



KAS

Kerala Public Service Commission

Paper 2 – Volume 2

Indian Polity – 2 & Social Justice



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Indian Polity - 2

Unit-16: Centre State Relationship

This unit has been covered under the following segments-

1. Introduction
2. Characteristics of Federation
3. Legislative Relations
4. Administrative Relations
5. Financial Relations
6. An Overview Of Federal Relations
7. Issues And Challenges Pertaining To The Federal Structure
8. Problems Of Autonomy Movements
9. Different Commissions And Their Recommendations
10. Trends Of Centre-State Relations Under Different Phases Of The Government
11. Judicial Behavior And Working Of Indian Federalism
12. Challenges To Our Federal Structure
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14. Steps Towards Cooperation
15. Devolution Of Powers And Finances
16. Suggestions For Smooth Functioning Of Devolution Of Powers And Finances To Local Levels
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The above segments have been described below:

INTRODUCTION

The Constitution of India provides a dual polity with a clear division of powers between the Union and the States, each being supreme within the sphere allotted to it. The States in India are not the creation of the Centre nor do they draw their authority from the Union Government. On the other hand, like the Union Government, they draw their authority directly from the Constitution and are free to operate in the field allocated to them by the Constitution. At the outset, it may be noted that the Constitution of India has made most elaborate provisions regarding relationship between the Union and the States. This was done with a view to minimize the conflicts between the Centre and the States. But the actual operation of the Centre-State relations for all these years has given rise to a controversy about the wisdom of arrangements made under the Indian Constitution. Critics have expressed doubts about the existing arrangements and demanded re-allocation and adjustment of the Centre-State relations. The relations between the Centre and the States can be conveniently studied under the following centers.

CHARACTERISTICS OF FEDERATION

A Federal Constitution generally possesses the following 5 characteristics.

1. Dual or two sets of governments. In a unitary state as the name indicates there is only one government. The national government. In a federation two sets of governments co-exist. The national (also called central or federal) government and the government of each constituent State. These two governments derive their powers from the same source (the Constitution) and are controlled not by the other but by the Constitution. But it would be erroneous to assume that they work in watertight compartments. They govern the same people and their object is to serve the same populace so naturally their functions many at times touch and effect each other. They must necessarily work not in isolation but in active cooperation with the other.

It is interesting to note two things in this context —

- (a) The Constitution in Art. 1(1) states India, that is Bharat, shall be a Union of States. Dr. Ambedkar had stated in the Constituent Assembly that the word Union has been used advisedly because it has certain advantages. It indicated that (i) The Indian federation is not the result of an agreement among the States and (ii) the States have no right to secede. It may be noted that the word Union was employed by Stafford Cripps in his proposals and was also used in the Cabinet Mission Plan.
- (b) By the 73rd and 74th Constitution amendments another level of government has been created viz. Panchayat's and Municipalities. Powers and functions have been assigned by them. This may be regarded as a third level. So in India the Constitution envisages not two but three levels of government. This is a novel form of federation, unknown to the outside world. Local government of a district, country or municipality is generally a creature of an Act of legislature. In India they are created by the Constitution whose provisions are supplemented by the Acts.

It is the natural corollary of a dual government that there is a division of power and functions between the two sets of government. The distribution between the Federal and the State units may not be identical in all constitutional systems. The division of subjects may be two fold i.e. Federal and State as in the U.S.A. or may be three fold (Central, State and Concurrent) as in Australia. The residuary powers may rest with the Centre (Canada and India) or with the States (U.S.A. and Australia). Apart from the lists there are many other ways of distributing power.

2. **Written Constitution**: In order to make the distribution clear and permanent it must be reduced to writing and must be made amendable to amendments and changes by observing the procedure laid down in the Constitution itself. Left to unwritten conventions or understanding it would create fluidity which in turn would generate uncertainty leading to dissatisfaction among the constituent units.

3. **Supremacy of the Constitution**: Constitution is regarded as a higher law which is there for the Union and States to obey and honor. None of the Units has the authority to override or disregard the Constitution. In some cases the Union may have overriding powers but not in relation to the divisions of power. Federal Constitutions guard attentively the distribution of powers and do not tolerate encroachments. Just as Public Corporations derive their powers from the Act creating them the two sets of Government owe their power to the Constitution and are in a way controlled by it and function within the limits marked by it.

4. **Rigidity**: Rigidity does not mean that the Constitution is not subject to any change and must remain in the same static condition. But as a corollary of the necessity of having a written Constitution it is required that the provisions containing and regulating the distribution of powers must not be left to the discretion of the Centre or the States. The amending process should lay down as a precondition the concurrence of both. Our Constitution provides amendment by a special majority at the Centre followed by ratification by at least half of the States. (In the U.S. it is $\frac{3}{4}$ of the States).

5. **Authority of Courts**: In a federation there is possibility of a State encroaching upon the field of another State. There is also the possibility of the Union trespassing on the rights of one or more States as also the States purporting to exercise the functions of the Union. To take care of such contingencies a federation contemplates an independent judicial body which will decide the rights of the Units and keep them confined within their limits. The Courts have the last word in regard to questions involving the interpretation of the Constitution. Our Constitution confers original jurisdiction on the Supreme Court in regard to federal matters (Art. 131). Thus the Supreme Court has been constituted arbiter in all disputes involving the units.

The five characteristic features recounted above are found in our Constitution. Our Constitution is a written document which establishes a dual polity of the

govt. level i.e. Central and State derives Each deriving its powers from the supreme law of our land, the Constitution. The powers of the Union and the State are plenary within the boundaries defined by the Constitution. The Constitution is endowed with supremacy. The Centre alone cannot mould or change it. Federal features may be amended with the concurrence of both sets of government as required by Art. 368 of the Constitution.

To guard the division of legislative and administrative powers between the two sets of government the Constitution has set up the Supreme Court. The Supreme Court may invalidate and inject any act which transgresses the division. It may be an administrative act or a legislative measure. The Supreme Court may be moved by any person aggrieved by violation of the distribution of powers or by any State or the Union. It is the existence of the above features in our Constitution that led the Supreme Court to describe our Constitution as federal.

LEGISLATIVE RELATIONS

The Union State relations in the legislative sphere have been dealt by Articles 245 to 254. The Constitution clearly provides that the Parliament shall have exclusive jurisdiction to make law for the whole or any part of the territory of India with regard to subjects mentioned in the Union List. This list contains subjects like defense, foreign affairs, currency, union duties, communication, etc. On the other hand the State enjoys exclusive power over the 66 items enumerated in the State List. This List contains subjects like public order, health, sanitation, agriculture etc. In addition there is a Concurrent list containing 47 subjects like criminal law and procedure, marriage, contracts, trust, social insurance etc. over which both the Union and the State Governments can legislate.

If the law of the Union Government and the State Government come into clash with each other the former prevails. However, a State law on the Concurrent List shall prevail over the Central law if the same had been reserved for the consideration of the President and his consent had been received before the enactment of the Central law on the same subject. This clearly gives some leeway to the States. The constitution also vests the residuary powers (viz., the enumerated in any of the three Lists) with the Central Government. It may be noted that in this distribution of powers the Union Government has certainly been given a favored treatment. It has not only been granted more extensive powers than the States, even the residuary powers have been granted to it contrary to the convention in other federations of the world, where the residuary powers are given to the States.

Though under ordinary circumstances the Central Government does not possess power to legislate on subjects enumerated in the State List, but under certain special conditions the Union parliament can make laws even on these subjects, in the following cases Union Parliament can legislate on the subject listed in the State List-

- If the Rajya Sabha declares by a resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in the national interest that the Parliament should make laws with respect to any matter, enumerated in the State List, specified in the resolution. After such a resolution is passed it is lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. Such a resolution remains in force for a period of one year and can be further extended by one year by means of a subsequent resolution. It may be observed that this provision has been used only in very few cases and has not added to the powers of the parliament.
- The parliament can legislate on the subjects mentioned in the State List when the Proclamation of Emergency has been made by the President on grounds of internal disturbances or external aggression. However, the laws thus made by the Parliament shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiry of the said period. Thus during emergency the Parliament can legislate on subjects in all the three lists and the Federal Constitution gets converted into unitary one.
- The President can also authorize the Parliament to exercise the powers of the State legislature during the Proclamation of Emergency due to breakdown of constitutional machinery in a state. But all such laws passed by the Parliament cease to operate six months after the Proclamation of Emergency comes to an end.
- The Parliament can also be authorized to legislate on a state subject if the legislatures of two or more states feel it desirable that any of the matters with respect to which the Parliament has no power to make laws for the states should be regulated in such states by Parliament by law and if resolutions to that effect are passed by legislatures of those states. Thereafter any act passed by the Parliament shall apply to such states and to any other state by which it is adopted afterwards by resolution

passed in that behalf by the house, or, where there are two houses, by each house of the legislature of that state. The Parliament also reserves the right to amend or repeal any such act.

- The Parliament can make law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. Any law passed by the Parliament for this purpose cannot be invalidated on the ground that it relates to the subject mentioned in the state list.
- Certain bills passed by the state legislature have to be reserved by the Governor of the state for the consideration of the President. These bills become law only after the President gives his assent. The bills which the Governor must reserve for the consideration of the President relate to compulsory acquisition of property, or those which adversely affected the powers of the high court.

It is quite evident from the above discussion that the Union enjoys a position of superiority in the legislative sphere and at times the states are completely at its mercy.

ADMINISTRATIVE RELATIONS

The administrative jurisdiction of the union and the state Governments extends to the subjects in the union list and state list respectively, which clearly establishes the superiority of the Union Government in the administrative sphere as well. In addition the Constitution contains a number of provisions which accord a position of superiority to the Union Government.

Article 256 lays down that the executive power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the

A new turn was given to the Centre-State Relations in the administrative sphere by the Forty-Second amendment, which empowered the Central Government to deploy armed forces for dealing with any grave situation of law and order in the States. The contingents so employed were to act in accordance with the instructions of the Central Government and not to work under the direction, superintendence and control of the state government concerned, unless specifically directed by the Central Government. This change naturally greatly restricted the autonomy of the states and was resented by the states. Ultimately this provision was nullified by the 44th Amendment. It is thus evident that in the administrative sphere the states cannot act in complete isolation and have to work under the directions and in cooperation with others of the federation.

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. Similarly, Article 257 of the Constitution provides that the executive power of every state shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to giving of such directions to a state as may appear to the Government of India to be necessary for that purpose. In short, the Union Government can issue directions to the state Government even with regard to the subjects enumerated in the state list.

The Union Government can also give directions to the state with regard to construction and maintenance of the means of communication declared to be of national or military importance. It can also ask the state Governments to construct and maintain means of communication as part of its functions with respect to naval, military and air force works. It can also issue them necessary directions regarding the measures to be taken for the protection of the railways within the jurisdiction of the state. It may be noted that the expenses incurred by the state Governments for the discharge of these functions have to be reimbursed by the Union Government. It may be noted that the state Governments cannot ignore the directions of the Union Government, otherwise the president can take the plea that the Government of the state cannot be carried on the accordance with the provisions of the Constitution and impose President's rule on the state. In such an eventuality the President shall assume to himself all or any of the functions of the state Government.

The President of India can also entrust to the officers of the State certain functions of the Union Government. However, before doing so the President has to take the consent of the state Government. Further, the extra cost incurred by the states in the discharge of these obligations has to be reimbursed by the Union Government. The Presence of the All India Services like the Indian Administrative Services, and the Indian police Services etc. further accords a predominant position to the Union Government. The members of these services are recruited and appointment held by the Union Public Service Commission. The members of these services are posted on key posts in the states, but remain loyal to the Union Government. The right to create new All India Services also rests with the Union Parliament. The Union Parliament can create a new All India Service only if the Rajya Sabha passes a resolution by two-thirds majority of the members present and voting that it is necessary in the national interest to do so.

The Parliament has been vested with power to adjudicate any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river-valley. In this regard, the Parliament also reserves the

right to exclude such disputes from the jurisdiction of the Supreme Court or other Courts.

Under the Constitution it is the responsibility of the Union Government to protect the states from external aggression and internal disturbances. This leaves much scope for Centre's interference in the spheres of the state. The President can declare national emergency in case of war or possible threat of war as well as armed rebellion. During this emergency the Centre can give directions to the states as to the manner in which their executive power is to be exercised. The President can authorize the Parliament to make laws with respect to any matter including power to make laws conferring powers and imposing duties or authorizing the conferring of power and the imposition of duties upon the Union officers and authorities of the Union as respects that matter unmindful of the fact, that the matter does not belong to the Union list. Similarly, it is the duty of the President to ensure that the government of the state is carried on in accordance with provisions of the Constitution. If the President is satisfied that the government of the state cannot run along constitutional lines, he can declare constitutional emergency in the state and assume to himself all or any of the functions of the Government of the state and all powers of the State other than those exercised by the legislature and High Court of the State. The President can also declare that the powers of the state legislature shall be exercised under the authority of the Parliament and make such incidental and consequential provisions as appear to him to be necessary or desirable for giving effect to the objects of the Proclamation.

The Central Government exercises effective administrative control over states through the Governors of State who are appointed by the President and hold office during his pleasure. The Governors can reserve certain bills passed by the State legislatures for the consideration of the President. President can also issue directions and orders to the Governor which are binding on him. Thus, the Centre can exercise effective control over the States through the Government to topple State Governments which are irksome to the Central Government.

As the Constitution of India provides for a single judicial system both the Union and the State Governments are duty bound to give full faith and credit to public acts, records, proceedings and judicial decisions of the Supreme Court and the High Court. The manner in which these acts, records and proceedings have to be preserved is determined by Parliament by law and the states do not have any say in this regard. In the matter of appointment of the Chief Justice and the Judges of the Supreme Court as well as the High Courts, the states have no say. They are appointed by the President in consultation with the Chief Justice of India and such other judges of the

supreme courts and the High Court as he deems fit to consult. The initiative for the removal of these judges also rests with the Parliament which can pass necessary resolution for their impeachment and recommend to the President to take necessary action. The States are in no way connected with the appointment or removal of the judges of the Supreme Court or High Court.

The State Governor can entrust conditionally or unconditionally certain functions with respect to the executive powers of the state to the officers of the Union with the consent of the Union Government. (Article 258 A). It may be observed that the original Constitution did not contain this provision. This provision was added through seventh amendment in 1956 in view of the objections by the Comptroller and Auditor-General over construction of Hirakud Dam by the Central Government on behalf of the Orissa Government and debiting, of cost to the state accounts.



FINANCIAL RELATIONS

Generally, in typical federation along with the distribution of legislative and administrative powers, the financial resources of the country are also so distributed as to ensure financial independence of the units. However, the Indian Constitution does not make a clear cut distribution of the financial resources and leaves much to be decided by the Central Government from time to time. The financial resources which have been placed at the disposal of the state are so meagre that they have to look up to the Union Government for subsidies and contributions. The distribution of financial resources in India has broadly been made as follows-

1. Taxes exclusively assigned to the Union

Income from certain 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 and succession duty in respect of property and other than agricultural land; and income from the earning departments like the railways and postal departments have been exclusively assigned to the Union Government by the Constitution.

2. Taxes exclusively assigned to States

Income from land revenue, stamp duty except on documents included in the Union List; succession duty and Estate duty in respect of agricultural land; income -tax on agricultural lands; taxes on goods and passengers carried by road or inland water; taxes on vehicles used on roads, animals, boats, taxes on the consumption or sale of electricity, tolls, taxes on lands and buildings; taxes on professions, traders, calling and employment; duties on alcoholic liquors for human consumption, opium, Indian hemp and other narcotic drugs, taxes on the entry of goods into local areas, taxes on luxuries, entertainments, amusements, betting and gambling, etc. has been assigned to the States.

3. Taxes Levi able by Union but collected and appropriated by the State

The taxes on the following items are levied by the Union Government but the actual revenue from them is collected and appropriated by the States; (i) stamp duties on bills of exchange, cheques, promissory notes, bills of landing, letters of credit, policies of insurance, transfer of shares etc.; (ii) Excise duties on medicinal toilet preparation containing alcohol or opium or Indian hemp or other narcotic drugs.

4. Taxes levied and collected by the Union but assigned to states

The taxes in this category are levied and collected by the Union Government although they are subsequently handed over to the states where from they have been collected. Such taxes included duties in respect of succession to property other than agricultural land; state duty in respect of property other than agricultural land terminal taxes on goods or passengers carried by railways, sea or air, taxes on railway freights and fares; taxes other than stamp duties on transactions in stock exchanges and future markets; taxes on the sale or purchase of newspapers and on advertisements published therein; taxes on purchase or sale of goods other than newspapers where such sale or purchases take place in the course of inter - state trade or commerce.

5. Taxes levied and collected by the Union but shared

Taxes on income other than agricultural income and excise duties other than those on medicinal and toilet preparations are levied and collected by the Union Government but shared with the states on an equitable basis. The basis of distribution is determined by the Parliament through a law.

AN OVERVIEW OF FEDERAL RELATIONS

It is criticized by some writer that India is federal in form but unitary in spirit. K.P. Mukherjee remarks that "India is not a federation at all". K.C.Wheare describes India as "quasi-federal". He is of opinion that it is more appropriate to describe India as a unitary state with subsidiary federal features than a federal state with subsidiary' unitary features.

The following features reflect the unitary character of our constitution.

1. Important powers have been assigned to the union (National Importance)

In India, the important powers have been assigned to the union. For example, matters of national importance like defense, external affairs, railways, Income Tax, Audit and Accounts, Posts and Telegraphs, Atomic energy, shipping etc. have been assigned to the states. But matters of local interest like land revenue, agriculture, police, local self-government etc. are in the hands of the states. Concurrent power like civil and criminal law, Trade Union and Labor Disputes, Marriage and Divorce are in the hands of both the center and the states. Residuary powers are assigned to the center following the Canadian model. This shows a strong unitary bias in our constitution.

2. Parliament can make law with respect to the matters in the state list –

Under certain circumstances Parliament can make law with respect to the matters in the state list. For example, during national emergency and state emergency, Parliament can make laws for the states. Again under Article 249 if the Rajya Sabha passes a resolution by a two thirds majority of the members present and voting that it is necessary or expedite in the national interest that Parliament can make law with respect to a matter enumerated in the state list, Parliament can do so. It continues for one year and not six months after the year or renewed as the case may be.

3. The President is empowered to give direction to the State Executive –

The President is empowered to give direction to the State Executive not to disobey the executive power of the union in the states, to maintain means of communication which are of national or military importance and to protect the railways and water ways within the state. If any state violates the directives, President may impose president's rule in the state as it will mean violation of the constitution.

4. Governor is the head of the state administration

The Governor is the head of the state administration but he works as the agent of the state. Every Governor sends a fortnightly report to the president regarding the administration of the state but if the Governor of a state sends a report that the government of the state cannot be carried on in accordance to the provisions **of the constitution**, the president may be justified in imposing president's rule in that state. During president's rule the center becomes very powerful.

5. Common Election Commission is another unitary feature of our constitutions

For conducting elections to the Parliament and the state legislatures, the constitution of India provides for a single election commission. The President appoints the Election Commissioners on the advice of the Prime-Minister. The Election Commission has the sole responsibility of conducting General Elections, Midterm Elections and By Elections for the union and state Legislature.

6. The states have no guarantee over their territories

According to Article 3 of the constitution a new state can be created by the Parliament by separation of territory from other states. But in America no new state can be created without their consent. So America is called an "Indestructible union of indestructible states".

7. There is a common Comptroller and Auditor General for India

He is known as the CAG. He verifies and checks the accounts of the union and also the states. He has to see that expenditure does not exceed the limits for which it was granted and that it was spent for the purpose for which it was sanctioned.

8. Appointment of All Indian officers like IAS and I.P.S

There are All Indian officers like IAS and I.P.S who are posted to the states and who try to bring about coordination policy between the states. Again full faith and credit shall be given to all Public Acts, records and Judicial Proceedings of the state throughout the territory of India.

9. States are not financially viable

The most important factor strengthening the center is that the states are not financially viable. They depend upon the center for finance. The Centre gives grants-in-aid and matching grants to the states. But these grants are not without strings. If a state does not obey the conditions, the center will withdraw grants from them.

Besides these, there are some extra constitutional factors which go for a strong center first is war. When the constitution was being framed there was the threat of war from our neighbors. Therefore, the makers of the constitution deliberately made the center strong. Unless there were a strong center, it would not meet the challenges of war. Our history tells us that whenever the central power was weak, it fell a prey to foreign aggression and whenever it was strong the neighboring states dared not attack India. Hence the makers of the constitution provided for a strong center.

Secondly, there is the Planning Commission. It is entrusted with the task of the mobilization of the human and material resources of the country for the development of India. It is said that planning is the band master who calls the tune of the economic policy of the state. It is in the name of planning that the center interferes in season and out of season in the affairs of the state.

ISSUES AND CHALLENGES PERTAINING TO THE FEDERAL STRUCTURE

Now let us examine the areas of issues between the Centre and the States.

1. Dominance of the Congress Party
2. The Role of the Governor (Discretionary Power and Appointment Issues)
3. Reservation of Bills for Consideration of President
4. Misuse of Article 356

5. The Maintenance of Law and Order in States
6. Encroachment by the Centre on State List
7. The Financial weakness of the State
8. Taxation Powers
9. Issue of Grants
10. Role of Planning Commission
11. Question of Autonomy Issue

A review of the above has been given below.

1. Dominance of the Congress Party

As we have already seen historically we have two phases so far as the Union-States conflicts are concerned. The first phase which ended with the Fourth General Elections in 1967, was marked by the domination of Congress party in Centre as well as on the States. As a result the Union-State conflicts were a matter of internal problem of Congress Party and resolved at that level only. The post 1967 political scenario saw the emergence of non-Congress Governments in the States as well as in the Centre. Now the internal mechanism of the Congress party could not resolve the conflicts and they not only came to the surface but also became increasingly intensive.

2. The Role of Governor and Discretionary Powers of Governor

The Governor is appointed by the President of India for five years. But he remains in the office till the pleasure of the President, which means he can be recalled any time. This means his continuation in the office depends at the sweet will of the Centre. The Supreme Court has held that the Governor's office is an independent office and neither it is under control nor subordinate to the Government of India. However a study of Governors in the States clearly reveals that most of them have been active politicians before becoming Governor and the rest were bureaucrats. They are appointed on political basis and therefore hardly expected to play a non-partisan role. It is the Governor's partisan role that has been the focal point in Union-State conflicts. The Governors have furthered the political interests of the ruling party of the Centre in the States. This has been done most notably in the appointment of Chief Ministers, summoning, proroguing and dissolving the State Assemblies and in recommending President's rule.

Apart from the normal functions which Governor exercises as a constitutional head, he exercises certain discretionary powers. Some of them have been expressly conferred on him while some others flow by necessary implication. As far as the discretionary powers by implication are concerned. These are

significant particularly in this matters. One is with regard to the appointment of Chief Minister when neither a single party nor a combination of parties emerges from the election with a clear majority. Related to this is also the question of dismissal of Chief Minister on the loss of majority support or otherwise. The second matter is with regard to making a report to President under Article 356 about this satisfaction that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Thereby recommending the imposition of President's rule the issue of proclamation of President's rule it has become a matter of serious tension between union and state governments.

3. Reservation of Bills for Consideration of President

Article 200 of the Constitution provides that certain types of bills passed by the State legislature may be reserved by the Governor for the consideration of the President. The President may either give his assent or may direct the Governor to send it back for reconsideration by the State legislature along with his comments. But even after the bill has been passed by the State legislature for the second time the President is not bound to give his assent. The main purpose of this provision is that the Centre can keep watch on the legislation in the national interest. But Governors, and through them the central Government have used this provision to serve the partisan interests. The opposition ruled States have from time to time raised a hue and cry against the misuse of these provisions. This has specially been so in case where the Governor has reserved a bill against the advice of the State Ministry. Presumably under the direction of the Central Government. In its memorandum to Sarkaria Commission, the Bharatiya Janata Party alleged that the bills have been reserved for consideration of the President in order to create difficulties for the State governments. The West Bengal government in its reply to the Sarkaria Commission's questionnaire felt that Articles 200 and 201 either should be deleted or Constitution should clarify that the Governor would not act in his discretion but only on the advice of the State Council Ministers.

4. Mis-use of Article 356

Article 356 is the most controversial article of the Constitution. It provides for State emergency or President's rule in State if the President, on receipt of report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The duration of such emergency is six months and it can be extended further. In the Constituent Assembly, Ambedkar had made it clear that the Article 356 would be applied as a last resort. He also