5-6 has mentioned the legislative, executive, and judicial authority of the states and Union Territories of India.

Table 2.2: Comparison between Fifth Schedule and Sixth Schedule of the Indian Constitution

	Fifth Schedule	Sixth Schedule
Area Cover	(Scheduled Area) Notified districts or parts thereof in 10 States: Himachal Pradesh, Rajasthan, Gujarat, Maharashtra, Andhra Pradesh, Telangana, Odisha, Jharkhand, Chhattisgarh, and Madhya Pradesh	(Tribal Areas) Notified districts or parts thereof in 4 States: Assam, Tripura, Mizoram Meghalaya
Type of Special Body	Tribes Advisory Council	(Autonomous) District Council & (Autonomous) Regional Council
Legislative Power of the Special Body	has advisory power to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State	make laws, rules, and regulations in some areas like land management, forest management, formation of village councils, the appointment of traditional chiefs and headmen, marriage and divorce, social customs, public health, etc.
Judicial Power the Special Body	N.A.	have the power to constitute village councils or courts for the trials of suits and cases all of whom belong to Schedule Tribes within such Schedule Tribes areas in Autonomous Districts.
Financial Power of the Special Body	N.A.	have the power to levy and collect land revenue and impose taxes on professions, trades, taxes on the entry of goods into a market for sale etc. for the maintenance of schools, dispensaries or road.

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While making a comparison between these two specific schedules, there is a vast difference between the Fifth Schedule and Sixth Schedule in terms of formation as well as power and functions. Under the provisions of the fifth schedule, the state legislature of that specified “Schedule Area” state creates Tribes Advisory Council for the administration of Schedule areas. Under the provisions of the Sixth Schedule, the constitution of India created the District Autonomous Councils and Regional Councils for the administration of Tribal areas in four Northeastern states. In comparison with the Tribes Advisory Councils, the District Autonomous Councils and Regional Councils enjoy a wide range of power in terms of executive, legislative and judicial power whereas, the Tribes Advisory Council has very limited powers. The Tribes Advisory Council only enjoys its status as an advisory body to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State. At the same time, District Councils and Regional Councils exercise certain executive, judicial as well as financial power.

2.6 Contestation and Innovation: Sixth Schedule and Fifth Schedule

Since the adoption of these two special provisions under Article 244 (1) and 244 (2) for the administration and controlling of the “Schedule areas” and “Tribal areas” of Indian states, there has been lots of contestation and innovations in terms of its power and structure. While examining the applicability of the Fifth Schedule in tribal majority areas of states other than North-East India, it has failed to deliver the desired outcome as these provisions have never been applied in the true sense. There are a lot of structural barriers while applying these provisions in true spirit. First, in the name of welfare and administration of scheduled areas under the Fifth Schedule, the Central Government exercises its control over the scheduled areas of that specific state through the Governor’s office. However, despite the existence of various provisions in the Constitution, the Governor has not exercised any significant role. The state government rather than the Governor frames the rules, regulations, or policies for the functioning of the Tribes Advisory Council which led to political control of such bodies by the political parties in the power of such respective states. The role of the State

Government in such schedule areas is also not satisfactory in implementing these provisions. Because of their lack of interest in taking initiative and planning for the welfare and development of tribal areas, these provisions failed to achieve the desired goal. Secondly, the creation of Tribal Advisory Council without any powers like Autonomous District Councils or Regional Councils specifically in terms of legislative and financial powers makes these provisions no use in a practical sense. Thirdly, there is a lot of ambiguity in the Governor's discretionary role which resulted in the controlling role of the State Government. It led to a serious deficit in the context of democratic ethos and governance.

Although Tribes Advisory Council has some advisory role in terms of welfare and development of scheduled areas, it is seen that the state governments have a tendency to neglect the views and advice of the Tribes Advisory Council. As a result, the democratic and constitutional rights of various tribes become deprived and not reflected in the government's policy implementation. Because of such structures as well as institutional deficits, the activities of the Tribes Advisory Councils are influenced by the political party that runs the state administration.

Comparatively, the Sixth Schedule has more power and responsibilities in tribal administration than the fifth schedule. However, the Sixth schedule has also various limitations in terms of implementation as well as execution at the local level. The Sixth schedule is meant for the four Northeastern states where before introducing these special provisions, the existence of traditional structures like Chief and Headmen in tribal society become a significant challenge for establishing this modern set-up in tribal societies. As these new constitutional provisions replaced or weaken the position and relevance of such traditional structure of village Chief and Headmen in tribal societies. In some portions of tribal dominant societies in Northeast India, the sixth schedule faced strong opposition from tribal societies as they felt this institutional mechanism for their administration will deprive their indigenous rights and privileges which they are enjoying in their traditional setup. Another problematic aspect of these special provisions in four Northeastern states is the emergence of new demand for the introduction of the same special demands by different tribal groups who are not included

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under the sixth schedule provisions. It has also created a conflictual situation among different tribal versus non-tribal groups in Northeast India. Similarly, in some autonomous councils like Bodo Autonomous Councils and Chakma Councils, it is seen that within one autonomous council the existence of various tribal communities with different cultures also creates lots of problems in its successful functioning. At the same time, there is a conflict of interest between the District Councils and the State legislatures in terms of its functioning and policy implementation. In such conflicts, the state legislature enjoys the superior status which led to an institutional deficit in such administrative set-up. Although, the provisions are meant to be for the development and welfare of the common people of that tribal area, however, the tribal elites become the main beneficiary to fulfil their political aspirations and appropriated all the vested power. As a result, the common people failed to enjoy such benefits under these provisions. Despite the autonomy status at the local level, the development benefits have not reached the common people in such areas.

There is a new demand has arisen for more autonomy in terms of financial power as well as extending the provisions of the Sixth schedule to different tribal groups in Northeast India. The government of India also from time-to-time incorporated new amendments, and provisions to accommodate such growing interests and aspirations among tribal groups in the region. For example, under the 90th Amendment of the Indian Constitution through the sixth schedule to the Constitution (Amendment) Bill, 2003 created the Bodoland Territorial Council (BTC) in Assam to include Bodo communities under the Sixth schedule. In January 2019 the current BJP government at the Centre-approved 125th Constitution Amendment Bill, 2019 to amend Article 280 and Sixth Schedule of the Constitution that will increase autonomy, financial resources, and powers of the 10 Autonomous Councils in Northeastern states. The amendment provides for the transfer of additional 30 subjects, including departments of Public Works, Forests, Public Health Engineering, Health and Family Welfare, Urban Development, and Food and Civil Supply to Karbi Anglong Autonomous Territorial Council and Dima Hasao Autonomous Territorial Council in Assam. The proposed amendment will empower the village councils to prepare plans for economic

development and social justice, including those related to agriculture, land improvement, implementation of land reforms, minor irrigation, water management, animal husbandry, rural electrification, small-scale industries, and social forestry.

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Check Your Progress

- Q1. Do you think the District Autonomous Council has more power and function in Tribal administration than Tribes Advisory Council? Discuss the major difference between the Fifth Schedule and Sixth Schedule of the Indian Constitution.
- Q2. How do you evaluate the importance of special provisions for tribal administration in Indian states under the Fifth and Sixth schedules? From a comparative perspective, discuss the provisions of the Fifth Schedule and the Sixth Schedule in the Indian Constitution.

2.7 Summing Up

After reading this unit, you can understand the idea of the Fifth Schedule and Sixth Schedule in the Indian Constitution as special provision under India's asymmetrical federal framework.

The Fifth Schedule and Sixth Schedule in Indian Constitution were discussed and passed by Constituent Assembly on 5-7 September 1949. These two schedules provide an alternative or special arrangement for tribal administration to provide tribal self-governance and protect the cultural identities of various tribal groups in the Indian States. These two schedules provide a special governance mechanism for "Scheduled areas" mainly in 10 states of the Indian Union and certain "Tribal areas" in four Northeastern states of the Indian Union. In terms of understanding the power and functions of institutional setup for the tribal administration under these two schedules, there is a vast difference between the Fifth Schedule and Sixth Schedule.

The provisions of the fifth schedule has created the Tribes Advisory Council for the administration of Schedule areas whereas the Sixth Schedule created

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the District Autonomous Councils and Regional Councils for the administration of Tribal areas in four Northeastern states. While examining the power and functions of these two institutional mechanisms, the Autonomous District Councils and Regional Councils enjoy a wide range of power in terms of executive, legislative and judicial power. The Tribes Advisory Council has very limited powers as an advisory body to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State.

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AUTONOMOUS COUNCIL AND DEVELOPMENT COUNCIL

Unit Structure:

3.1 Introduction

3.2 Objectives

3.3 Autonomous Council

3.4 Development Council

3.5 Summing up

3.6 References and further reading

3.1 Introduction:

India is a huge country with a diverse population. The tradition and cultural values of its states are different from one another. Administration in tribal areas is always a matter of concern. Each tribal community has their own governance system and rule of law. Government has failed to understand this. Tribal areas in India are divided into schedule V and schedule VI according to the constitution of India. Administrative autonomy was given to the tribal areas under VI schedule. Before India's independence most of its current states are princely states under various kingdoms. Due to the strong leadership of the India's independent movement almost all the population joined in the movement. But most of them were joined in the freedom struggle with a hope of having their own separate state after India's independence. India got independence in 1947 and divided into two sovereign countries, India and Pakistan. Rest of the provinces remained with India. This created serious tensions in the areas like North-Eastern states. Many insurgents' organisations come up with the demand of separate state. To combat these problems the Government of India brings the concept of Autonomous councils and development councils under the 6th schedule of Indian constitution. In 1929 the Nagas gave a petition to the Simon Commission of India demanding autonomy from India. The Khasis, Garos, Mizos and Karbis raised the demand for separation from the larger state of Assam and self-governance for their own tribal people. The constitution

makers of India realized the importance of separate political and administrative mechanism for the hill tribes thus they created autonomous district councils under the 6th schedule of the constitution of India.

The 6th schedule of the constitution is based upon the recommendation of the North-East Frontiers (Assam) Tribal and Excluded areas subcommittee, popularly known as Bordoloi Committee under the chairpersonship of Mr. Gopinath Bordoloi, the then Chief Minister of Assam. After studying the local administration of the hill areas Bordoloi Committee recommended setting up of an administrative body, which would be based on the regional autonomy in all matters relating customs, laws of inheritance, administration of justice, land, forest etc. ¹

Hence, the constitution of India grants local self-governing status to the tribal groups in the form of autonomous councils. This helps in democratic decentralization of power and smooth functioning of the tribal administration. This is also important in preserving the unique identity of North-East India.

The development councils are the outcome of the recommendation of the planning commission of India to accelerate the growth of each state including in it. In the draft outline of the First Five-Year Plan, the Commission recommended the need for a body comprising the central and state governments to enable the plans to have a national character. The National Development Council was set up in 6 August 1952 to strengthen and mobilize the effort and resources of the nation in support of the Five Year Plans made by Planning Commission, to promote common economic policies in all vital spheres, and to ensure the balanced and rapid development of all parts of the country. The Council comprises the Prime Minister, the Union Cabinet Ministers, Chief Ministers of all States, representatives of the Union Territories and the members of the NITI Aayog. In Assam there are 33 development councils.

3.2 Objective of the chapter:

After reading this unit you will be able to—

- *understand* the meaning of Autonomous council and development council

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- *evaluate* about the powers and functions of Autonomous council and development council.

3.3 Autonomous Council:

India's population consists of 100 million tribal people who have constitutionally been addressed via two distinct avenues i.e. Fifth and Sixth Schedule. Fifth and Sixth Schedules were discussed and passed by Constituent Assembly between September 5-7, 1949. The Fifth Schedule applies to the overwhelming majority of India's tribes in nine States, while the Sixth Schedule covers areas that are settled in the northeastern States bordering China and Myanmar. The Sixth Schedule gives tribal communities considerable autonomy; the States of Assam, Tripura, Meghalaya, and Mizoram are autonomous regions under the Sixth Schedule. The District Council and the Regional Council under the Sixth Schedule have real power to make laws, possibility on the various legislative subjects, receiving grants-in-aid from the Consolidated Fund of India to meet the costs of schemes for development, health care, education, roads and regulatory powers to state control. The mandate towards devolution, deconcentration and divestment determines the protection of their customs, better economic development and most importantly ethnic security. However, the Sixth Schedule has its own shortcomings; breakdown of law and order, elections not being contested, rather than empowerment there is exclusion that fails to provide much-needed protection to tribes in the absence of political will, and live by the mercy of government funds.

Sixth Schedule:

The Sixth Schedule of the Constitution deals with the administration of the tribal areas in the four northeastern states of Assam, Meghalaya, Tripura and Mizoram as per Article 244. The Governor is empowered to increase or decrease the areas or change the names of the autonomous districts. While executive powers of the Union extend in Scheduled areas as with respect to their administration in Vth schedule, the VI schedule areas remain within executive authority of the state. The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or

apply with specified modifications and exceptions.² The Councils have also been endowed with wide civil and criminal judicial powers, for example establishing village courts etc. However, the jurisdiction of these councils is subject to the jurisdiction of the concerned High Court. The sixth schedule to the Constitution includes 10 autonomous district councils in 4 states. These are:

Assam: Bodoland Territorial Council, Karbi Anglong Autonomous Council and Dima Hasao Autonomous District Council.

Meghalaya: Garo Hills Autonomous District Council, Jaintia Hills Autonomous District Council and Khasi Hills Autonomous District Council.

Tripura: Tripura Tribal Areas Autonomous District Council.

Mizoram: Chakma Autonomous District Council, Lai Autonomous District Council, Mara Autonomous District Council.

Powers and functions of Autonomous district council:

- **Executive Powers And Functions** like the ADCs have executive power to construct or manage primary schools, dispensaries, markets, cattle, ponds, roads and water ways, land revenue, forest, primary education, taxes, administration of villages and towns under (para 6 and 8 of sixth schedule). The executive committee EC of district council to carry executive functions. The chief executive members (CEM) are elected by district council amongst themselves and by the Governor.
- **Judicial Powers And Functions** which entitles the council to constitute village and district council courts in autonomous areas to adjudicate or try cases or customary laws in which both the parties are tribe but no case involving offences punishable by death transportation of life or imprisonment for not less than five years are heard and adjudicated by these courts.

The district council courts and the regional council courts are courts of appeal in respect of all suits and cases tried by village council courts and subordinate district council courts. No other court except the High Court and Supreme Court of India have jurisdiction over

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suits and cases decided by the council courts.(para 4 of sixth schedule)

- **Legislative Powers And Functions** which gives powers to the district councils to make laws for allotment, occupation, use of land, other than reserved forests for purposes of agriculture, grazing and other residential and non-residential purposes, management of unreserved forests, use of water courses and canals for agricultural purposes, regulation of shifting cultivation, establishment of village councils and town committees, administration of village policy, public health and sanitation, appointment and succession of chiefs or headmen, inheritance of property, marriage, divorce and social customs, money lending and trading by non-tribal's within the autonomous districts.

The governor has the power to alter laws or rules passed by district councils, which are in violation of provisions of sixth schedule. The sixth schedule thus makes the Governor the head of the autonomous district council. (Mostly in para 3 of sixth schedule)

- **Financial Powers And Functions** can be used by the district council and the regional council. They have the responsibility for framing rules for the management of finances and approval of the Governor. They are also have mutually exclusive powers to collect land revenues, levy and collect taxes on lands, holdings, shops, entry of goods into market and tolls etc. within their respective jurisdictions and the District Council has concurrent power on the professional trade, professions, trade, callings, employments, animals, vehicles and huts, tolls on passengers and goods carried in ferries or boats or on waterways and maintenance of schools, dispensaries or roads (Under para 9 of sixth schedule). Royalty on licenses or leases for the extraction of minerals in the autonomous districts goes to the district council.

As regards the tax on motor vehicles, it is assigned and collected by the state government on behalf of district council. Grants-in-aid, loans and advances or any kind of loan etc. from the state

government, constitute other sources of income of the councils. The district council enjoys autonomy and the acts of parliament and state legislatures on the subject under them do not normally apply to the autonomous districts. They may be extended there with such exceptions and modifications as are considered necessary by the district regional council concerned.

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Self Asking Question

1. How far the autonomous councils have been successful in providing regional autonomy? (50 words)

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3.4 Development Council:

Let us now discuss some important points related to National Development Council.

National Development Council (NDC) – Background:

- The National Development Council is one of the key organizations of the planning system in India.
- It symbolizes the federal approach to planning and is the instrument for ensuring that the planning system adopts a truly national perspective.
- The NDC has experienced numerous ups and downs in its fortunes. Its status has been determined by the prevailing political climate and the support provided to it by the government in power at the centre and the effectiveness of the pressures exerted by state governments.
- Notwithstanding the vicissitudes that it has faced during the past six decades, its continuing presence in the apex policy structure has always been felt.

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- Way back in 1946, the Planning Advisory Board under the chairmanship of KC Neogi, had recommended the setting up of an advisory organization that would include representatives of the provinces, princely states and other interests. Although this idea was not implemented before independence, its rationale was well appreciated.
- The Planning Commission of the Government of India, in the initial days of its inception, had recognized the potential utility of such a coordinating body.
- In the Draft First Five-Year Plan, it was stressed by the Planning Commission that in a vast country like India, where under the constitution, the states enjoy autonomy in the performance of their functions, there was a need for a body like the National Development Council that may facilitate the periodical evaluation of planning and its various facets by the Prime Minister and the state Chief Ministers.³
- Accordingly, the National Development Council was set up by a proposal of the Cabinet Secretariat of the Government of India in August 1952.

Powers, Functions and Responsibilities of Development Council:

In October 1967, on the recommendations of the Administrative Reforms Commission, the Council was reconstituted and its functions were redefined to include:

- Prescription of guidelines for the formulation of National Plan, including the assessment of resources for the Plan
- Consideration of National Plan as formulated by the National Development Council; considering important questions of social and economic policy affecting national development.
- The review of the working of the Plan from time to time and recommend such measures as are necessary for achieving the aims and targets to secure the active participation and cooperation of the people, improving the efficiency of the administrative services, ensuring the fullest development of the less advanced regions and sections of the community and, through sacrifice, borne equally, by all citizens, build up resources for national development.

- It was envisaged that the National Development Council would advise and make its recommendations to the Central and State Governments.
- Since its inception, it has been functioning as a high power consultative body where the frame of the Five Year Plans, the important problems facing the Indian economy, and the policies, that have to be adopted for tiding over the urgent problems have been discussed and solutions arrived at.
- Thus in addition to the Plan, the Council has concerned itself with problems like food, creation of the State Trading Corporation and land reforms.
- The prime function of the Council is to act as a kind of bridge between the Union Government, the Planning Commission and the State Governments.
- It helps in the coordination not only of policies and programmes of plans but also other matters of national importance. It provides a good forum for discussion and full and free exchange of views.
- There is no other comparative forum. It is also a device for sharing of responsibility between States and the Union Government. Government of India accepted the recommendations of the First ARC in a slightly modified form. It was decided that the NDC, headed by the PM, should comprise all Union cabinet ministers, Chief Ministers of states, Chief Ministers/Chief executives of the union territories and members of the Planning Commission. Accordingly, the NDC was reconstituted in October 1967, on these lines. It may be noted that the NDC generally, does not pass any formal resolutions.

Objectives of the National Development Council-

NDC is an advisory body to the Planning Commission. The major objectives of NDC can be listed below:

- To strengthen and mobilize the effort and resources of the nation in support of the Plan.

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- To promote common economic policies in all vital spheres.
- To ensure the balanced and rapid development of all parts of the country.

In addition to this, NDC provides a platform for all the states to discuss their problems and issues related to development. Thus, it secures the cooperation of the states in the execution of developmental plans.

Check Your Progress

Q1. What do you mean by Autonomous Councils?

Q2. What is the meaning of Sixth schedule?

Q3. What are the functions of Development council?

Q4. What are the powers and functions of Autonomous council?

3.5 Summing Up:

After reading this unit you have learnt that for the inclusive development of India, it is very important for the autonomous councils and the development councils to function in proper way. They are being formed for the smooth functioning of Indian democracy and decentralization of powers. The establishment of these two types of council the indigenous people of the various states of India could take part in the decision-making process of their respective places. But in actual we can see that most of the councils are corrupt in nature. The members of the councils are mostly busy in building their own political career and indulging in dishonest activities. The important issues like health, education, communication, poverty are not addressed by the members in a serious way. This developments lead to the dissatisfaction amongst the people, and their trust regarding the councils are reducing.

For the state as well as central government of India it is necessary to have a strong vigilance regarding the activities of the councils, so that they can be accountable to the governments.

3.6 References and Suggested Readings:

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2. <https://www.drishtias.com/pdf/autonomous-district-councils.pdf>
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(Footnotes)

¹ Report published by *action aid India* on autonomous district council, 2016

²<https://www.drishtias.com/pdf/autonomous-district-councils.pdf>

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**FISCAL FEDERALISM: RESOURCE DISTRIBUTION AND
THE FINANCE COMMISSION**

Unit Structure:

- 4.1 Introduction**
- 4.2 Objective**
- 4.3 Concept of fiscal federalism**
 - 4.3.1 Historical background**
 - 4.3.2 Working of fiscal federalism in India**
 - 4.3.3 Challenges in realizing fiscal federalism in India**
- 4.4 Resource distribution between centre and the state**
 - 4.4.1 Constitutional provisions**
 - 4.4.2 Resource sharing with the local self-government**
- 4.5 Finance Commission**
 - 4.5.1 Constitution of Finance Commission and its function.**
 - 4.5.2 Finance Commission in promoting Fiscal Federalism**
- 4.6 The 15th finance commission**
- 4.7 Summing Up**
- 4.8 References and Suggested Readings**

4.1 Introduction

In a federal system of government, power, responsibilities and resources are divided between various units of the government. It is done to avoid any tussle between central and the state governments through a well-defined constitutional mechanism. In fiscal federalism the resources of the country are divided between the tiers of government and provide financial autonomy in terms of decision making. However, fiscal federalism is not confined to federal countries only. It has more to do with division of responsibilities and resources irrespective of whether the State is politically federal or not. In India, along with the constitutional provisions relating to the sharing of resources and taxation between centre and the state governments, the Finance Commission is constituted to promote fiscal federalism.

4.2 Objectives

The objectives of this unit are to introduce the reader to the idea of fiscal federalism and various aspects of it. After going through the unit, we shall be able to:

- *understand* the concept of fiscal federalism.
- *describe* various aspects of fiscal federalism.
- *explain* the role and functions of finance commission.
- *discuss* about the sharing of resources between centre and the states.
- *describe* how fiscal federalism helps in bringing cooperative federalism.

4.3 Concept of fiscal federalism

Fisc in literal term means public exchequer or the treasury and on the other hand word federal means a system of government having two or more tiers. Hence fiscal federalism means the financial relation between different units of the government in a federal set up. It refers to division of responsibilities with regards to public expenditure and taxation between different tiers of the government. The term was introduced by the American economist Richard Musgrave in 1959 for the first time. This concept applies to all forms of government whether unitary, federal or confederal.

4.3.1 Historical Background

To understand the concept of fiscal federalism in Indian context it is very important to dwell on to the evolution of it in India. Many features of fiscal federalism in India are interlinked with the history of British East India Company and the British Government. The current budgetary system that India follows along with the system of the financial year starting from 1st April to 31st March were adopted in 1858 with British government taking direct control of Indian territory. The current systems of division of power between Centre and states through Union, State and Concurrent Lists have their genesis from the first Budget, which was presented by the British Indian government in 1860s.

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The modern federalism in India could be said to be begun from the passing of Government of India Act 1919. It for the first time provided for the clear separation of revenue sources between the Central and the Provincial governments. Fiscal federalism got another great boost in 1935 with the passing of the Government of India Act in that year. The act provided for the provision of transfer as well as sharing of revenue between centre and the provinces along with the distribution of jurisdictional revenue between centre and the states. Post-independence, center assumed greater importance.

Until 1993, the Indian system of government worked as a two-tier structure. In 1992 the 73rd and 74th amendments were done to provide constitutional status to the local government. The amendments made the local self-government as the third tier of government in the Indian federal system. But in terms of financial resources, such governments are largely dependent on the devolutions from State government. However local governments, at the rural level that is panchayats are assigned 29 items on which they can make laws and create their pool of financial resources and local governments at the urban level that is municipalities are assigned 17 items for the same. Thus, the local governments also work as the third tier of fiscal federalism in India.

Unitary	Federal	Confederal
A unitary country has a single or multi-tiered government in which effective control of all government functions rests with the central government.	A federal form of government has a multi-layered structure, with all orders of government having some independent as well as shared responsibilities of decision-making. Federalism represents either a “coming together” or a “holding together” of constituent geographic units.	In a confederal system, the general government serves as the agent of the member units, usually without independent taxing and spending powers.

Source: Author's compilation based on Shah (2007[2]), "Introduction: Principles of Fiscal Federalism", in A. Shah and J. Kincaid (eds.), The Practice of Fiscal Federalism: Comparative Perspectives, McGill-Queen's University Press

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4.3.2 Working of fiscal federalism in India

Fiscal federalism is considered as an important institutional arrangement for providing financial independence to the states as well as for providing public services. It brings together the advantages of decentralization and as well as economic development. fiscal federalism implies that everything starting from boundaries, tax, intergovernmental and interjurisdictional interactions and intergovernmental transfer systems, expenditure assignments etc are purely determined on economic considerations.

The fiscal federalism in India has undergone significant changes in the recent years. These changes are attributed to three distinguish factors. These are-

- The abolition of the erstwhile planning commission and creation of a new extra constitutional body in the form of NITI Aayog in 2015. Unlike the planning commission which used to follow top-down approach, the NITI Aayog follows the bottom-up approach which allows equal participation of the states and thus helps in fostering cooperative federalism.
- Based on the recommendation of the fourteenth finance commission fundamental changes in the system of revenue transfer were made. The 14th finance commission recommended higher tax devolution to the states.
- Another significant change occurred due to the introduction of goods and services tax and subsequent establishment of GST Council by 101st constitutional amendment act for the Central and state government to jointly deliberate and take decisions regarding the share of tax revenue.

The above-mentioned changes has led to the far reaching consequences in the matter of center state fiscal relations.

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SAQ:

Q. What do you understand by the term quasi-federal state? Discuss the nature of India federalism. (60 words)

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4.3.3 Challenges in realizing fiscal federalism in India

Due to the recent changes certain issues have emerged in the current fiscal federalism structure of India there has been a resurgence of vertical, horizontal as well as developmental imbalances in the structure is being witnessed. These are discussed below

● **Vertical Imbalances:**

- (I) Vertical imbalances arise due to fiscal asymmetry in the taxation power of the center and state in relation to their expenditure responsibilities as provided by the Indian constitution.
- (II) In terms of domain of taxation, the central government enjoys much greater share of taxes that is 60% in comparison to states despite the fact that the expenditure responsibilities of the center are only 40% of the total public expenditure
- (III) These imbalances are further increased in case of local bodies where they enjoy only a meager share of taxes.

● **Horizontal Imbalances:**

- (I) The horizontal imbalances occur due to the differing levels of attainment by the state, which are resulted from the difference in the growth rate of the states and their developmental status. The differences are seen in terms of standards of delivery of public services.
- (II) The conditional grants provided by the finance commission further increases the horizontal imbalances between the states. It sometimes restricts the independent fiscal decisions of the states.

(III) The function of finance commission as a monitoring agency of the fiscal status of the states and their performance sometimes goes against the constitutional role of the finance commission.

• **Developmental Imbalances:**

It occurs due to differences in terms of per capita income between states and also due to regional desperations in development.

For the successful functioning of fiscal federalism in India these imbalances need to be addressed in the following ways-

- (I) The imbalances can be addressed through the provision of higher devolution to the states by the center in order to empower them financially.
- (II) All the three tiers of the government need to be financially empowered to better target their fiscal deficit in a cooperative manner.
- (III) Fiscal space needs to be provided to all the levels of government.

Check Your Progress:

- Q1. What is fiscal federalism?
- Q2. Discuss the evolution of fiscal federalism in India?
- Q3. How fiscal federalism works in India? What are the challenges it faces in Indian context.

4.4 Distribution of resources between Centre and the states

In India federal system in the structure of government is followed where powers are divided between centre and the states. In the 7th schedule of the constitution of India the division of power is enumerated. It includes three lists regarding power sharing between Union and the states, which is provided in the Article 246 of the constitution. These are as follows:

1. **The Union list:** At present the Union list contains 100 subjects on which the centre has the exclusive powers of legislation. In terms of financial powers, the list includes taxes like custom duty, excise duty, corporate tax and tax on income (other than agricultural income) etc.

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2. **The State List:** There are 61 subjects enumerated in this list. The states in Indian Union enjoy full authority to make laws on the subjects included in the state list. However, in certain specific circumstances the centre can legislate on the state list. Example- during National emergency. In terms of financial powers, the list includes taxes like stamp duty, tax on luxuries, entertainment tax, tax on liquor, vehicle, sale and purchase of goods etc.
3. **The Concurrent List:** At present there are 52 subjects under the concurrent list. On the subjects of the concurrent list, both the centre and the state can legislate. It doesn't include any major tax as such. It helps in avoiding over exploitation of sources of revenue by centre and states and also avoids overlapping of tax jurisdictions. However, in case of conflict between centre and state over the subject of concurrent list, the laws made by the centre will prevail.

Apart from these three lists, the constitution of India also enumerates certain articles which provides for the distribution of financial powers like levying and collection of taxes between centre and the states. Article 268 to 281 of the Indian constitution made elaborate provisions relating to the distribution of financial resources between centre and the states. It also provides for systematic arrangements between centre and states regarding their collaboration for levying and collection of taxes. Let us discuss these articles one by one to have a clear idea on the sharing of financial resources between centre and the states.

1. Article 268- duties levied by the union but collected and appropriated by the states. It includes stamp duties on bills of exchange, cheques and promissory notes. All the decisions regarding the levy of taxes and its appropriation rests with the union government.
2. Article 269- taxes levied and collected by the union but assigned to the states. It includes taxes on sale or purchase of goods (other than newspaper), taxes on the consignment of goods in the course of inter-state trade and commerce. These taxes are assigned to the concerned states according to the provisions made by the parliament.

3. Article 269 A- by the 101st constitutional amendment acts this new article was inserted to the constitution which provides for the provisions of Goods and Services Tax. It involves the levying and collection of GST. It applies in the case of inter-state trade and commerce. The tax collected under GST shall be appropriated between centre and the states. The laws regarding the sharing of taxes under GST are made by the parliament in accordance with the recommendations of the GST council (article 279 A)
4. Article 270- taxes levied and collected by the centre but distributed between the centre and the states. Except for the taxes referred to in the articles 268, 268-A, 269, surcharges on taxes referred to in the article 271 and any cess levied for specific purpose; it includes all the taxes and duties mentioned in the Union list. It includes taxes such as- excise duty on non-GST products, Income tax, basic customs duty etc.
5. Article 271- surcharge on certain taxes and duties for purpose of the centre. The centre at any time can levy a surcharge on taxes and duties to increase the revenue of the government. All the proceeds of such surcharges go to the consolidated fund of the union. States have no share in the surcharges levied by the union.
6. The other provisions of the constitution relating to taxation are as follows- prior recommendation of the president on bills affecting taxation in states (Article 274), taxes on professions, trades, callings and employments (Article 276) etc.
7. Article 275 and Article 282 deals with Grants in aid to the states. Article 275 provides for statutory grants to the states by the centre to assist the states in their financial needs. The grants are augmented from the consolidated fund of India. Article 282 provides for discretionary grants. It empowers the centre and the state government to make any grant for any public purpose. These grants are not compulsory in nature.
8. Article 280 and 281 includes finance Commission and its recommendation respectively. We will discuss these in later part of the unit.

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Thus, the constitution of India provides for wide ranging provisions regarding the distribution of resources between centre and the states.

4.4.1 Resource sharing with local self-government

The government at one level that is at the centre cannot carry out diverse functions of the country which helps in meeting the demands of regional aspirations and needs. Problems and needs may differ across various parts of the country and it is believed that governments at the local level which is nearest to the people would understand their requirements in a more appropriate manner.

As it is already mentioned above that certain subjects are delegated by the state governments to the local governments for raising their financial independence, they are also provided with grants directly from the central government for certain schemes. To recommend the amount to be devolved to the local governments by the states, the state finance commission was created. The state finance commission decides the net proceeds of taxes between states and panchayats/ municipalities, also determines the taxes, duties, tolls etc. at the local level.

Stop to Consider:

Specific circumstances when centre can legislate on the subjects of state list-

- (I) Article 249- power of parliament to legislate in the matter of state list in national interest, when Rajya Sabha passes a resolution for the same.
- (II) Article 250- parliament legislate on state list during national emergency.
- (III) Article 252-when two or more states requests the parliament to make laws on the subject of state list.
- (IV) Article 253- parliament legislate on state list for giving effect to international treaties.

Check Your Progress:

- Q1. Discuss the constitutional provisions of division of taxes between centre and the states of India?
- Q2. What are the different types of grants provided by the Union to the states in India?
- Q3. In the light of fiscal federalism in India discuss the status of local governments?

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4.5 Finance Commission

Under article 280 the Indian constitution provides for the Finance Commission. It is a quasi-judicial body constituted for the providing recommendation to the president regarding the distribution of finances between centre and the states. It is advisory in nature. The finance commission is constituted by the president in every five years.

4.5.1 Composition of Finance Commission and its functions

The finance commission is a five-member body including the chairperson. The members are appointed by the president for a term of five years. They are eligible for reappointment. The constitution provided the provision that the qualifications of the members of the commission and the manner of their selection are determined by the parliament. Accordingly, the parliament has specified the qualifications for the chairperson and the members of the commission as, the chairperson should be a person having experience in public affairs and the other members should be selected from amongst the following-

1. a judge of high court or a person who is qualified to be a judge of high court
2. a person having specialized knowledge about the accounts and finance of the government
3. a person having wide experiences in administration as well as in financial matters
4. and a person having special knowledge of economics

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There are certain grounds also under which the members of the finance commission can be disqualified. These are-

1. if he/she is of unsound mind
2. if he/she is an undercharged insolvent
3. if he/she is being convicted of an offence involving moral turpitude
4. if he/she has such financial or other interests as is likely to affect prejudicially his/her functions as a member of the commission.

The finance commission was created to perform certain specific functions. It is required to make certain recommendations to the President of India on the matters of finances like-

1. The distribution of the net proceeds of taxes to be shared between centre and the states, and the allocation between the states of the respective shares of such proceeds.
2. The principles that should govern the grants in aid to the states by the centre (i.e. out of the consolidated fund of India).
3. Any other matter referred to it by the President in the interest of sound finance.
4. The measures needed to augment the consolidated fund of a state to supplement the resources of the panchayats and the municipalities in the state on the basis of the recommendations made by the state finance commission.
5. The commission submits its report to the president. He lays it before both the houses of Parliament along with an explanatory memorandum as to the action taken on its recommendations.

Stop to Consider:

Finance Commission:

One of the most important functions of finance commission i.e. making recommendation to the president regarding the measures needed to augment the consolidated fund of a state to supplement the resources of local bodies in accordance with the state finance commission recommendation was added by the 73rd and 74th constitutional amendment acts of 1992, which have granted constitutional status and protection to the panchayats and the municipalities respectively.

4.5.2 Finance commission in promoting fiscal federalism

The finance commission works for promoting fiscal federalism in India. It is known as the balancing wheel of fiscal federalism in India. Till 2014 the role of finance commission in the centre state fiscal relations was undermined by the erstwhile planning commission which was a non-constitutional and a non-statutory body. According to Dr. P. V. Rajamannar, the chairman of fourth finance commission observed that the functions and the responsibilities of both the commissions overlap to a great extent. He was of the view that setting up of the Planning Commission curtailed the scope and functions of the Finance Commission.

The recommendations of the finance commission are non-binding on the government according to the constitution. However, there is a general precedent that governments usually go by the recommendations and suggestions of the finance commission regarding the matter of sharing of revenue. The recommendations given by the finance commission regarding the distribution of taxes and duties as well as grants and aids by the central government are usually implemented by a presidential order.

The finance Commission works in redressing the vertical imbalances between the center and the states in terms of taxation powers and expenditure responsibilities as well as helps in equalization of all public services i.e. health, education, infrastructure etc. across the states. Thus, finance commission leads to cooperation between centre and states which in turn helps in promoting cooperative federalism in the country. And for proper realization of fiscal federalism, cooperation is the key.

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Stop to consider

State Finance Commission:

The state finance commission is created by 73rd and 74th constitutional amendment act in 1992 to rationalise the local level fiscal relations in India. Article 243-I of the constitution provides for the creation of state finance commission to review financial position in Indian states. The article empowers the governor of state to constitute a finance

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commission after every five years to review the financial position of the panchayats. The commission shall make the following recommendations to the governor: -

- (I) Principles of distribution between state and the panchayats of the net proceeds of taxes, duties, fees levied by the state.
- (II) Grants and aids to the panchayats from the consolidated fund of the state.
- (III) The measures needed to improve the financial position of the panchayats.
- (IV) Any other matter referred to it by the governor in terms of sound finance of the local governments.

The composition of the commission, qualifications of its members and manner of elections are determined by state legislature.

SAQ:

Finance commission as the balancing wheel of fiscal federalism in India. Illustrate the statement with suitable examples.

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4.6 The 15th Finance Commission

The 15th Finance commission was constituted by the President of India in November 2017, under the chairmanship of N. K. Singh. Its recommendations will cover a period of five years from the year 2021-22 to 2025-26.

Key recommendations given by the 15th finance commission are as follows-

- 1 In terms of vertical devolution, it has recommended to maintain 41% of the divisible pool of resources as against 42% of the 14th finance

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commission recommendation. It has made this adjustment of about 1% due to the change in the status of erstwhile state of Jammu and Kashmir into the new Union territories of Ladakh and Jammu and Kashmir.

2. For horizontal devolution, it has recommended 12.5% weightage to demographic performance, 45% to income, 15% each to population and area, 10% to forest and ecology and 2.5% to tax and fiscal efforts.
3. It has recommended for providing revenue deficit grants to the states amounting to about Rs. 3 trillion over the five-year period ending in financial year of 2026. The revenue deficit is defined as the differences between revenue receipts and revenue expenditure that includes tax and non-tax revenues of a financial year. The revenue deficit grants emanate from the requirement to meet the fiscal needs of the states, even after considering their own tax and non-tax revenue resources and tax devolution to them by the centre.
4. It has recommended for performance-based incentives and grants to the states. These grants revolve around four main areas-
 - I) Social sector which includes health and education.
 - II) Second is the rural economy where it has focused on agriculture and the maintenance of rural roads
 - III) Third sector is governance and administrative reforms
 - IV) Fourth sector focuses on performance-based incentives to the power sector.
5. The 15th finance commission also focuses on the importance of Fiscal space for the centre to meet the resource requirements and spending obligations on the national development priorities.
6. It also has recommended for performance-based grants for local bodies for development of new cities and health grants.

There are certain concerns regarding the 15th finance commission and its recommendations. These are mentioned below-

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- The population parameter used by the commission is criticized by the Southern states.
- The previous finance commission used both the 1971 and 2011 populations to calculate the states shares, giving greater weight to 1971 population
- The use of 2011 population figure by the 15th finance commission has resulted in states with larger populations like Uttar Pradesh and Bihar getting larger shares, while smaller states with lower fertility rates have lost out.
- On the other hand the southern states of Tamil Nadu, Kerala, Karnataka and Undivided Andhra Pradesh are home to 20.75% of population with 13.89% share of taxes.
- This means that the terms decided by the commission are loaded against the more progressive and prosperous southern states.

In spite of facing unprecedented challenge of making recommendations in Indian state, the finance commission is consistently trying to balance the requirements of all the stakeholders to achieve efficient, equitable, inclusive solutions to the fiscal problems of India.

Check Your Progress:

- Q1. Discuss the composition and functions of finance commission of India?
- Q2. Comment on the role of state finance commission in India?
- Q3. Critically examine the recommendations Of 15th finance commission of India?

4.7 Summing Up:

In this unit we have learnt that India follows a federal structure in the system of government. The powers between various levels of the government are divided according to the constitution of India. In terms of financial relationship between the Union and the states, a clear division is made which

is provided in various articles of the constitution. We have understood that financial resources are shared between central and the state governments in accordance with the recommendation of the finance commission which is constituted in every five years by the President of India. At present the Indian government is following the recommendations of 15th finance commission. Hence finance commission is regarded as the balancing wheel of fiscal federalism in India. The Finance commission provides recommendation on both vertical and horizontal division of the pool of resources to bridge the revenue gaps in the Indian States. Besides this, to supplement resources of local self-governments the finance commission also recommends various measures to augment The Consolidated Funds of States. Thus, helps in bringing fiscal balance in all the tiers of the government and fosters cooperation in Indian union.

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4.8 References and Suggested Readings:

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TOPIC: NOTION OF COOPERATIVE FEDERALISM

Unit structure:-

- 5.1 Introduction**
- 5.2 Objectives**
- 5.3 Meaning and Definition of Cooperative Federalism**
- 5.4 Cooperative Federalism in India**
- 5.5 Historical Roots of Cooperative Federalism in India**
- 5.6 Constitutional Framework for Cooperative Federalism in India**
- 5.7 Provisions Obstructing Cooperative Federalism**
- 5.8 Summing Up**
- 5.9 References and Suggested Reading**

5.1 Introduction

Federalism is a form of government where each set of government is entrusted with certain powers and functions by the constitution - their powers and functions are clearly and distinctively defined. Herein lies the fundamental distinction between a unitary government and federal government. In a unitary government all powers and functions are vested in the central government and the government of the units, if any, derive their powers from the centre. In other words all other units enjoy such powers as are delegated to them by the centre. They have no independent existence of their own. On the other hand in a federation each set of government is independent. Their powers and functions are specifically given to them to perform. Neither the central government can encroach upon the authority of the units nor the units can encroach upon the authority of the central government.

Therefore, the units in a federal form of government are not subordinate to the centre unlike unitary form. They exist not by the grace of the centre but by the rights granted to them by the constitution itself. The jurisdiction of each set of government in fact, is being categorically defined. It is a system

of national and local governments, combined under a common sovereignty with both national as well as federating units having autonomous spheres assigned to them by the constitution.

However, countries with federalism have showed several factors that led to the formation of federal government. Likewise each federation has been adjusted with specific nature of the respective country. Federation is an agreement between two types of governments- central and federating units, sharing power and maintaining relationship based on their respective spheres. Based on the relationship between the central and local government–the concept of federalism is divided into- Cooperative federalism and Competitive federalism.

Although United States of America is regarded to have perfect federal structure, the term “cooperative federalism” was originated in the USA in 1930’s. The root of cooperative federalism was established during the administration of *Thomas Jefferson* (the third president of the United States). The Great Depression forced the central and state governments to work together for economic recovery. The model then was expanded during *Franklin D. Roosevelt’s* policy of *New Deal*. The influence of the national government over social welfare policies continued after World War II and into the 1960’s when *Lyndon B. Johnson* declared his War on Poverty and, Johnson’s efforts to expand this model of federalism is often referred to as “cooperative federalism.”

During the late 1960’s and 1970’s, the idea of cooperative federalism extended as the national government became involved in issues such as the environment, job safety, mental health, education, and the rights of the individuals. As the national government tried to generate new public policies to deal with these issues, it had become dependent on the state governments to implement a wide range of directives for this purpose and the situation needed to set up the concept of cooperation in the federal structure.

5.2 Objectives:

This unit deals with the concept of cooperative federalism at length. After reading this unit, you will be able to:

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- *understand* the meaning and concept of Cooperative Federalism.
- *describe* the process of cooperative federalism in India.
- *trace* the historical Roots of Cooperative Federalism in India.
- *evaluate* the Constitutional Framework of Cooperative Federalism in India.
- *understand* the Provisions Obstructing Cooperative Federalism.

5.3 Meaning and Definition of Cooperative Federalism

Cooperative Federalism is the branch of federalism which envisages that all the levels of governance, which are- central, state and local bodies, should cooperate with one another in order to achieve collective goals for the benefit of the society. All these bodies put their collaborative efforts towards a common goal and strive to achieve that for the growth of country. No level of government is supreme in this Federalism; all share their place at a horizontal line. There is said to be Cooperative Federalism, when Central and State Governments have a healthy nexus between their functions. Neither the Central Government imposes some random provisions upon the States nor the States nor do Local Bodies work in a manner that is completely antithesis to the working of Central Government. Moreover, Cooperative Federalism asserts that governmental power is not concentrated at any governmental level or in any agency rather national and state or local governments have distinct and separate government functions.

Numerous examples across the world on federal nations show that the old-style federalism is no more relevant. It is replaced by intergovernmental relations, which establishes the fact that cooperation in political process can only provide adequate protection to the interests of the states rather than notion of separateness of responsibilities. Scholars also argue that relative power distribution is no longer a significant issue. The main features of Cooperative federalism, therefore, are- sharing of policy responsibilities and financial resources, interdependence of administration and overlapping of functions.

In a modern concept the elementary notion that “sharing” does not necessarily mean equality is no longer relevant. Numerous analyses show that for the

greater good of the citizen it is an important tool to enable states' to participation in the formulation and implementation of various policies and national or central government should also take care of each state or local government and provide aid and support constantly. In some countries, union and the states are constitutionally obliged to cooperate with each other on the matters specified in respective constitutions. For example in the federal government when the central government grants tax revenue to the states in order to fund interstate highway and the states are allowed to govern the construction and maintenance process in accordance with goals set by the national government then it is said to be the sharing of financial resources.

The idea of cooperative federalism postulates that the relationship between the national government and the states is one in which governmental functions typically are undertaken jointly by central and state administrative agencies. Bureaucratic agencies at the national and state level normally carry out governmental programs jointly. Because the governments' responsibilities are split between many levels of government, citizens and organised interests have many access points to influence public policy. As it is correctly observed by distinguished jurist M.P. Jain, that a cooperative federation is where the governments are interdependent and not independent. It also known as marble-cake federalism, where both sets of government maintain a flexible relationship and work together on a variety of issues and programmes.

The notion Cooperative federalism establishes a model of intergovernmental relations that recognizes the overlapping functions of the national and state governments. This model can be contrasted with the model of dual federalism, which maintains that the national and state governments have distinct and separate government functions. For example in India many of the functions in the Concurrent List have traditionally been undertaken by the states and are in their area of responsibility. And in Concurrent list, there are functions which are best carried out by both the Union and State Governments in the spirit of cooperative federalism. For instance, specified minimum standards of certain public services, like transportation and communication facilities, should ideally be available to people, irrespective of where they reside. Thus, both the Union and State Governments have an

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overlapping responsibility to ensure such specified minimum standards. It is sometime reflected in the relationship between centre and state governments where they both come together and resolve the common problems with each other's' cooperation.

A.H. Birch has described cooperative federalism as a system in which: '... the practice of administrative cooperation between general and regional governments, the partial dependence of the regional governments upon payments from the general governments and the fact that the general governments, by the use of conditional grants, frequently promote developments in matters which are constitutionally assigned to the regions.'

5.4 Cooperative federalism in India:

India opted for a federal structure after independence. The term "federal" has not been mentioned in the constitution but the working of Indian democracy is essentially federal in structure. The constitution of India has also provided for a division of power between the Central and State governments. Under the 7th schedule there are three lists- the Union, State and Concurrent. However, the practical working style of federalism is quite different from that of theory. India has not adopted a full fledged version of Federalism; rather it has a stronger centre which is created by making the states subordinates to the centre. Moreover, the concept of 'Federalism' in India Constitution is apparently seen in the functioning of governments in the country with more unitary features. Prof. K. C. Wheare, thus rightly, labelled the Indian Constitution as "*Quasi-Federal*". Sir Ivor Jennings remarked on Indian federalism as a federation with a strong centralising policy. Prof. D.D. Basu is of the view that the Indian Constitution is neither purely federal nor purely unitary, but is a combination of both. According to him, it is a Union or a composition of a novel type. We can, thus, also call it a mixture of federal principles and unitary principles. Governance in India although run by the spirit of federal principles but constituted with the unitary formulas.

Some people see the stronger tendency of centre as criticising it as anti federalism. On the other hand some argue that a stronger centre is necessary to bound states in it and to promote a better functioning of the government.

Granville Austin, an American historian of Indian Constitution has called Indian federalism as “cooperative federalism”. As in the Supreme Court in *State of Rajasthan v. Union of India* case has also declared the Indian model of federalism is ‘cooperative federalism’, it needs to be examined on the manifestation of its nature of functioning. However, after Independence India has witnessed many constrains in maintaining neither federalism nor unitary structure in its truest form. While the pillars of federalism - Dual Government, Division of Power, Written Constitution and Independent Judiciary, were established the founding fathers of the constitution restricted it from following true spirit of federalism. It was the need of the hour to curb the separatist tendencies among states, which were quite common at the time of the partition and, thus, the Constituent Assembly made the central government relatively strong.

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5.5 Historical Roots of Cooperative Federalism in India

Since time immemorial the Indian subcontinent has been witnessed assimilation of various groups of people and maintaining their own cultural identity. That is why India had been always a land with diversified culture. Therefore, in the ancient period, kingdoms or empires that have ruled over the Indian subcontinent have practiced federal policies because it was not possible to bring all the diversified population and their vassal states under unified structure of policy. The policy of non-intervention in local affairs was realised by the monarchs and was felt practical necessity because of the natural diversities of the people of Indian subcontinent otherwise they could not have made all the territories a part of a single empire. However, this may be one of the important reasons of disintegration of kingdoms like of the Mauryas and the Mughals. As the monarchs like Jehangir and Aurangzeb did not pay sufficient attention to this need and tried to impose codes of conduct to the diversified subjects that attributed in their fall and the empire as a whole.

Roots of cooperative federalism in formal sense can be traced right from the Regulating Act of 1773 that set up a system whereby the British Government supervised (regulated) the work of the East India Company but did not take power for itself. Then by the Government of India Act,

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1919 had announced a dual form of government called 'dyarchy' provided for a federal structure of Indian polity, however by envisaging the spirit of cooperation. The same was aimed to be attained by the Government of India Act, 1935, with its pattern of distribution of legislative powers. Jawaharlal Nehru, while moving his Objectives Resolution on 13 December, 1946, typically could rely on establishing a government machinery at the centre in cooperation and consultation with the states. It is further added that since all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people it was necessary to adopt a federal government envisaging cooperation.

After independence when the leaders of India's Freedom Movement and the founding fathers of the Constitution had the task of drafting the Constitution, the members of this Constituent Assembly had two main goals in front of them. The first was to build a unified polity amongst highly fragmented society, which they attempted through keeping the notion of "Union" inspite of declaring federalism, and the second aim was to develop a highly undeveloped country by reducing poverty and illiteracy and building a modern nation state. However, a country with huge size of population, a large area of territory, a highly diverse society with 14 scheduled languages (at the time of independence) and some 2000 dialects and ethnic identity, several religious groups fragmented into a large number of sects, castes and sub-castes, could never imagine an united territory.

Therefore the founding father of the Constitution establishes a "Union of States," with 14 states, 6 union territories and one National Capital. A centralised polity was established in which the Union government was vested with sufficient powers to set a dominant union, also ensured its ability to rule in a unitary fashion if necessary and politically feasible. In fact, at the most crucial time of its independence when forces of communalism, separatism and linguism were flourishing rapidly the choice of a strong central bias in the constitution had been a boon to keep India together. Moreover, cultural and ethnic pluralism that demanded political flexibility, stand with the politics of cooperation and coordination.

Self Asking Question

1. Do you consider India a Cooperative Federalism? (50 words)

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5.6 Constitutional Framework for Cooperative Federalism in India:

Federalism in India is built upon the structure of power-sharing in a parliamentary democracy and it basically involves two features: devolution of authority and decentralisation of administration. The drafting of the Constitution was based on the concept of unity, rather than individuality, therefore, strong governance at the Centre could not be denied. Although it was never theoretically mentioned to be a Cooperative federalism', but with its formal and informal rules for running of the political system as well as for peaceful co-existence, has worked well in practice. Following are some constitutional provisions of Cooperative Federalism in India-

Article 1 of the Constitution: The very first article of the Constitution provides that "India shall be a Union of States", but it does provide for a structure of governance primarily federal in nature. It provides for separate governmental set-up for the Union and in the states. It also specifies and demarcates the powers, functions and jurisdictions of the two sets of governments. Not only that, it gives the specification of legislative, administrative and financial relations between the Union and the states. Thus, the inclusion of the word union in the constitution, inspite of having federal structure, provides for the integrity among the Union and the States. Rather the units of governments are made inseparable for one another. This was the first idea of cooperation among states and the centre.

Seventh Schedule: The provision in the Seventh Schedule of the Constitution ensures three lists, namely- the *Union list*, the *State list* and the *Concurrent list*. These lists contain matters of national importance which have been divided between Central and State Government to legislate upon. This is an ideal example of coordination among the different levels of

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government in India. Union List consists of those subjects on which Parliament has exclusive powers to legislate and the state has exclusive powers to legislate on the State List. But it is also mentioned that in certain situations Parliament can interfere to do so. Regarding the Concurrent List, though both Union and State governments are given equal share of power to legislate on it, but in case of a conflict between a State and the Union government, legislation of the parliament shall prevail. Again, the residuary powers of legislation are vested in the Union government. These principles of the Seventh Schedule give a contraction to the spirit of proper federalism rather integrate the system.

Inter State Council: Article 263 of the Constitution provides for the establishment of an Inter-State Council by the President, if he believes that such council is necessary to discuss and investigate subjects which have a larger public interest. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of inquiring into and advising upon disputes which may have arisen between States; investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organisation and procedure. This provision ensures that states are not in conflict that hinders the proper growth of the country. This way, this Article promotes cooperation and coordination among states.

All India Services: Article 312 of the constitution states that there will be certain services common to the Union and the States. These are called 'All India Services' of which the Indian administrative service and the Indian Police Service are two examples. Parliament may by law provide for creation of one or more all-India services that are common to the Union and the states and also can regulate the recruitment procedure. Dr. Ambedkar in his explanation in Constituent Assembly stated that the objective behind the provision for All India Services is to establish unity in the federal system and

efficiency to the administration in both the Union and the states. All India Services, therefore, add another element in paving the path for cooperative federalism.

Mutual Delegation of Function: The Constitution distributes not only the legislative powers but also the executive powers between the Union and the States. But a rigid division of power is neither suitable nor desirable for a welfare country where the Union and the States may work together for the betterment of the society. An administration with strict demarcation of function may end up causing occasional deadlock. To avoid such situation the Constitution of India has incorporated such provisions that enable Union and the State governments to make a mutual delegation of their respective administrative functions. However, under two circumstances the mutual delegation is applicable- with the consent of the state government, the President may, without any legislative sanction, entrust any executive function to the state; and with the consent of the Government of India, the Governor of a state may entrust on the Union government or its officers, functions relating to a state subject, so far as that state is concerned.

Establishment of Zonal Council: By the State Reorganisation Act, 1956 Zonal Councils are established to ensure coordination and cooperation among states as well as Union and the States particularly in respect to economic and social development. These statutory bodies aimed to provide common meeting ground of States and to maintain common interest by cooperative action. The main objective of these councils, as Jawaharlal Nehru foresee it, is to develop the habit of cooperative working. In each of these councils presence of a Union minister, nominated by the Union government, Chief Ministers of the states concerned ensures co ordination and cooperation. There is also provision for holding joint meetings of two or more Zonal Councils. These councils discuss the common issues of states of a particular zone, such as, economic development, social planning, border disputes, inter-state transport, matters arising out of the reorganisation of states and the like.

NITI Aayog: Though it is a recent development in this context but NITI Aayog is not a new concept. In 2015, the Planning Commission, the centralised policy-making body, was replaced by the National Institute for

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Transforming India, i. e., the NITI Aayog. The main objective in constituting the Aayog was to give greater scope for states to work together and in promoting state as well as national objectives. The Aayog's Governing Council comprises Chief Ministers of states and Administrators or Lieutenant Governors of Union Territories which apparently aimed to enhance cooperative federalism, that not only can settle complex policy issues among states but also can involve in Union Government's policy making process. This very concept of representation makes it a dynamic institutional mechanism in providing smooth directional and strategic input to the development of the nation as a whole.

GST Council: By the 101st Constitutional Amendment Act, in 2016, the Union government has introduced a single centralised taxation system in India for which the GST Council was created and it got implemented in 2017. This council is made responsible to provide recommendations to the Union and the States on the taxes and surcharges levied by the Union, the States or the Local Bodies. However, the main agenda behind the whole concept of GST is to bring the entire nation under single taxation regime. The concept of GST has removed all central and state indirect taxes, eliminated inter-state tariff barriers and also allowed underdeveloped states with low taxation revenue also to obtain funds. This system of taxation also indicated that there is an increasing equal share concept in the Union government about the needs of the States, most importantly, it has enabled every state to obtain a portion of the central government's tax income.. Moreover, its members represent all the levels of the government and have share in decision making process. Therefore, this council ideally promotes cooperation among the Centre, States and Local Bodies.

Apart from the above mentioned factors there are many minor issues those could be cited as acts towards cooperative federalism. For example, programmes like the Rural Employment Scheme (MGNREGA), Aayushman Bharat, PM-Kisan, Ujjwala, Jal Jeevan etc. that are collaborated with the states to utilise resources. Special mention can be made here about the various policies tackling COVID-19 . Through a combination of various laws, regulations, guidelines, and orders both Union and the States Governments have been handling the various phases of this worldwide

pandemic. Although public health is a subject under the States' jurisdiction as per the Indian Constitution, but in this national crisis the Centre and the state governments have shown the spirit of cooperative federalism effectively. A nation-wide lockdown; enforcement of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 to deal with this outbreak; states' corporations in donating to PM-CARES etc. are some instances of cooperation between Union and States governments.

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5.7 Provisions Obstructing Cooperative Federalism:

There have been numerous instances, that contradict the nature of cooperative federalism in India. There is widespread discontent over how inter-state relations are maintained in India. In one hand where the Centre exercises unreasonable control or interfered with the affairs of the states that results in growing concerns of over-centralisation. On the other hand citing the examples of inter-state competition in socio- economic sphere, some call it a competitive federalism. Let us point out some provisions that pose constrains in calling Indian federalism a cooperative federalism:

The supremacy of the Constitution in India is prevalent and its provisions are followed by all the states universally. Though states have been given due autonomy in their functions, their freedom is subject to superiority of Central Government. Thus, India has not been able to incorporate Cooperative Federalism in the real sense of the term. The superior position of the Central Government in every matter incorporates more unitary features in our Constitution. Some features that are so strong that those work as antithesis of Federal System. In this context there have been protests and demands that the federal structure needs far-reaching changes to make it truly federal. Amongst those the most criticised provisions that break away from concept of federalism in India are related to the imposition of the President's Rule in a state, and the President's power of appointment of State Governors.

The vesting of residuary power to the Union instead of the states under the constitution and the final decision of the Courts to determine the nature of power to be fall under the residuary power negates the very principle of

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federalism. However, in distribution of powers in three lists are not normal distribution. Certain circumstances are mentioned under which the system of distribution of powers is either suspended or the power of the Union parliament are extended over State subjects. Some of these circumstances are-If the subject is of National interest (Art. 249) ; Proclamation of emergency (Art. 250); By agreement between states (Art. 252); In implementing treaties or international agreements and conventions (Art. 253); Under a proclamation of failure of constitutional machinery in the states (Art. 356). Apart from these, there are provisions in the Constitution conferring wider powers on the Union in case of administrative and financial matters as well.

Over many years after independence there has been several question regarding financial provisions that have buffed the federal structure in India. No system of federation is successful unless both Union and the States are allocated adequate financial resources to perform their respective duties and responsibilities. Therefore, the Constitution has made elaborate explanation of provisions derived from the Government of India Act, 1935, regarding distribution of power of taxation between the centre and the states. Article 268, Article 270, Article 273 and Article 275 elaborate broadly the Centre- State financial relation and it indicates the fact that the Central government enjoys greater power over states in this perspective too. The resources that are kept at the disposal of the States are quite meagre.

The states are to remain dependent on the central government for their financial allocations for development. The provision for Grant -in -Aid (Art.275) Finance Commission (Art. 280), Sales Tax legislation (Art.286), Provisions of tax on Property (Art.285 and Art. 289) etc. made the states subordinate as well as Centre -State federal relation unsusceptible. In the words of Pylee, “No other federal constitution makes such elaborate provision as the Constitution of India, with respect to the relationship between the Union and the States in the financial field. In fact, by providing for the establishment of Finance Commission for the purpose of allocating and adjusting the receipts from certain sources, the Constitution has made an original contribution in this extremely complicated aspect of federal relationship.

The economic changes of 1990s, impact of globalization, reforms on land acquisition and labour flexibility for states etc have shown the inclination of Indian federal system towards competitive federalism. According to the 14th Finance Commission's recommendations the share of states in central tax revenue has been increased from 32% to 42%, enabling the states to design and implement programmes more suitable to their needs and thus there arouse greater competition for limited resources among the states. Another step towards competitive federalism is the abolition of Planning Commission and replaced with NITI Aayog. The mandates of the NITI Aayog have developed competition by stressing on allowing the states to develop in accordance with their goals and local conditions. This is also known as Bottom-Up Methodology. Moreover, some of the indices launched by NITI Aayog are School Education Quality Index, State Health Index, Composite Water Management Index, Sustainable Development Goals Index, India Innovation Index and Export Competitiveness Index etc. have no doubt encouraged healthy competition among states but also changed the institutional mechanism for working of federalism in the country.

Over the last 75 years the country's federal structure has been subjected to great stresses and strains. The pressures of political, social, economic and cultural forces, growth of mass and local politicisation has thrown up a challenge to the very concept of federalism in India. The competition for scarce resources has produced many disputes amongst States and between States and the Centre. The Constitutional machinery is finding it increasingly difficult to satisfactorily resolve such disputes within a reasonable time frame. On other hand these disputes led to increasing militancy and insurgency in Kashmir and the north-east and elsewhere. As a result it has become difficult for the government at the Centre to maintain control except by use of armed forces. Again, the demands for protection of local languages and culture, the demands for the creation of more States, even by dividing those formed on the basis of common language and culture, are creating problems that defy easy solution. The very concept political theory of federalism is thus in jeopardy in recent times.

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Check Your Progress

1. Critically analyse India as a Cooperative Federal State.
2. Discuss constitutional framework for Cooperative Federalism in India.
3. What are the major provisions obstructing Cooperative Federalism in India? Discuss.

5.8 Summing Up:

The constitutional framework in India has neither mentioned the term cooperative federalism nor been realised by the central and state governments, it is not a myth either. In recent years, government of India has taken up various measures to develop a unified framework of cooperative federalism. But the lack of balance of power between the centre and the states, lack of cooperation among states themselves, representation of states in law-making and policy-making, regional and political aspirations of the states, socio-economic parameters of different states etc. have put hindrances in realisation of a cooperating federation in India. However, in a highly diversified country like India to preserve the notion of nationhood both Centre and State governments need to be committed to attain constructive cooperative federalism.

In this context the Sarkaria Commission on centre-state relations gave several recommendations to cultivate cooperative federalism and suggested various steps for its actualisation. With supporting the idea of cooperative federalism the commission put forth an observation that federalism is more a functional arrangement for cooperative action, than a static institutional concept. Therefore, state governments should be equipped with sufficient financial resources to reduce their dependency on the central government. The commission advocates a consultative process between the centre and states whenever there is a necessity, such as in matters related to state bills, to deploy the armed forces in the states, to the appointment of the governor with the formation of panels etc. It has also suggested to set up a permanent Inter-State council must be set up to resolve any issue of dispute among the states and recommended that the residuary powers to formulate laws in matters related to taxation must remain with the Parliament. Other than the matters of taxation, the residuary field must be categorised under the concurrent list.

In the light of this, it can be observed that Cooperative federalism is the need of the hour to strengthen Indian federalism from within. The evolution of a new institutional arrangement should be considered to be established in consistent with objective of strengthening centre- state relation. While all policymakers and economists feel that “true” cooperative federalism is the way to go, they all agree that Centre must be more dedicated to distribute decision making power to the states.

5.9 References and Suggested Reading:

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