

Issues and Challenges Pertaining to the Federal Structure

LEARNING OBJECTIVES

In this Chapter, you will learn about:

- Federalism
- Emerging Pattern of Centre-State Relations
- Impact of New Economic and Developmental Policies on Federalism
- Governor as Factor in Federal Relations Introduction
- Impact of Emergency on Federal Relations
- Coalition Politics and its Impact on Federal Relations
- Judiciary as a Factor in Federal Relations
- National Security and its Impact on Federal Structure
- Re-invention of Self-Governing Institutions and Decentralization
- Federal Fiscal Relations
- Conclusion

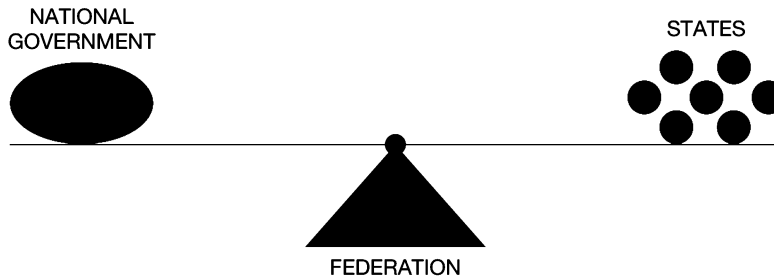
5.1 FEDERALISM

5.1.1 Federalism Introduction

Federalism is a harmonious system of government, in which the powers are distributed between a union government at the national level and several provincial governments at the sub-national level.

It requires a minimum of two levels of government to create a federal state: (i) The Union government, which takes the responsibility for subjects of law that have a common national interest and (ii) the provincial or state governments that look after subjects of regional or provincial interest.

In a true spirit, these governments act independent of each other, when it comes to federalism. This is guaranteed by the proportionate division of subjects and their ratification through a written constitution. It is done so as to ensure a constitutional sharing of sovereignty that prevents the accumulation of unbridled power with the Union government or vice-versa. Notable examples of federal countries include the United States of America, Canada, Australia, Germany, Switzerland and India.



5.1.2 Types of Federalism

(a) Classification Based on Nature of Federalism

The concept of federalism has evolved since its inception and has developed into different models. These models can be decoded as the following types:

- (i) Dual/Layer-cake federalism
- (ii) Cooperative/Marble cake federalism
- (iii) Competitive federalism
- (iv) Permissive federalism
- (v) The “New” federalism

(i) Dual/Layer-Cake Federalism

In this model, the Union government takes control of crucial subjects such as foreign policy, defence, communication, etc., leaving the rest to the provincial units. The domains of both governments are usually exclusive in nature. This characteristic feature gives it the name “layer-cake federalism”. An important point to note here is that the Union government hardly interferes into the domain of the state governments. The best example of dual federalism existed in the United States prior to the civil war years

(ii) Cooperative Federalism

This form of federalism insists on the two levels working together as a team. The inter-governmental relations are mostly cooperative in nature, while the autonomy of the states in their spheres is not infringed by the Union government. There is a confluence of powers, resources, and programs between and among the Union, provincial and local governments. There are, however, possibilities of influencing the policies and decision making of the state governments. The process of cooperation is ensured through several means. Usually

it is done by creating vision documents in planning, dialogues in several centre-state fora, etc. For instance, the 15-year vision document being prepared by the NITI Aayog in consultation with the states is a notable example. Similarly, the Goods and Services Tax council includes representatives of both the Government of India and the state governments.

As there is no water-tight separation of domains between the union and the states, this form of federalism is also called '*marble-cake federalism*'.

(iii) Competitive Federalism

It is a type of federalism in which the Union government, states and local bodies compete with each other. This competitive spirit is held in order to provide a better delivery of services and inclusive growth to their citizens. The competition is visible in spheres such as investment opportunities, social welfare schemes and infrastructure development. It is to be noted that competition is not the opposite of cooperation. While through cooperation the units try to seamlessly operate and find solutions, through competition, they try to effectively implement these solutions as against their peers.

(iv) Permissive Federalism

It is a quasi-unitary concept. As part of a federal setup, the states are provided with certain powers through the constitution. However, they depend on permissions from the Union government to administer and take decisions with those powers. This form of federalism is found in instances where the states derive their existence and authority from the Union government.

(v) The New Federalism

The concept of New federalism was a result of the advocacy that anything that falls outside the division of powers in the constitution shall be entrusted to the state governments. The primary objective of this model is to reduce the disproportionate accumulation of power with the Union government. An example of this is the call for restoration of autonomy and power that the states had lost to the federal government of the United States of America following the New Deal of President Franklin Roosevelt. Through New federalism, the state governments receive block grants for non-specific purposes or in general policy areas.

(b) Classification Based on Nature of Formation

Federations can also be divided based on the nature of formation. The two common forms are:

(i) Coming Together Model

Here, a number of independent states unite to form a larger unit so that they can increase their security while maintaining sovereignty. The constituent states hold equal power and are stronger in comparison to the Union government.

(ii) Holding Together Model

In this case, a Union government creates a second-tier of government for the purpose of administrative convenience, especially when a larger scale of diversity in the population is involved. The model follows the principle of "indestructible union with destructible states".

5.1.3 Importance of Federalism

- **Protection of rights and liberties:** The fundamental aspects of the constitution cannot be amended arbitrarily by one level of government alone. Such changes require the acceptance of both levels of government.
- **Judicial oversight:** Courts have the responsibility to interpret the constitution and codify powers of different levels of government, from time to time. Where there is a dispute among them, the apex court takes the role of a neutral arbitrator.
- **Financial autonomy:** Sources and proportion of revenue allocation for each level is clearly specified to ensure the financial autonomy of the units.
- **Dual objectives:** The federalism offers a grand design of living together, it two important objectives are to safeguard and promote unity of the country, while accommodating the regional diversity.
- **Opportunities for decentralisation:** These opportunities are based on the concept of self-rule and shared rule. It strives to make the governance efficient, swift and ensures grassroots involvement in the political process.

5.1.4 Why India Opted for Federalism?

Although the Indian Constitution nowhere uses the term 'federal', it has provided for a governance model, which is essentially federal in spirit. Federalism in India should be studied in the context of its pluralities of culture and its socio-economic conditions on the eve of independence.

With a large population spread across a large pluralistic framework in terms of ethnic, linguistic, religious and other diversities, it was necessary to implement a system of polity that would accommodate these pluralities. This was to be done without compromising on building a unified nation. In order to serve the objective, the constitution makers decided on a democratic structure based on federal system of government with a unitary bias. While democracy ensures freedom to the citizens, a federation would ensure the protection of pluralities. This when managed by a strong Union government, ensures the principle of 'unity amidst diversity' in order to march ahead to progress.

The perils of colonial rule made India a land of severe economic disparities and chronic under-development. As the immediate goal for the newly born nation was to turn around the economic conditions, it was necessary to bring in an administrative system that would combine regional management and centralised supervision. It was thus decided that a federal polity with an empowered Union government will best fit these requirements to achieve the goal.

5.1.5 Features of Indian Federalism

There are certain unique features in Indian federalism. They are as follows:

1. **Supreme and single constitution:** Constitution is the most supreme law of the land in India. It contains several components that together act as a rule of thumb in framing policies of the government. It guarantees a set of fundamental rights to the citizens. Similarly it demarcates the domains of power of executive, legislative and financial powers of both the government of India and the states.
2. **Dual government:** The constitution has distributed powers between the Union and the States. Through this distribution, it seeks to accommodate the diversity of India. By

providing certain powers to the state governments, the constitution allows the states to take decision with flexibility and according to local needs.

3. **Authority of the courts:** Legal supremacy of the constitution is an essential feature in the federal system. It helps in maintaining the division of powers between the union and centre. Courts have the final power to interpret the constitution and nullify actions on the part of the federal and state governments or their different units, which violate the provisions of the constitution.
4. **Mode of formation:** Unlike the United States, which was formed as a result of coming together of a group of states, Indian federalism was born out of the need for administrative convenience.
5. **Position of the states in the federation:** In the United States, since the states had existed much before the formation of federation, they held their own sovereignty vis-a-vis the federal government. Therefore, their constitution had several safeguards for the protection of state's sovereignty. Whereas in India, there was no such history of states holding a higher sovereignty. Thus, our states do not enjoy a higher authority in comparison to the Union government.

5.1.6 Criticism of Indian Federalism

Though the founding fathers of the Indian Constitution have done their best to imbibe a federal character into our polity, there are a number of criticisms against it.

1. **Not a truly rigid constitution:** The amendment process to the constitution of India follows a blend of rigidity and flexibility. Some of its provisions can be easily amended by the parliament and some require ratification from the states. While it is challenging to pass amendments that affect the federal provisions, it is not as difficult as the amendment process in the United States. **Powerful Union government:** The union holds more power as against the states. This can be understood by the number and importance of subjects under the Union list under Schedule 7 of the constitution. Even regarding the concurrent list, the constitution empowers the parliament to override any law made by the state legislature in case of a conflict with a union law on the same subject. Additionally, all residuary powers are also vested with the parliament. Besides this, it empowers the parliament to legislate in certain cases to legislate on subjects in the state list.
2. **Unequal representation of states in the upper house:** In bicameral legislatures of federal countries, it is a basic feature to have equal representation for states in the upper house. India has deviated from this principle and has opted for proportional representation based on the population of the respective states.
3. **Executive is a part of legislature:** Separation of powers is yet another essential part of a federal polity. In India though, the political executive is an integral part of the legislature.
4. **Lower house enjoys greater power than upper house:** The role of the upper house in a federation is quite significant as it features representatives from the states. In the Indian parliament however, the lower house enjoys greater powers compared to the upper house. For instance, money bills can only be introduced in a lower house; a no confidence motion against the government can only be initiated in the lower house. Interestingly, the upper house as well enjoys the unique

power such as to initiate a bill for the creation of an All-India service. Such unequal distribution of powers among the houses of parliament is contrary to the principle of federalism.

6. **Emergency powers with the Union:** The constitution has vested all the emergency powers with the Union government. By enforcing an emergency, the Union government virtually takes complete control of the country, superseding the autonomy of the state governments.
7. **Integrated judiciary:** Though independent, the judiciary is integrated. This means, India does not have a separate judiciary at the union and at the state level.
8. **Single citizenship:** Indian citizens hold only one citizenship that is issued by the Union government whereas in United States of America, concept of dual citizenship exists.
9. **Appointment process of Governor:** The power of appointing a governor lies with the President, who executes this power based on the advice of the council of ministers. As a result, the governor acts as an agent of the Union government.
10. **All India Services:** The Union government through the All India Services such as the Indian Administrative Service (IAS), Indian Police Service (IPS) and Indian Forest Service (IFS), veers into the governance of states and controls the executive functions. Though the immediate authority of these services lie with the state, the ultimate powers lie with the Government of India. These services provide efficiency and uniformity in administration throughout the country.
11. **Destructible states:** A state's name, territory, or its very existence can be changed by the Parliament by passing a law to that effect. All of this can be done following the procedure of an ordinary bill.
12. **Veto over states' bills:** The Governor of a state has the power to reserve certain bills for the President's consideration. The President on the other hand is provided with absolute veto on these bills. At times, he also holds the power to reject bills, when they come after reconsideration and are still found wanting. As the President follows the advice of the council of ministers in this respect, this power can be misused to keep the state legislatures under the hold of the Union government.
13. **Integrated election machinery:** Elections in India, at both the centre and states are conducted by the Election Commission of India. Though the body is independent of political intervention or influence, the Chairman and the members of the commission are appointed by the President.
14. **Integrated auditing:** Similar to the conduct of elections in India, auditing of accounts of the states and the union are done by the Comptroller and Auditor General of India. The **holder of this office** is also appointed by the President.
15. **Removal of key functionaries:** The state government is hardly empowered to remove government functionaries, even at the state level. This includes judges of the high court, state election commissioners, etc.

5.1.7 Stages of Federalism in India

Towards the end of the British Raj, the founding fathers of India were facing questions on the type of polity that the new nation will take up. Considering the diversity of the country, they decided to go for federalism, as it would ensure the protection of regional, minority and

community interests. However, as the security at both external and internal spheres was threatened by various forces, they were left with no choice but to compromise on the level of federalism that was chosen for the country. It was decided to make India a strong, cohesive state, by giving more power to the national government at the centre as against limited spheres for the state governments. Moreover, it was felt that resolving the problem of economic development was comparatively easier when planning can be made in a centralized manner.

Evolution of Indian form of federalism can be classified into four waves:

- Wave of single party dominance (pre 1967)
- Wave of confrontational federalism (1967–1990)
- Wave of cooperative federalism (1990–2013)
- Wave of cooperative and competitive federalism (since 2013)

(a) The First Phase: Single Party Dominance

The initial years since independence saw the formidable power of the Indian National Congress ministry as they ruled at both the centre and state levels. Jawaharlal Nehru, the then Prime Minister was very much involved in promoting the federal relationship with the state governments. He maintained regular written communication in order to keep them informed of the developments at the national level and to take in suggestions from them in order to build a better nation. The roots for this federal organization were laid back in 1920, when the INC organized itself on the basis of provincial Congress committees.

(b) The Second Phase: Confrontational Federalism

The era of dominant rule by the INC began fading away with the fourth general elections (1967). This election witnessed routing of the INC by regional parties in nearly half of the states. They had little choice other than coexisting with opposition parties. This was once again lost with the split of 1969 and slowly the style of governance was moving towards a centralized leadership of the country by Indira Gandhi, the then Prime Minister. As a result, the federal principles of organization were set aside. And the regional accommodation, which was nurtured since the early years of the 20th century was subsequently eroded.

With the Congress obtaining near two-thirds majority in the 1972 parliamentary elections, reaping on the success of the Bangladesh liberation war, the federal government started arguing the case for a 'strong centre' not only to serve the interests of balanced development but also to safeguard the unity and integrity of the country.

This was to hit a nadir with the imposition of national emergency in 1975-77. The draconian regime was an era in which the state was almost reduced to a unitary dictatorship. The Union government was more than happy to intervene into the states' administration and Article 356 was arbitrarily applied to ward-off governments that weren't in its good books. A remarkable event of this era is the passing of the 42nd amendment to the constitution, which placed the already power-heavy Union government on higher ground compared to the states. This led to several non-Congress parties in unison demanding for state autonomy.

(c) The Third Phase: Cooperative Federalism

This wave of federalism had its advent towards the end of the 1980s. The system of coalition governments at the national level led to the strengthening of regional parties such as the *Dravida Munnetra kazhagam (DMK)* in Tamil Nadu, *Rashtriya Janata Dal (RJD)* in Bihar,

etc. With this new-found importance, they have been able to assert their interests more vocally since this era. Thanks to this development, even when a centre-right party such as the *Bharatiya Janata Party (BJP)* came to power in the centre as part of the National Democratic Alliance (NDA) for the first time, they tread cautiously, hardly ruffling feathers with their coalition partners and counterparts at the state level. The Union government had little choice but to listen to the requirements of the states and make policy formulations accordingly.

(d) The Fourth Phase: Cooperative and Competitive Federalism

On returning to power for the second time in 2014, the NDA has been rooting for a judicious mix between cooperative and competitive federalism. The foundation stone for this was laid by replacing the decades-old Nehruvian brainchild, the Planning Commission with the National Institution for Transforming India (NITI). According to the government, while cooperative federalism will ensure an inclusive strategy towards achieving development, competitive federalism will help in realizing the same with maximum potential.

5.1.8 Cooperative Federalism to Competitive Federalism

- **Cooperative federalism** implies that the Union and states share a **horizontal relationship**, where they “**cooperate**” in the larger public interest. It’s visualised as an important tool to enable states’ participation in the formulation and implementation of national policies.
- **Sharing of powers and responsibilities** between the three levels of government is a key element of the concept, which involves participative policymaking. This is particularly important in areas of concurrent responsibility, where the Centre has had a tendency to ride roughshod over the states by occupying the common legislative space.
- A reform of the seventh schedule lists in the direction of greater empowerment of states would be consistent with the logic of increased financial transfers and cooperative federalism. Locating the right level for making and implementing policy is a central feature of the cooperative responsibility matrix.
- A key element in fostering cooperative federalism is the **respect for the mandate of elected governments, even those run by opposition parties**. In an era where the party system is fragmented along federal lines, the need is still felt to include state parties in federal coalitions, even when technically not necessary.
- **Competitive federalism** can refer to the relationship between the Central and state governments (vertical) or between state governments (horizontal). Post the 1990s economic reforms, this idea of federalism gained prominence.
- In a free-market economy, the spirit of competition is developed through the provision of endowments to states, their available resource base and their comparative advantages. States not only need to compete with the Centre but also among themselves for gaining these benefits. Increasing globalisation, however, has made the already existing inequalities and imbalances between states much wider. Hence, there is concern about the states’ freedom to formulate their own growth policies.
- With the onset of **globalisation**, there have been new economic roles for the government. There has been complex power sharing and multi-level relationship.

- There is rise of Identity-related issues (e.g. Telangana) and resource-based issues (like Cauvery and Narmada), hence in a multi-party system it is important to forge effective federal coalitions.
- Fiscal constraints of the states have led to the proliferation of central schemes and national missions.
- Because of responsive and participative democracy, we get **asymmetric federalism** (the acceptance of inequality of states) leading to decline in inequality, tensions and dissatisfactions.

5.1.9 Steps to Achieve Cooperative Federalism

(a) Institutions

1. **Inter-state council:** Article 263 provides that the President may by order appoint an Inter State Council if he/she is of the opinion that public interest would be served by its establishment. This council shall be used to promote a cohesive relationship among the federal units of the Union. The organization, procedure and duties of the council shall be defined by the President.
2. **Zonal councils:** They were created as a result of the States Reorganization Act, 1956. These councils function as forums that would bring the states of a particular region in close conformity with each other. Currently these are five in number. They act as instruments of intergovernmental consultation and cooperation primarily in socio-economic fields and also to curb the growth of particularist tendencies among various states.

(b) Policies

1. **Recommendations of the 14th Finance Commission:** The 14th Finance Commission report is a landmark report in terms of fiscal allocation. Besides several important recommendations, the commission recommended a statutory increase in the share of divisible tax-pool from 32% to 42%. As the Union government has also raised the non-statutory share from 21% to 26%, about 68% of the division pool is to be transferred to the states.
These imply that nearly half of the total receipts of the Union government will be transferred to the states. The larger allocations are accompanied by significant reduction in the central schemes and rationalization of remaining schemes to give greater flexibility and control to the individual states.
2. **The establishment of the NITI Aayog:** The NITI Aayog was established as the replacement to the Planning Commission. Unlike its predecessor, NITI Aayog aims to include the state governments into the planning process and give them a better say at decision making. The forum has a good potential to facilitate coordination between the states and the centre.
3. **Goods and Services Tax and the GST Council:** By creating a uniform regime of taxation, the devolution of revenue receipts to the states would get much easier and efficient. As the introduction of this new tax regime replaces several existing revenue resources for the states, a council for better managing the process and allocation of revenue has been setup as the GST council.

5.1.10 Steps to be Taken to Improve Cooperation

- **Reforms in the seventh schedule:** As India is consciously promoting cooperative federalism, it needs to focus on greater empowerment of states by shifting more subjects into the state list or at least into the concurrent list.
- On issues that have a global effect, such as treaties and multi-lateral conventions, the Union should setup a mechanism to implement these agreements with minimal or no infringement into the sovereignty of the states. These include WTO obligations, INDC recommendations, etc.

5.1.11 Indian Federalism in the Age of Globalisation

As India is constitutionally referred to as a 'Union of States', the states have a large significant role in implementing the agenda of globalization. However, the effect of globalization on our federal polity has produced a paradoxical outcome.

The economic reforms of the 1990s gave state governments lot more freedom to make policies independently. For instance, while the national government still decides on investment policies and trade tariffs, state governments are free to provide incentives to investors of foreign capital to enter their jurisdictions.

By opening their markets to globalization, states have been regularly engaging in a fierce competition among themselves in order to attract more and more foreign direct investments. As a result the political autonomy of states has been greatly reduced in favour of investments and markets. This has exposed local governance to direct or indirect influence by global and multi-national corporate entities. As a few of the states cannot compete at a major level, it leads to an unequal development and therefore paving the way for the categorization of states as 'developed' and 'special category' states.

From the point of view of an Indian state, capital from another country or from another state can be seen through the same lens, and must be treated equally on par in typical policy environments. The final impacts of the entry of capital will therefore depend also on the internal mobility of capital and labour within the sub-national government.

Hence, attention must be paid to internal mobility of goods and other factors, in addition to external liberalization in the federal system. The tax and regulatory policies of the sub-nation can assume greater importance in a scenario of economic reform under globalization. Another federal aspect of India's reform is that the decade of the 1990s has seen an increase in regional inequality in some dimensions.

While inequalities may have widened within states as well (for example, the coastal and urban areas of Maharashtra and Gujarat versus their interior rural regions), the main focus has been and will be on widening disparities across the states themselves.

This is natural, given the size and political importance of the states, and the fact that the states are the direct and indirect channels for significant financial transfers from the central government.

We also consider whether aspects of economic reform, larger global economic forces, and state-level initial conditions and policy responses are increasing regional inequalities within the country, and whether the mechanisms that exist within India's federal structures for managing regional inequalities are adequate.

The growing literature on globalization and Indian federalism, mostly written though from the standpoint of political economy, suggests that Indian federalism has been drastically changed so that it needs to be redefined.

5.1.12 Federalism in the Fiscal Sphere

The fiscal relations between the Centre and the States have been defined under the Constitutional provisions of distribution of revenues between the Union and the States. Based on this scheme, the Union gets its revenue from the following sources such as taxes on income other than agricultural income; customs duties including export duties; excise duties on goods manufactured in India except alcohol and liquors for human consumption; taxes on capital value of the assets, exclusive of agriculture land, of individuals and companies; taxes on the capital of companies; estate duty and succession duty in respect of property other than agricultural land; etc.

The revenue sources allocated to the States, on the other hand are: land revenue; taxes on agricultural income; succession duty in respect of agricultural land; estate duty in respect of agriculture land; taxes on land and buildings; taxes on mineral rights; excise duties on alcoholic liquors for human consumption; sales tax; professional taxes; taxes on the consumption of electricity; taxes on advertisements; etc.

Though the allocation of resources is limited, the states hold greater responsibilities for social, educational and economic development of citizens. It is for this reason that the Constitution provides for inter-governmental transfers through the establishment of Finance Commission, once in every five years. This body recommends the proportion at which transfer of central revenue has to be made to the states. Besides this, central plan transfers and funding for central sector and centrally sponsored schemes are also made to the states. While the proportion of funding has been climbing at a fast rate over the past few years, the states find them inadequate to meet their responsibilities.

5.1.13 Green Federalism

In the context of environmental and climate change issues, it is becoming increasingly important for governments to formulate policies and guidelines to effectively address hazards and ensure sustainable growth. As a federal country, India needs to work out a plan among its different levels of government to come up with a comprehensive strategy to tackle these challenges.

The federal provisions of the constitution of India gave generally remained silent on the environmental issues. At present there is no dedicated subject for the purpose of environmental legislation. Originally, in the seventh schedule of the constitution, all the natural resources – land, water, forests and minerals – were assigned to the states, while the central government was given the responsibilities to regulate the development of mines and mineral resources. Later this was amended to push forests and wildlife protection to the concurrent list.

But the process of green federalism doesn't end with just specifying the jurisdictional ambit of legislation alone. There are larger challenges in terms of research, governance, resources and capacity building to deal with the complex issues of environment. When the states and the union come together to play specific roles in relation to these areas, it is then that the objectives of green federalism can be effectively realized.

5.1.14 Issues in Indian Federalism

Union's influence over concurrent list: One of the main accusations on Indian federalism is the problem of pseudo-centralisation. A number of states have accused the Union government of extending a dominance over the concurrent list.

Article 200: It relates to the State bills which are reserved for the assent of the President. This provision has been abused numerous times with impunity. Anandpur Sahib Resolution by Punjab in 1973, West Bengal Memorandum in 1978 has demanded centre to restrict itself to defence, external affairs, currency and general communication.

Arbitrary Imposition of President's Rule: Article 356 is one of the most misused provisions by the Union government to restrict the proper functioning of states under the control of opposition parties. However, following the S.R. Bommai case, the Supreme Court has largely reduced the scope for the imposition of President's rule.

Removal of Governor: As the governors are appointed by the Union government, a change of ruling party will lead to the removal of governors appointed by the preceding regime. Though the governor doesn't hold a security of tenure, the practice of removing governors for political reasons does not act as a healthy indicator of cooperative federalism.

All India Services: State governments have time and again called for the abolition of the All India Services. Though the officers under these services come under the immediate supervision of the states, their service conditions are primarily managed by the Government of India.

DELHI CASE STUDY

Delhi is a peculiar case, neither being a State, nor a Union Territory. So, Article 239, which deals with Union Territories, does not apply to Delhi. Instead, **Delhi is governed by Articles 239AA and 239AB, introduced by a constitutional amendment in 1991.** The problem with the Home Ministry notification is that while it conflates Delhi as a Union Territory to suit its own interests, at other times, it treats it as a State.

Partial statehood, Delhi's peculiar constitutional situation, has posed challenges before every government that has ruled the national capital since 1993, the year an elected Vidhan Sabha was reinstated in Delhi. Central to this is the prickly issue of an elected government being forced to share powers with a non-elected Lieutenant Governor.

Article 239 (AA and AB) of the Constitution appears to grant the LG more discretionary powers than Governors in other States. Clause 4 of this Article says that there shall be a Council of Ministers in Delhi to aid and advise the LG "except in so far as he is, by or under any law, required to act in his discretion".

Such a situation created many conflict situations between the elected government of Delhi and Lt. Governor.

5.1.15 Recommendations of Various Commissions

The constitutional arrangements of Centre-State and inter-State coordination and cooperation functioned smoothly during the first twenty-five years of the working of the Constitution of India due largely to single party rule at the Centre and in almost all the States and presence of stalwart national leaders like Pandit Jawaharlal Nehru who played prominent role in the drafting the Constitution. The end of the era of single party rule since the late sixties and emergence of regional parties and coalition governments with diverse ideologies, priorities and programmes brought sharp focus into various issues of coordination in Centre-State relations and constitutional governance.

In order to study these issues and recommend measures for improving the system, a few Commissions/Committees have been set up since mid-sixties. These are:

(a) First Administrative Reforms Commission

The first Administrative Reforms Commission was constituted by the Government of India on 5 January 1966 for reviewing the public administration system of India and recommending measures for making administration fit for carrying out the social and economic policies of the government and being responsive to the people. The Commission was Chaired initially by Morarji R Desai, MP, and later on by K. Hanumanthaiah, MP when Morarji R Desai became the Deputy Prime Minister of India.

The Commission submitted its reports in 20 parts containing 537 major recommendations till the mid-seventies. The 13th report of the Commission covered the issues of Centre-State relations. With regard to Inter-State Council the Commission made the following recommendations:

- (i) Establishment of an Inter-State Council under Article 263 (b) and (c) of the Constitution which would discuss all issues of national importance in which the states are interested.
- (ii) Saddling the Council with functions under article 263 (a) to inquire into and advise upon disputes between the States would prevent it from giving full attention to the various problems of national concern which it ought to consider.
- (iii) This body should replace the National Development Council, the Chief Minister' Conference, the Finance Minister' Conference, the Food Ministers' Conference and the National Integration Council.
- (iv) The Council will be wide-embracing and will provide a standing machinery for effecting consultations between the centre and the states. Only issues of real and national importance need to be taken up there. Others should be settled by conferences convened by the ministries concerned, at a lower, preferably official level.
- (v) The Council should have an appropriate secretariat. The Secretary of the Council should be an officer having the knowledge, experience and status that will enable him to work effectively.

(b) Rajamannar Committee

The Centre-State Relations Inquiry Committee was set up by the Government of Tamil Nadu on 2 September, 1969 under the Chairmanship of Dr. P. V. Rajamannar to consider the entire question regarding relationship that should subsist in a federal setup between the Centre and the States. The other two members of the Committee were Dr. A. Lakshmanaswami Mudaliar and Mr. P. Chandra Reddy.

With regard to the Inter-state Council, the Committee made the following recommendations:

- a. The Inter-State Council should be constituted immediately. The proposed Council may consist of the Chief Ministers or their nominees, all the states having equal representation, with the Prime Minister as the Chairman. No other minister of the union cabinet should be a member of the Council.
- b. Every bill of national importance or which is likely to affect the interests of one or more states should, before its introduction in Parliament, be referred to the Inter-State Council and its views thereon should be submitted to Parliament at the time of introduction of the Bill.
- c. No decision of national importance or which may affect one or more states should be taken by the Union Government except after consultation with the Inter-State Council. Exception may be made to subjects like defence and foreign relations. But even on such matters the decision of the Central Government should be placed before the Inter-State Council subsequently without any avoidable delay.
- d. If the Inter-State Council is to be really effective, its recommendations should be made ordinarily binding on both the Centre and the States. If for any reason, any recommendation of the Inter-State Council is rejected by the Central Government, such recommendation together with reasons for its rejection should be laid before the Parliament and state legislature.

(c) **R S Sarkaria Commission**

In the wake of the increasing strain in the Centre-State relations, the Parliament, in June 1983, appointed a Commission under the Chairmanship of Justice R S Sarkaria to go into details of the Centre-State relations and to recommend measures to make the relation efficient and cooperative.

The Commission submitted its report in January 1988. The Commission did not call for any structural change, but preferred to continue the existing arrangement because the disintegrative forces are active in the country.

However, the Commission recommended the need for restructuring the provisions of the Centre-State relations.

To begin with it suggested the Centre, to relax its financial hold over the states and to provide them more autonomy. This would make the regional powers more responsible and accountable.

Major Recommendations of the Sarkaria Commission:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
2. Article 356 (President's Rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.
3. The institution of All-India Services should be further strengthened and some more such services should be created.
4. The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.

5. When the president withholds his assent to the state bills, the reasons should be communicated to the state government.
6. The zonal councils should be constituted afresh and reactivated to promote the spirit of federalism.
7. The centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.
8. The Centre should consult the states before making a law on a subject of the Concurrent List.
9. The procedure of consulting the chief minister in the appointment of the state governor should be prescribed in the Constitution itself.
10. The net proceeds of the corporation tax may be made permissibly shareable with the states.
11. The governor cannot dismiss the council of ministers as long as it commands a majority in the assembly.
12. No change in the role of Rajya Sabha and Centre's power to reorganise the states.

(d) **Second Administrative Reforms Commission**

The Second ARC was setup by the Government of India on 31 August 2005 under the Chairmanship of Shri M. Veerappa Moily with the directive to suggest various measures to achieve a proactive, responsive, accountable, sustainable and efficient administration for the country at all levels of the government.

The Commission submitted its report in 15 parts during June 2006 to May 2009. Part-7 of the report titled 'Capacity Building for Conflict Resolution: Friction to Fusion' made the following two recommendations regarding the Inter-State Council:

- (i) The Inter-State Council must be given the complete role provided to it under the Constitution, that is both conflict resolution and better coordination of policy and action in matters of interest to the Union and States. For resolution of conflicts, whether interstate or Union-State, the mechanism of enquiring and advising, even without having the power to adjudicate, envisaged by clause (a) of Article 263 can be an effective method to resolve disputes.
- (ii) The Inter-State Council should be constituted as and when the need arises and that the Council need not exist in perpetuity. The Council could best serve its purpose as a pro-tem body with a flexible composition suited to its term of reference. The present omnibus Council may be dissolved. There should not be any bar or impediment for constituting more than one Council at a given time with different composition for each to consider different disputes or other matters of concern to different states and the Union. This approach would also facilitate meaningful, result-oriented discussions by parties directly interested in an item and facilitate time-bound solutions.

(e) **Justice M M Punchhi Commission**

The Commission for Centre-State Relations headed by Justice Madan Mohan Punchhi has submitted its report to the Central government without much fanfare. This is a contradiction to the Liberhan Commission Report which was "full of sound and fury, signifying nothing" and which wasted 15 years.

A comprehensive review of Centre-State Relations was undertaken by the Sarkaria Commission in the mid-eighties. In the two decades that have gone by both the polity and economy have undergone profound changes, posing new challenges for government at all levels and calling for a fresh look at the relative roles and responsibilities of each level and their interrelations. The present Commission has been entrusted with this task and asked to make recommendations that would help to address the emerging challenges.

Major recommendations may be enumerated as follows:

1. There should be an amendment in Articles 355 and 356 to enable the Centre to bring specific trouble-torn areas under its rule for a limited period.
2. The commission has proposed “localising emergency provisions” under Articles 355 and 356, contending that localised areas — either a district or parts of a district — be brought under Governor’s rule instead of the whole state. Such an emergency provision should however not be of duration of more than three months.
3. The commission however supports their right to give sanction for the prosecution of ministers against the advice of the state government.
4. To make an amendment in the communal violence Bill to allow deployment of Central forces without the state’s consent for a short period. It has proposed that state consent should not become a hurdle in deployment of central forces in a communal conflagration. However, such deployment should only be for a week and post-facto consent should be taken from the state.
5. Among the significant suggestions made by the Commission is, laying down of clear guidelines for the appointment of chief ministers. Upholding the view that a pre-poll alliance should be treated as one political party, it lays down the order of precedence that ought to be followed by the governor in case of a hung house:
 - a. Call the group with the largest pre-poll alliance commanding the largest number;
 - b. The single largest party with support of others;
 - c. The post-electoral coalition with all parties joining the government; and last
 - d. The post-electoral alliance with some parties joining the government and remaining including independents supporting from outside.
6. The panel also feels that governors should have the right to sanction prosecution of a minister against the advice of the council of ministers. However, it wants the convention of making them chancellors of universities done away with.
7. As for qualifications for a governor, the Punchhi commission suggests that the nominee not have participated in active politics at even local level for at least a couple of years before his appointment. It also agrees with the Sarkaria recommendation that a governor be an eminent person and not belongs to the state where he is to be posted.
8. The commission also criticises arbitrary dismissal of governors, saying, “the practice of treating governors as political football must stop”. There should be critical changes in the role of the governor — including fixed five-year tenure as well as their removal only through impeachment by the state Assembly. It has also recommended that the state chief minister have a say in the appointment of governor.
9. Underlining that removal of a governor be for a reason related to his discharge of functions, it has proposed provisions for impeachment by the state legislature along

- the same lines as that of President by Parliament. This, significantly, goes against the doctrine of pleasure upheld by the recent Supreme Court judgment.
10. Endorsing an NCRWC recommendation, it says appointment of governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and Chief Minister of the concerned state. The Vice President can also be involved in the process.
 11. Unlike the Sarkaria report, the Punchhi report is categorical that a governor be given fixed five-year tenure. The Punchhi Commission report also recommends that a constitutional amendment be brought out to limit the scope of discretionary powers of the governor under Article 163 (2). Governors should not sit on decisions and must decide matters within a four-month period.
 12. The creation of an overriding structure to maintain internal security along the lines of the US Homeland Security department, giving more teeth to the National Integration Council.
 13. For the National Integration Council (NIC), the commission has proposed that it should meet at least once a year. In case of any communal incident, it has said that a delegation of five members of the Council, who would be eminent persons, should visit the affected area within two days and submit a fact-finding report.
 14. The commission, however, rejects a suggestion from some stakeholders as well as the Liberhan Commission that the NIC be accorded constitutional status.
 15. The commission has also studied new set-ups like the National Investigation Agency, and recommended procedures to ensure smooth cooperation of the states in terror investigations entrusted to NIA. One can say that the extreme politicization of the post of Governor must be decried and certain specific norms for the appointment and removal have to be evolved.

(f) Fourteenth Finance Commission

The Finance Commission is a Constitutional body created under provisions of Article 280; one of its important functions is to make recommendations regarding the devolution of taxes between the Centre and the states.

Fiscal federalism deals with the division of governmental functions and financial relations among various levels of government at the central, state and local levels.

Implications of the Fourteenth Finance Commission (FFC) [2015-16 to 2020-21] recommendations for fiscal federalism:

1. The total increase in FFC transfers in FY2015-16 from FY2014-15 is estimated to be about 2 lakh crores, with all states standing to gain in absolute terms.
2. The FFC transfers have more favourable impact on the states (among the General Category States) which are relatively less developed which is an indication that the FFC transfers are progressive, that is states with lower per capita net state domestic product receive relatively larger transfers per capita.
3. Also, due to a change in the horizontal devolution formula which now gives greater weight to a state's forest cover, some states are to gain more than others.
4. There would be more fiscal autonomy for states by increasing their share from 32% to 42% of divisible pool.

5. But, there could be commensurate reductions in the Central Assistance to States (CAS) to secure Centre's fiscal space.
6. However, CAS being discretionary and only mildly progressive, implementing FFC recommendations would entail even more progressivity.

In sum, the far-reaching recommendations of the FFC will further the Government's vision of cooperative and competitive federalism.

However, all the recommendations will only prove fruitful only if following measure are given priority:

- Administrative reforms particularly the bureaucracy at the state level
- Strengthening the centre-state coordination networks.
- Technical capabilities of states must be augmented
- Monitoring and audit must be given renewed thrust – CAG may be engaged.

5.1.16 Important Supreme Court Decisions

State of West Bengal vs Union of India (1962):

The case involved the question of sovereignty of individual states in India.

The Supreme Court held that

- (i) The Indian Constitution does not provide for absolute federalism. It provides to decentralize the authority, so that the large territory of India can be governed efficiently.
- (ii) The individual state has no power to amend the constitution which is vested only in the parliament.
- (iii) The Constitution has divided powers between the centre and the states in such a way that the national policies and local governance could be executed by the centre and the individual states, respectively.
- (iv) The Constitution provides supreme power to the judiciary to invalidate any law made by legislature if it violates the constitution.

S. R. Bommai vs. Union of India (1994):

In this case, the Supreme Court discussed about the provisions of **Article 356** (President's Rule). It laid down the conditions under which it can be imposed, so that the misuse of **Article 356** can be checked. The Supreme court laid down certain principles regarding **Article 356**:

- (i) President has power to impose **Article 356**, but the decision is not immune from judicial review. The judiciary can examine whether the proclamation was justified or it was imposed with malafide intention.
- (ii) The Supreme Court or the High Court can strike down the proclamation if it is found to be malafide or based on irrelevant grounds.
- (iii) It was held that the President has conditional power and not absolute power in regards to imposition of **Article 356**.
- (iv) It was held that the **Article 356** is an extreme power and is to be used as a last resort in cases where it is manifest that there is an impasse and the constitutional machinery in a state has collapsed.

5.1.17 Conclusion

The constitution of India is neither purely federal nor purely unitary but is a combination of both. It enshrines the principle that “in spite of federalism, the national interest ought to be paramount”.

It is emphasized that the Centre wants to empower the states with finances, with technology and knowledge so that they are able to plan better and execute even better. For federalism to work well, states must also fulfill their role in promoting the shared national objectives. The critical element for cooperative federalism to flourish is that states commit to the path they choose within the context of the shared national objectives and then deliver on that commitment.

To conclude, the adoption of innovations involves altering human behavior, and the acceptance of change. There is requirement to promote the spirit of cooperation and harmony between all the level of governments in India to usher in a powerful and inclusive India.

5.2 EMERGING PATTERN OF CENTRE-STATE RELATIONS

5.2.1 Introduction

The most important aspect of any federation is the power sharing arrangement made between the Centre and the States. The modern conditions have created scenario whereby all federal systems are ultimately biased towards the Centre. The Constitution has deliberately granted extraordinary powers to the Centre, and since independence these powers have been freely exercised in a state adopted to planned economy. It is understood that any consideration to be given to Indian federal system should first acknowledge the fact it is centre-centered. But enormous changes have indeed taken place in the federal setup since the adoption of the Constitution. The Constitution itself was tilted in favour of the Centre, during the initial decades after independence, the Union dominated the federal setup. The government under the leadership of Nehru and with active support from the Congress party, defended the adoption of strong centre-stance in order to maintain national integrity and unity. The dominance of Congress party during the initial years paved way for centralization of all major activities concerned with politics, economics and including government.

5.2.2 Era of Nehru

Nehru gave constitutional legitimacy to the centralized planning by bringing such matters under the purview of Entry 20 of the ‘Concurrent List’ in the Seventh schedule, which deals with distribution of powers between Centre and the States, and thus came to de facto control the whole economy.

1. Nehru’s ideological leaning towards democratic socialistic pattern of the society made him to adopt the centralized planning for the whole country.
2. From the initial stages, the Planning Commission – an extra constitutional body – took care of the disbursement of the funds and approval of the development plans of the States.
3. Hence the states were pushed to the margin and their economic consideration became secondary, they were now largely dependent on the centre for the funds.
4. The Centre also took control over all industries by enacting the Industries Development and Regulation Act 1956.

5. The states powers were also curbed by forming of all-India and specific boards for individual industries such as coffee, tea, rubber, etc.
6. During the period of Nehru and Indira, some of the important subject matters in the 'State list' of the seventh schedule was amended and encroached upon by the centre.
7. The centralization of the economy had several consequences, most importantly the identification of key industries and their location within the territory of the states.
8. It also involved nationalization of the insurance and aviation industries, culminating in nationalization of the major commercial banks in 1969 by Indira Gandhi.

(a) **Nature of Federalism-Nehru Era**

Nehru's phase had a strong centralizing tendency, but the centre took no effort to politically destabilise the state governments. The emergency was minimally used, and Nehru consulted with powerful state leaders before taking major policy decisions.

1. The centre-state relation during this period was relatively peaceful as the governments in the Centre and in the states were of one-single party and Nehru was its unquestioned leader.
2. It is understood that, the initial phase of Indian politics after Independence was based on elite consensus, it went uncontested because of its nearness to the national freedom movement, and the people had implicit trust on the leaders.
3. The federal structure functioned within the federal setup of the Congress party itself and not through constitutional channels.
4. During the time of Nehru and Shastri, the demands of the state were generally confined to federal fiscal matters and to other operational aspects of federalism; and centre-states disputes hovered around sharing of national revenue and states discontent was over the overarching power of the Planning Commission vis-à-vis the Finance Commission.

(b) **Language Movement**

During this initial phase, the language movement became more prominent. As per the provision of the Constitution, English was allowed to continue as official language of the Union for a temporary period of fifteen years. Accordingly, after the end of the period a review had to be made for further continuation of English language as the official language. But by mid 1950s debates around adopting Hindi as the official language and the link language between Union and the States started coming to the fore. Nehru in fact constituted the Official Language Commission under B.G. Kher in 1955. This commission submitted its report in 1956, and since then the language divide started to grow between the Hindi and non-Hindi speaking states, especially in south India and West Bengal.

1. The Kher commission recommended various steps for eventual replacement of English with Hindi.
2. The members of the commission from Tamil Nadu and West Bengal had submitted their dissenting notes against the recommendations.

3. A parliamentary committee was constituted under Pandit Govindh Ballabh Pant to study the Kher commission report, in order to address the growing dissent for compulsory use of Hindi by many state leaders and academic institutions.
4. Committee under Pant came out with its recommendation in 1959, it recommended that Hindi be used as the primary language of communication while English be made subsidiary one.
5. However, the anti-Hindi agitations did not subside and it in fact became stronger, and in south India, strong movements were launched against any possible move to make compulsory use of Hindi.
6. The movement was so strong in Tamil Nadu that, despite the assurances given by Nehru and Shastri, the Dravidian parties continued with their agitations which led to eventual fall of the Congress government in the state.
7. Despite having a strong pro-Hindi lobby, the Parliament adopted the Official Language Act of 1963 and subsequently the Official Language (Amendment) Act of 1967, which allowed for continuation of English as the official language and as a link language between the Union and the states.
8. There was no option before Nehru, but to continue make use of English as the official language.
9. He was also interested in maintaining the federal balance in order to accommodate the demands made by the non-Hindi speaking states. Nehru's comment on the introduction of Official Language Bill 1963 in the Parliament is as follows,

This is a bill, continuation of what had happened in the past, to remove a restriction which has been placed by the Constitution on the use of English after a certain date i.e. 1965. It is just to remove that restriction that this is placed.

As per the Official Language Rules 1976, framed under the Official Language Act, 1963,

- Communications from a central government office to state/union territories or to any person in region "A" comprising the states of Uttar Pradesh, Uttarakhand, Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand, Rajasthan, Haryana and UTs of Andaman and Nicobar Islands and Delhi shall be in Hindi;
 - Communications from a central government office to state/UTs in region "B" comprising of States of Punjab, Gujarat, Maharashtra and the UT of Chandigarh, shall ordinarily be in Hindi; but communication to any person in region "B" may be either in English or Hindi;
 - Communications from a central government office to state government office in region "C" comprising of all other states and UTs not included in regions "A" and "B" or to any office (not being a central government office) in region "C" to a state or a UT of "A" and "B" or to any office (not being a central government office) or persons in such state may be either in Hindi or English.
10. Though the Official Language Act and the official language rules allow continued use of English, there are still provisions in the Constitution which give importance to the promotion of Hindi language.
 11. For example, the *Article 343(1)* still contains provision that says the official language of the Union is Hindi.

12. In respect to the language used in the Parliament, *Article 120(1)* says notwithstanding anything in Part XVII, but subject to provisions of *Article 348*, the business in the Parliament be transacted either in English or Hindi. Provided that the Chairman of the council of states or Speaker of the House of people, or the one who is acting in that capacity, as the case may be, may permit any member to address the House in his mother-tongue, who cannot adequately express himself in Hindi or English.
13. Article 351 states, it shall be the duty of the Union to promote the Hindi language, to develop it so that it may serve as a medium of expression for all elements of the composite culture of Indian and to secure its enrichment by assimilating without interfering with its genus, forms, style and expression used in Hindustani and other languages of India specified in Eighth schedule, and by drawing, whatever, necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily other languages.

5.2.3 First Wave of Coalition Politics

The very tendency that initially created a desire for a stronger central authority, created this counter current by the states demanding greater autonomy. During the initial two decades after independence, Nehru and his government had to concede to create several states based on the linguistic re-organisation basis. By end of 1960s and early 1970s regional political parties started to emerge successfully challenging the domination by the Congress party.

1. The first wave of coalition politics-government radically altered the centre-state relations. In fact, several coalition governments were formed during the election of 1967.
2. Leftist parties formed coalition government in West Bengal and Kerala. Coalition governments with non-Congress parties formed government in Uttar Pradesh, Bihar, Punjab, Haryana, Madhya Pradesh and Orissa.
3. In Tamil Nadu, DMK got elected, which was a state party government, predominantly based on strong Tamil identity.
4. As a result of these developments, state leaders started to question the dominance of the centre.
5. The left-led government of Kerala, DMK-led Tamil Nadu, Swatantra-led Orissa emphasised right from the beginning that the authority of the centre should be curtailed.
6. Some of the states even asked for more taxation powers. C.N. Annadurai, Chief Minister of Tamil Nadu, expressed his views on the central planning as follows:

The powers which the Central government has assumed in regard to mobilization, allocation and pattern of utilization of resources for the plan have reduced the States to a status of supplication from the Centre. Though the Constitution of India is described as a federal one, the balance is tilted towards the central and hence the states are not able to function freely in the administrative and financial spheres. Only such powers are necessary for the Centre to preserve the strength of India should be assigned to the Centre and all other powers should be left to the States without impairing the ideal of a strong India.

5.2.4 Interregnum Period of Shastri

Nehru's death in 1964 brought into prominence the state party leaders of the Congress party. These State leaders took the important decision of placing Lal Bahadur Shastri as the successor Prime Minister after Nehru.

1. By the time Nehru fell ill, and question about his successor was raised, the State units of the Congress party had become more powerful.
2. The selection of successor of Nehru had no parallel anywhere in the world.
3. The President of the Congress party consulted with the senior cabinet ministers with political backing, the Chief Ministers of states, members of Congress parliamentary party and all of them along with the Congress working committee constituted the electoral college, which included the so called 'cadre of state leadership', which was a first in Indian federation.
4. And again when question of succession came after death of Prime Minister Lal Bahadur Shastri in Tashkent, the Congress Chief Ministers issued a joint statement to the Congress president Kamaraj to sponsor Mrs. Indira Gandhi as Shastri's successor.

(a) Period after the 1967 Elections- Strengthening of Regional Parties

The states in India gradually started to challenge the Centre by the mid-1960s. After the 1967 elections, some of the strategically and politically important states came under the rule of non-Congress government which strengthened the regional voice.

1. The Congress power had been curtailed and many states saw formation of coalition governments either with a central party or together with support of other regional parties.
2. This signalled the weakness of the Centre and increasing strength of the states. This phase has been described as the adulthood of the Indian federation.
3. The states under the control of the non-Congress governments by the end of 1960s started demanding structural changes in the Indian federal structure.

(i) Initiatives by Government of Tamil Nadu- The Rajamannar Commission

The Government of Tamil Nadu constituted a committee under P.V. Rajamannar in 1969, to examine the working of the Constitution of India and recommend changes for reallocation of powers between centre and the states.

1. The terms of reference of the committee was clear and it wanted to examine the question "regarding the relationship that should subsist between the Centre and the States in the federal set up, with reference to the provisions of the Constitution of India; and to suggest suitable amendments to the Constitution so as to secure to the States the utmost autonomy".
2. The committee under Rajamannar favoured autonomy to the states and suggested abolition of several Articles of the Constitution, such as 344(6), 356, 249, 357, 360, etc. of the Constitution.
3. It recommended for immediate constitution of the inter-state council, it also sought to remove the directions given by the centre to the States under the Article 256, 257 and 339(2), and instead these directions have come from the inter-state council.

4. It also suggested that any bill of national importance should be placed before the council and its views should be submitted to the Parliament when the bill is introduced to be passed.
5. The committee under Rajamannar recommended that some entries in the Union list such as power to levy some excise taxes (entry 84 in Union list), non-vital industries (entry 52 in Union list), etc. should be transferred to the State list.
6. While making further recommendations about this issue, the Committee recommended that a High Power Commission should be setup to effectively redistribute entries in List-I and List-III in the Seventh Schedule of the Constitution.
7. It also gave suggestion for increasing the revenue base for the states, constitution of Planning Commission without any members from Government of India in it, appointment of Governor in consultation with the State Cabinet.
8. Regarding *Article 3*, the Committee was of the view that the territorial integrity of the states should not be interfered without the consent of the states. Another suggestion was equal representation of the states in the committee based on their population.
9. In addition to these, the committee suggested to amend *Article 297* of the Constitution, so as to make the state the sole controller of all lands, minerals and other valuable things underlying in the ocean falling within the territorial extent of the state concerned.
10. The important point to highlight here is that the state of Tamil Nadu has been, for a long time arguing for autonomy of the state.
11. The DMK party in Tamil Nadu has in fact, consistently and repeatedly raised the question of federal autonomy and greater powers to the states.
12. Even in its 2009 election manifesto, the DMK had included a section of 'federalism' which is read as follows:

It is DMK's consistent stand that the Constitution should be amended for the creation of a wholesome and genuine Federalism with fuller autonomy for the states. A resolution.... (on).... State Autonomy was passed in the Tamil Nadu Legislative Assembly way back in 1974 itself by DMK. DMK will continue to insist on the abolition of Article 356 which empowers the dismissal of state governments. It will continue to strive for the suitable constitutional amendments that will empower the States to States to function freely and effectively.

(ii) Initiatives by the Government of West Bengal

The leftist government in West Bengal since mid-1960s had also started to call for revision of the Centre-State relations. The West Bengal government in December 1977 came out with a report on Centre-State relations which made the following suggestions:

1. Replacement of the word 'Union' by 'Federal' in the Constitution.
2. Repealing of Articles 356, 357 and 360.
3. Mandatory consent of the state government for formation of new states and alteration of area, boundaries or names of existing states.

This memorandum was submitted to the then Prime Minister Morarji Desai by the West Bengal Chief Minister Jyoti Basu to review the Centre-State relations.

5.2.5 Emergence of New Regional Elites

The green revolution of 1960s created a new crop of elite farmers who became a powerful lobby, these farmers from some of the progressive state started to play an important role in the centre-state dynamics. From the states of Punjab, Haryana, Uttar Pradesh an interest group of rich and middle-class peasants emerged, and they started to have great impact on the regional and national politics.

1. New demands were raised by the emergent elites from the rural areas with respect to federalism and economic development.
2. Apart from lobbying for farmers issues, they started to lay out regional demands and advocated state autonomy.
3. They started to influence the policy of the centre in areas such as food procurement and agriculture marketing.
4. However, they represented the rural local dominant castes, also referred as peasant castes and now officially known as the Other Backward Classes (OBCs).
5. Thus, the rich and landholding farmers turned the table in their favour, the rural landless poor peasantry were marginalized further.

5.2.6 Era of Indira Gandhi

The centre-state relation reached to its climax during the tenure of Prime Ministers Indira Gandhi. Imposition of emergency in 1975, the move towards over centralization went unchallenged till the second wave of coalition era started to emerge in 1989.

1. The offices and institutions of the state governments were used as platforms to implement the ideas and policies of the Central government leadership.
2. Indira Gandhi deviated from the leadership style of her father Nehru.
3. The central leadership became irrational and authoritarian, and it became intolerant to any kind of dissent from the opposition and even from within its own party.
4. Coercive techniques were used by the central government to tame and control the state governments.
5. The 42nd amendment enacted during the emergency further tried to enhance the power of the Centre.
6. Education which was previously on the State list was transferred to the Concurrent list.
7. Other nationalizing measures carried out by Ms. Gandhi before and after emergency are:
 - (i) Nationalization of the banks
 - (ii) The political role played by the state leaders were curtailed
 - (iii) The Chief Ministers of the Congress ruled states were selected by Ms. Gandhi in consultation with her kitchen cabinet.
 - (iv) Unilateral deployment of CRPF and BSF to any part of the country
 - (v) Unreasonable imposition of President's Rule in several states

(a) Janata Interregnum

Even the Sarkaria Commission constituted in 1988 on Centre-State relations mentioned the underlying theme was over Centralization. Even the subsequent Janata Party government which made a promise in election manifesto to revert the centralizing tendency did not reverse the trend.

- a. It removed several state governments with the use of President's Rule.
- b. In fact, in no time after it assumed power after the 1977 general elections, the Janata government dismissed/dissolved state governments and legislative assemblies of nine Congress ruled states namely, Haryana, Madhya Pradesh, Punjab, Uttar Pradesh, Bihar, Orissa, West Bengal, Himachal Pradesh and Rajasthan.
- c. The Janata government at the Centre was a weak coalition with partners having divergent political backgrounds.
- d. The following joined together, Bharatiya Jana Sangh, Socialist party, Swatantra Party, Congress (Rebels), Congress (O), Congress for Democracy and Bharathiya Lok Dal, as Janata party under one symbol.
- e. This coalition could not survive for long and again the Congress led by Indira came back to power in 1980 with an overwhelming majority.
- f. Still non-Congress governments in the states had a re-election. All such non-Congress governed states started to put up a united front, demanding more administrative and fiscal autonomy for them.
- g. Non-Congress governments in the states of Punjab, Tamil Nadu, Andhra Pradesh, West Bengal and other States in North East have been demanding to review the overall scheme of the centre-state relations.

(b) Second Phase of Indira Gandhi – 1980s

During Indira's reign in 1980s, Chief Ministers of the non-Congress ruled states held several conclaves at various places questioning the centre's negligence of state's development programme and eroding of the autonomy of the states. They also urged to review the Centre-State relation.

1. In 1982, the Chief Ministers of the four southern states met and agreed to form a council for southern region to restructure and negotiate the centre-state relation to ensure a more equitable distribution of the resources.
2. The second phase of Indira's rule was also authoritarian, like the previous regimes President's Rule was misused through improper use of the office of the Governor and state governments got dismissed, this continued until her death in 1984.
3. Once again the Chief Ministers of the states were handpicked on her will and wishes.
4. She still thought that the policy of centralization would work in her favour. But this centralization tendency faced a strong counter from the states during the second phase unlike the first.
5. This resulted not only in regionalization of the state politics but also the party system.
6. The demand for structural change to federalism received a sudden boost after the elections of 1983 whereby a number of non-Congress state governments came into existence, especially in south.
7. They mobilised support for bringing in changes in constitutional provisions affecting the powers of the state.
8. The political leaders of the state and the elites demanded greater powers and autonomy to the states.
9. As mentioned earlier, the DMK government in Tamil Nadu and notably the government of West Bengal always protested against the 'over-centralized' federal structure.
10. The Telugu Desam Party in Andhra Pradesh also revolted against the centralization policy of Mrs. Gandhi. This party was formed in 1980s to counter the hegemony

of the Congress in the state, as many Chief Ministers were replaced continuously by Mrs. Gandhi and the party became a laughing stock in the state. The rise of regional sentiments in Assam can be seen from the sprout of Assom Gana Parishad party in the state.

11. Indira's authoritarian and dictatorial rule was one the major reasons for the rise of Khalistan movement in the state of Punjab.
12. In 1973, Anandpur Sahib resolution of the Akali leaders asserted that the Sikhs are a separate nation and demanded that the political structure has to be changed by devolving more powers to the state from the centre in all areas except defence, foreign affairs, currency and communications.
13. This resolution was used by both the extremists of the Congress and the Sikh to sabotage the attempt made by the moderate Akalis to reach a settlement on the issues of Punjab with the centre.
14. The government of West Bengal too passed a resolution suggesting that Centre play only a limited role except that pertaining to defence, foreign affairs including foreign trade, communication, currency and economic coordination, moreover all these have to get approved by the National Development Council.
15. Chief Ministers of several non-Congress ruled state walked out in the session of National Development Council opposing Centre's dissolution of democratically elected government in Jammu and Kashmir.

5.2.7 Sarkaria Commission – Recommendations

In the wake of severe criticisms faced by Indira Gandhi on her centralization moves, she announced in the Parliament a proposal to appoint a commission on Centre-State relations to be headed by R.S. Sarkaria a retired Judge of the Supreme Court. Subsequently the commission was constituted vide notification IV/11017/1/83 CSR dated June 9, 1983. Further two more members were included in the commission namely B. Sivaraman and S.R. Sen. In order to resolve the Centre-State rivalry, the Commission recommended several measures, including role and selection process of the Governor and a strict procedure to be followed for imposition of emergency. The Sarkaria Commission made the following recommendations:

1. Setting up of inter-governmental council under Article 263, comprising the Prime Minister, Chief Ministers of all states and Union Cabinet members to discuss all major problems, other economic and development issues between the Union, State and Local governments. Though the council was set up, it could not do much to change the Centre-State relation.
2. It also recommended decentralisation of powers and Centre should restrain itself from occupying subjects in the Concurrent list.
3. An informal convention should be established whereby, whenever Centre decides to legislate of matters pertaining to the Concurrent list, it has to consult the state governments concerned, except in cases of extreme emergency of urgency. The consultation should not only be done with the individual states but also with the collective of all states in the inter-governmental council.

5.2.8 Role of Governor

The controversial role played by the Governor came into prominence during the blatant use of the President's rule during the regime of Indira Gandhi and Rajiv Gandhi.

1. The states raised voice against the role played by the Governor.
2. The appointment process too was questioned as it was largely political and had no rationale, but it had a significant impact on the Centre-State relations.
3. In the era of coalition regimes also, the office of Governor was misused to bring about the President's rule.
4. The intervention by the Judiciary reversed this trend. The Sarkaria Commission recommended certain measures to be taken before the imposition of President's rule in the State, but the Supreme Court in 1994 in the landmark S.R. Bommai case brought in the proclamation of emergency within the purview of the judicial review.
5. It also laid down certain guidelines for imposition of the President's rule in the states.
6. This unhealthy trend of imposition of President's rule came under fire from the Supreme Court in its Constitution Bench decision in Bihar Assembly Dissolution case (2006), which put a stop to misuse of Article 356. In this judgement the Court quashed the imposition of President's Rule in Bihar by the Centre.
7. Even in other several occasions too, the Judiciary has played a vital role in dissolving the Centre-State conflicts.

5.2.9 Federalism in Era of Coalition Politics

In the second wave of coalition era beginning in 1989, the coalition governments have become more prominent in Centre than in the States, it has thus changed the federal dynamics of the Centre-State relations.

1. The federalism debate became more vibrant and exciting. In the elections of 1989, the National Front in its manifesto talked about "true-federalism", it promised to reverse the 'centralising tendency of the ruling government'.
2. State level parties in the present times have played prominent role in dictating the agenda of the national government. In addition to the role played by the Judiciary in restraining the imposition of President's rule under its judicial review, the rise of regional parties in the national politics has also led to the review and reassessment of use of President's Rule (Article 356) by the Centre.

5.2.10 Effect on Policies of State

The economic liberalisation policies in the 1990s had their own impact on the centre-state relations. The centre's role has undergone a radical change after a new industrial policy was formulated in the 1990s.

1. Many of the leaders of the state started to play a progressive role in external trade, commerce and investment opportunities.

2. The state governments now also play important role in shaping foreign and diplomatic relations.
3. The structural adjustment programme of the WTO could not be carried out without the cooperation of the states, hence they were to be brought on board.
4. The Central government's legislative initiatives in areas such as agriculture, rural employment, education, social welfare, health care etc. in the recent times have also changed the federal dynamics.
5. In order to implement the progressive social welfare schemes, the central government is now resorting to the concerned ministries/departments to sign Memorandum of Understanding (MOU) with the concerned state governments.
6. This is important as Centre is dependent on the resources of the state government in order to implement major decisions and policies. Thus, real decentralization of power and authority presently taking place instead of mere transfer of administrative and functional powers, is now setting the outline for centre-state dealings.

5.2.11 Views of Dr. Ambedkar

The emergence of coalition governments at the Centre has strengthened the role of regional political parties and elites, but it has created an atmosphere where the governance of the country is suffering. At present there is a competitive blackmail type bargaining between the centre and the states and this is making the governance system more inefficient and corrupt. At this juncture, it is worth quoting the visionary leader Dr. Ambedkar's argument for a strong and unified India, way back in 1939,

The existence in the country of one government which can speak and act in the name of and with the unified will of the whole nation is no doubt the strongest government that can be had only a strong government can be depended upon to act in an emergency. The efficiency of governmental system must be very weak where there exists within a country a number of governments into which different parts of the nation's strength flows and whose resistance to the will of the Central government is likely to be more effective than could be the resistance of individuals, because such bodies are each of them endowed with a government, a revenue, a militia, a local patriotism to unite them.

5.2.12 Three Phases of Coalition Era

(a) Phase I

Looking into the Centre-State relations in the post independent India, we can see that it can be separated into three distinct phases. First, during the first two decades, most particularly under Nehru-Shastri, the centre-state relations can be termed as cooperative with leaning towards centralization. The centre-state relations were centralized in the areas of economic planning and national development, otherwise Nehru maintained politically balanced and cooperative federal relations.

(b) Phase II

In the second phase, after Nehru, especially after the 1967 general elections, Indira Gandhi turned the cooperative federalism of Nehru-Shastri into coercive federalism. The Centre-State relations became unidirectional initially, and later became reactionary. This kind of coercive federalism was marked by over centralization of both political and economic power. The states

were virtually ruled over by the Centre. Even the Janata government elected to power on basis of discontent against the policies of Indira, did nothing to reverse the centralization trend. In the second phase of Indira after the 1980s election, many of the state governments started to react sharply against the authoritarian and over centralization measures of Indira. Rajiv Gandhi while trying to become cooperative with the states initially, took upon his mother's over centralization and authoritarian measures to take political decisions. Again the states leaders reacted sharply to such measures. This coercive and over centralized decision-making process in centre-state relations continued unabated till 1989, when a new era of coalition regime started to emerge.

(c) Phase III

The third phase of the Centre-State federal dynamics started after the emergence of the coalition regimes was marked simultaneously with confrontation and cooperation between the Centre and the State governments. If the bargain worked in favour of cooperation, then centre and state cooperated, otherwise the confrontation between them became obvious. A continuous phase of coalition politics has given enormous power to some of the state political parties and their leaders to work the federal bargain in favour of their respective states. Political bargain was also carried out by the central government for its own sustenance. This bargaining has led to uneven development because of trying to 'accommodate' the interests of states, valid demands have been marginalized. And centre has become weak to carry forward any strong reform, including much talked about economic liberalization measures and national security concerns.

5.2.13 Punchhi Commission

The UPA government in 2007, constituted a Commission on Centre-State relations under the Chairmanship of M.M. Punchhi in order to address the emerging concern of centre-state federal dynamics. In a lengthy report in April 2010, in volume I, the Commission commented as follows:

.....with ever growing aspiration of the states and in some cases the concerns of the Central government, it was felt by the Government of India that time had come to have another comprehensive look at the entire gamut of Centre State relations so that a further positive headway can be made on this important subject.

It is clear that the Centre's concern about the emerging federal dynamics in centre-state relations was the main reason in constitution of the Commission under Punchhi on Centre-State relations. In fact constitution of previous Sarkaria Commission and the present Punchhi commission was based on two different considerations. In the case of Sarkaria Commission, it was constituted under the pressure from the state governments, while Punchhi Commission was constituted by Government of India on its own initiative.

5.2.14 Conclusion

Analysis of federal dynamics influencing the centre-state relations in post-Independent era may lead us to concur with the argument of J.A. Corry, that if Centralization pushed too far in any federation, it will break down in its own weight. This is particularly so because the states in a federation have territories of their own, if the territories in a federation are not well defined,

then it does not constitute a true federation. In a federal structure, the Centre has to be accommodative of the states. Constitutionally powers might be granted to the Centre to discipline the states, but in a democratic federal polity, the Centre cannot unilaterally use its constitutional power to impose its dictates. The Centre is dependent on the states, particularly in present time, where the state political leaders play an important role in forming of coalition government in the Centre. In the era of coalition governments, it will be difficult for the Centre to resort to any kind of centralization of power and authority. But in coalition regime, if the states are allowed to follow its own way, without recognising the need for inter-dependence, it will destroy the unity and integrity of the federation. There is a constant need for reappraisal of centre-state relations due to changing dynamics, hence a Parliamentary Committee on Centre-State relation may be constituted for this purpose.

5.3 IMPACT OF NEW ECONOMIC AND DEVELOPMENTAL POLICIES ON FEDERALISM

5.3.1 Introduction

In 1991, India brought in some significant economic reforms in order to overcome a severe crisis and to align itself to the neo-liberal conditions as suggested by the World Bank and the WTO allegedly on behest of the developed nations. India thus liberalized and opened its economy to the world by removing strict government barriers – rules and regulations – and easing the norms for foreign investment in the country. This reform led to substantial decentralization of powers and functions with larger decision-making power to the state governments in bringing in the investments to their respective states. This was a major boost of investments to the states, and some of the states exploited the opportunity to the maximum and brought in investments to their own states. However, things changed, the economic reforms did not spill over and it could not bring in the changes for which it was intended. Down the line, major economic reforms could not be brought in because of the reluctance of many state governments. It seems that there is an organic linkage between federalism and growth of modern-market economy. According to some scholars, in 1990's India experienced *de facto*, not *de jure*, decentralization of its policy management. This decentralization was not carried out in planned or systematic manner. Another impact of this neo-liberal policy combined with the coalition politics of 1990s is that the federal relations among states became more intense and competitive.

5.3.2 Impact of the Enron Deal

Direct negotiations were carried out with the State Governments immediately once the economy was liberalized, by the multinational foreign companies and other global financial institutions like the World Bank. It was perceived that states had become important centres of economic decision making, including that of the foreign entities. One such example of this is when a historic agreement was signed for power purchase between the Maharashtra government and the Texas-based energy giant, the Enron, in 1993. Sovereign counter guarantee was given by the Centre due to the pressure given by the Maharashtra State, in order to enter into the said agreement with Enron. However, the project could not see light of day as it was flawed and had to scrapped after strong lobbying and protests against it. Though the project was scrapped,

it had left denting revelations that the new economic reforms had on the Centre-State federal fiscal matters.

1. This episode with the Enron did not prevent Centre and State from carrying out other externally funded projects.
2. In fact, the sovereign guarantee given by the Centre to Enron became the basis for giving guarantees to several other external loans and funding to the state including the ones granted by the World Bank, Asian Development Bank and other agencies.
3. The World Bank has been funding development projects in some states under its structural adjustment programmes, this has caused some tension because as per *Article 292* of the Constitution, the states can borrow only within the territory of India.
4. The states were enthusiastic in getting funds from outside, hence the Central government thought over the issue because the fiscal deficits were also on the rise.
5. The Central government therefore directed the lending agencies and other international finance institutions to make sure that the funds they allocated to the states were not misused to meet revenue deficits and utilised only for the purpose it meant.
6. It also gave freedom to these institutions to discontinue funding if the state is not performing up to the standards.

5.3.3 The Deal with WTO

One of the most significant aspects of the post 1991 reforms is the negotiation carried out by the Government with the WTO and how this impacted the Centre-State relations. Under *Article 253* of Constitution of India, the Central government has a sovereign and exclusive right to enter into international bilateral and multi-lateral treaties/ agreements/ convention. But when the Centre was making such negotiations with the WTO they had to face stiff challenges from the states. As the usual practice, the Government of India without consulting the states signed the agreement with the WTO in 1994. And when the treaty had to be operated in the country from January 1995, various voices were raised by the state governments against the contentious issues of the WTO provisions already signed.

1. As per the Constitution Seventh Schedule, the subject matter of agriculture belong to the State list, hence falls under the legislative purview of the State government, but the Central Government taking advantage of powers under *Article 253*, had already made several negotiations with the WTO with various matters pertaining to the subject matter of agriculture – including agriculture production, marketing and pricing and distribution of agricultural products.
2. The WTO treaty had a far reaching consequence on the Indian federalism. Though a broad reading to the Constitution may seem to confer all the powers to the Central government to enter into such negotiations, but in reality this move went directly against the spirit of federalism.
3. Very recently, the Centre's move to introduce foreign direct investment in multi-brand retail was stiffly opposed by the states on the fact that it would impact small retailers and farmers, and thus they were able to force the Centre to revisit its policy in the same.
4. The states were given option to decide whether to allow retail investments in their states or not.

5.3.4 Impact of State Government on Centre's Policy

There are also other instances where the states have played de facto role in determining the decision of the Centre on foreign policy of Government of India. For instance, the state of Tamil Nadu has very often been directing the Central government on how it should maintain relations with the neighbouring country of Sri Lanka. The legislative assembly of the State of Tamil Nadu has even passed resolutions dictating on its own terms for the Indo-Sri Lanka relations. Recently because of the stand taken by the Government and political parties of Tamil Nadu, the Prime Minister of India had to cancel his participation in an important meeting of the Commonwealth Heads of Governments Meeting (CHOGM) in Sri Lanka. As far as the river water sharing agreement with Bangladesh is concerned, the government of West Bengal has its own stand. In the issue of sharing the water of Teesta River, the action of West Bengal government embarrassed the Government of India recently. There are various other instances where the states have played a role in influencing the foreign policy matters. States with international borders have always had a say in foreign policy matter either directly or indirectly.

5.3.5 Impact of Neo-liberal Economic Policies

Coming back to the impact of the neo-liberal economic policies on the Centre-State relations, it is important to highlight that such policies have created growth and development of numerous new central agencies and regulatory bodies in order to boost the liberalized market economy. Some of the pan-India central agencies like the Competition Commission of India, the Securities and Exchange Board of India, the Telecom Regulatory Authority of India, the Insurance Regulatory and Development Authority of India, the Central Electricity Regulatory Commission, etc. have started to play important roles and all these have far reaching federal implications. In addition to this, the National Commission to Review the Working of the Constitution (NCRWC) has recommended, that for the purpose of carrying out the objectives set out in Articles 301,302,303 and 304 of the Constitution, and for other purposes relating to needs and requirements of inter-State trade and commerce and to eliminate barriers preventing them, the Parliament should by law constitute an authority called as the 'Interstate Trade and Commerce Commission' (ITCC) under the ministry of Industry and Commerce.

1. While the neo-liberal economic policies have had made significant impact on the Centre-State relations, developmental issues are also increasingly tend to impact this relationship.
2. These development issues broadly cover a wide range of issues pertaining to governance and service delivery of some of the major areas of public concern – including agriculture, social welfare, education, health, family planning, rural development etc., most of these are under either the state jurisdiction or under Concurrent list as per the Constitution.
3. However, due to lack of sufficient funds and expertise, the states are not taking much initiative in these major areas of concern.
4. Though it is in the hands of the state governments to take initiative, they tend to look at the centre for directions in these matters. Taking Education, for example, it was initially under State list and then brought to the Concurrent list by the 42nd Amendment of the Constitution in 1976.

5. And since then all major legislative and policy decisions involving the field of Education has been made by the Central Government. Even in the case of subject of Agriculture, all major policy initiatives have been taken by the Centre.
6. The Centre is thus playing a dominant role in the areas of state concern.
7. It has brought in several major policies and legislations in the field of agriculture, social welfare, health care, family planning, education, housing, rural development, etc.
8. All these areas have been covered by the central planning, and under one or the other centrally sponsored schemes, all these factors have soured the Centre-State relationship.
9. All these acts by the Centre have eroded the responsibility and initiative of the states, even their constitutional accountability has been diminished.
10. The more the centre forms policies on the state subjects, the more damaging effect it has on the centre-state federal structure.
11. This is so because majority of these schemes were formed without the consultation of the state governments, and their views were not sought while framing the guidelines for their implementation.
12. Sarkaria Commission on Centre-State recommended that the Central schemes should be kept to a minimum and there should be maximum decentralization of plan formulation.
13. Rather than decreasing, the Centre continued to increase the centrally sponsored schemes with clear disregard to the federal system.

5.3.6 Inequality Between the States

According to scholars, India is a federation of states but its regional developmental process was relegated to the background in the clamour for fulfilling national growth objectives. This led to significant inequality gap between the states based on infrastructure and development. Though the liberalization and the reforms after 1991 put India on the fast track of growth, inequality is prevailing among the states. Hence, the several states have started demanding flexibility in their planning and growth strategies. The issue of regional disparity and inequality prevailing among the states were put forth by the backward states long before the reforms of 1991 got initiated in the country. The third five year plan in 1961, explicitly stated that the location of new enterprises, whether government or private, due consideration has to be given to create a balanced economy in different parts of the country. The Central government addressed this issue of states by issuing 'special category status' to some states based on their backwardness, presence of hilly region. Even some of the bigger states like Bihar, Orissa and Bengal are now demanding the special category status.

1. In short, the neo-liberal policies and reforms of the 1991 have radically transformed the Indian economy to a market economy and presently corporates and industries now play a dominant role in restructuring the political economy of the country.
2. Despite this, the autonomy of the state still remains an important factor for consideration.
3. It would be difficult to carry forward the growth and development agenda, without addressing the concern of the states and their autonomies in their own sphere and jurisdiction.

5.3.7 Impact of Corruption

Another major cause of concern for the Centre-State relations is the fight against corruption and criminalization of politics which has now become a predominant feature of the Indian political system. The criminal law enforcement system is heavily tilted in favour of the Centre, organizations like Central Bureau of Investigation which is responsible and accountable to the office of the Prime Minister, is the principal agency in combating high political and bureaucratic corruption not only at the centre but also in the states. Rather than combating the menace of corruption this agency has been used discriminately against the states.

5.3.8 Subject of Education

As far as sphere of education is concerned, it seems that the Centre is taking overall responsibility. Since the time of emergency, when the subject of Education was moved from the 'State list' to the 'Concurrent list', the Central government has started to bring in major legislations in that subject. Moreover the states also follow the guidelines set by the Centre in this regard. This centralized control of education by the Centre can be traced back to the British era. The Central Advisory Board of Education (CABE) established in 1920 by the colonial government marked the beginning of the centralized coordination of education in the country. Despite education being subject matter of the State list, the matters of higher education always came under the purview of the Central government. Apart from creation of University Grants Commission (UGC), the central government created several other bodies to regulate and implement its policies in the sphere of education. The All India Council for Technical Education Act, 1987 and the National Council for Teacher Education Act, 1993 have both given the control of technical and professional education to the Centre.

1. The Central government has in fact completely intruded into the sphere of education and have recently enacted many legislations pertaining to it, and the most important of those legislations is the Right to Free and Compulsory Education Act, 2009.
2. States are presently trying to attract more central institutions, such as IIT and AIIMS to their states. In order to maintain the federal balance, the Central government has created Central universities in almost all states.
3. Federal consideration is now becoming an important factor in determining the strategic location of various other central government institutions of higher and professional education.
4. *Views of Members of Constituent Assembly*
Members of the Constituent Assembly understood the significance and hence supported the central control of the education. Some scholars such as Frank Antony proposed that the education throughout the country has to be under the control of the Centre after getting approval and endorsement of people of eminent domain associated with the sphere of education. Others such as Renuka Ray stated that in the nation-building services the unifying force has to be strong, hence the Centre should be given power to regulate and coordinate services especially education and health. Basanta Kumar Das stated that Centre should have enough power to carry out a uniform policy of education and to give financial assistance to the states so that such uniform standards

be reached. Phool Singh was also in favour of uniform education policy as elaborated by the Centre and states receiving adequate financial assistance from the Centre.

5. The above-mentioned debates in the Constituent Assembly was reflected in the contemporary educational policies in India.
6. The Sarkaria Commission on Centre-State relations was of the opinion that the best way forward in the sphere of education is that, actual norms and standards of performance are set by the Union and bodies such as UGC set up under central legislations but the actual implementation should be left to the States.
7. The Commission was also of the opinion that a system of monitoring has to be established by the Union, further it suggested that states and their universities/institutions have to be taken into confidence through close collaboration and cooperation between the Centre and the states.
8. From an overall perspective, it is clear that the States do not have adequate infrastructure and resources to carry forward the burgeoning educational requirements.

Thus, the states have to rely on the Centre which has taken de facto responsibility to control and regulate the sphere of education in almost every aspect. In establishing Central universities and institutions within the jurisdiction of the states it should follow certain minimum/uniform standards and regulations. However, modification and changes might be required so that specific and peculiar problems of each state is addressed in effective manner.

5.3.9 Conclusion

The beginning of independent India was with a unitary federal state under a highly centralized Constitution, which defined India as 'Union of States'. This term obviously meant federation, though the term was deliberately avoided in the Constitution. The federalism was an inevitable necessity. Though the Constitution was in favour of the Centre, it did make provisions for maintaining the federal characteristics. In due course of time, the federalization had strengthened as recognition was accorded to federal diversity of ethnic, regional, linguistic and other cultural communities. The process of federalization had happened through unionization and regionalization, which are expected to provide for the stability of the nation as a whole. The Constitution grants enough power to states to give representation and protect the identities and interests of the minority communities including territorial and non-territorial communities.

India though a multi-national state, is increasingly tending towards a nation-state system. The states are looking toward one government that is at the Centre, which is playing a dominant role in almost all aspects. Centralized political authority is considered to be the most suitable for any effective governance system in the country. This effectively curbs the mischief of the regional leaders and parties. Perhaps time has come now to recognise districts as constituent units of governance. The Constitution might delegate specific power and responsibility at the district level, including the criteria to create new districts. The Central government should stop its dependency on the states for implementation of its policies, instead it should deploy its own officers and set up the effectiveness of the districts so that they become the centre of implementation. The Centre can also promote the local elites. There should be no other state than that of the Nation-State with governance structure based in the districts. This may essentially solve many of the problems faced by various smaller minority and unrepresented communities.

5.4 GOVERNOR AS FACTOR IN FEDERAL RELATIONS

5.4.1 Introduction

Long before independence the office of Governor has been functioning as the head of the provinces. The office is still playing a pivotal role in the Centre-State federal relations. *Article 153* of the Constitution provides that there shall be Governor for each state and *Article 154* says that he shall be the executive head of the state. The Constitution also provides that the same person can be the Governor of two or more states. The important provision given in the Constitution has been highlighted by the Sarkaria Commission, three important facets of the Governor's role is as follows:

- a. The constitutional head of state operating normally under a system of Parliamentary democracy.
- b. A vital link between the Union government and the State government.
- c. An agent of the Union Government in a few specific areas during normal times (e.g. *Article 239(2)*) and in a number of areas during abnormal situations (e.g. *Article 356(1)*).

Though the position of Governor in post-independent era is considered to be symbolic, he has often played a very controversial role in the relations between the Centre and the State. As per the Constitution, the post of Governor is not an elected one, rather it is appointed by the Union Government. Though he/she plays a very vital role in relations between the Centre and the State, the state has no role in the appointment process. Governor is appointed on recommendation of the Central government by the President, he can continue for a term up to 5 years and holds office at the pleasure of the President. This shows that the Governor is an agent of the Centre, but Constitution nevertheless bestows up on his office important and vital powers which is central to the functioning to the state government.

5.4.2 Origins – Office of Governor

As mentioned earlier the post of Governor is not a new one, it had its origins long before the independence of the country, under the auspices of the British Empire the office of Governor was created. In fact, the Governor had a very important role to play under the Government of India Act, 1935. But these powers granted to the Governor of the province under the 1935 Act were significantly reduced in the Constitution after the independence.

1. Serious debate took place when the powers to be granted to the Governor came up before the Constituent assembly, which was given the responsibility to frame the constitution of the country.
2. Various arguments for and against were made regarding the election/nomination of the Governor and his/her role, authority and power.
3. The Provincial Constitutional Committee had formed and submitted a model provincial Constitution, and based on this in July 1947 the Constituent Assembly had accepted the principle for the election of the Governor for all the provinces based on universal adult suffrage.
4. There were some difficulties in proceeding with direct election of the Governor with limited responsibilities.
5. Hence, the Constituent Assembly later in the discussion of the draft Constitution decided to do away with the system direct election of the office of Governor.

5.4.3 Views of Leaders on Governor's Office – Constitutional Debates

(a) Alladi Krishnaswami Ayyar

Alladi Krishnaswami Ayyar made arguments rejecting an elected Governor. He supported the concept of Presidential appointment on consultation with the cabinet. According to him, the expenses involved in process of election was disproportional to the powers vested to the office by the Constitution. Like other leaders, he saw that there would be a danger of clash when both Governor and the Chief Minister are elected by the people. Most of members of the Constituent assembly at the time of debate thought that the post of Governor will be just a mere figure-head as he/she will not be interfering with the day to day administration of the provinces.

(b) P.S. Deshmukh

According to P.S. Deshmukh, if the position of Governor is going to like that what were provided under the 1935 Act, and similar provisions were adopted in the draft constitution also, then the post of Governor has to be appointed by the President and no election process is to be involved. Like many other leaders like Ayyar, Deshmukh too had his own apprehensions about the office of elected Governor coming in conflict with the provincial government. As the debate went on further many of the members of the Constituent assembly were against the direct election based on universal adult suffrage.

(c) B.G. Kher

According to B.G. Kher, the direct election was not advocated by anyone not just because it incurred huge expenses, but also to the fact that there is already a post elected- chosen by all the people of the state and the whole power was bestowed upon this office of the Chief Minister, if another person is chosen directly by the people, there would be confusion in allocation of the responsibility and authority of the State which would further lead to conflict, and this conflict has to be avoided for smooth functioning of the administration. However, Kher disagreed with the argument that Governor is just a mere figurehead. To quote Kher,

So far as the Governor is concerned, we have given him very few powers. But, I do not agree with the comment that he is mere a figurehead; a figurehead is capable neither of good nor of bad. I wasn't to submit to the House, Sir, that a Governor can do a great deal of good if he is a good Governor and can do a great deal of mischief, if he is a bad Governor, in spite of the very little power given to him under the Constitution we are now framing. The powers that we purpose to give him, and the functions that we assign to him are very few such as summoning and dissolving the Assembly, to give assent to the bills passed by the State Assembly, to act as representative of the State, to nominate the Premier after the general election of the resignation of the Ministry, to represent the province on ceremonial occasions and such power as given to act in the emergency. He is the symbol of the State and we have found in actual practice that if he is an active Governor, a good man, he can, by all means of getting into touch with opponents of the party which is in power, reconcile them to good number of measures, and generally, by tours and other means make the administration run smoothly. Similarly he can do a great deal of mischief. I believe, therefore, to have as a Governor a person who is elected on a wider franchise to have at the head of the province a person who is supposed to be more representative than the Premier would be a mistake....the only insurance for smooth government in the provinces is to allow the President of the country to nominate a person who enjoys his confidence, which clearly means, the confidence of his Cabinet as also the cabinet of the Province, to be the Governor or the province any other mode, whether by election on adult suffrage or by election by the representatives of the people in the House will give rise to considerable friction.

B.R.Ambedkar made it clear about the powers of the Governor, he stated in the Constituent assembly as follows, “...the real issue before the house is really not the nomination or election because as I said this functionary is going to be purely ornamental functionary; how he comes into being, whether by nomination or by some other machinery is purely a psychological question”.

(d) H.N. Kunzru

According to H.N. Kunzru, the ultimate power with regard to any serious problem in the province will rest with the President, but he will not act without consulting the Governor of such province. Constituent assembly at the time of discussion about the general principles of the Constitution agreed that there has to be some provision for its breakdown, something similar to the Section 93 of the Government of India Act, 1935. It was proposed that if the Governor feels that the setup provided by the Constitution for administration of the province breaks down, then the Governor should have the power by proclamation to take over the administration of the province for a fortnight and communicate the same with the President that since constitutional machinery had failed in the state, he the Governor had proclaimed and taken over the administration to himself. This shows the dominant role played by the Governor in the provinces, there were also other voices calling for increased power to Governor and his direct election by the people.

(e) Jawaharlal Nehru

At the time of final discussion of the draft Constitution, the Constituent assembly accepted the provision to have a nominated Governor. On 31st May 1949, Jawaharlal Nehru stated as follows:

..... I feel that if we have an elected Governor that would to some extent encourage separatist provincial tendency. There will be far fewer common links with the Centre.... Apart from the tremendous burden of these elections for the provincial and the central legislatures, to add another election on this major scale would mean not only spending a tremendous deal of energy and time of the nation but also money of the nation and divert it from far more worthwhile projects. Apart from this it would undoubtedly mean, I think, encouraging that narrow provincial way of thinking and functioning in each province... I think it would be infinitely better if he was not so intimately concerned with the local politics of the province, with the factions in the provinces. He must be acceptable to the province, he should be acceptable to the government of the province and yet he must not be known to be a part of the party machine of that province. He may be sometimes, possible a man from that province itself. We do not rule it out. But on the whole it probably would be desirable to have people a part in politics. There may be an eminent educationist or persons eminent in other walks of life, who would naturally, while cooperating fully with the government and carrying out the policy of the government... I think that an elective Governor is almost invariably not only likely to be that province, but is likely hardly ever to represent any of the numerous minority groups that exist in the country.

5.4.4 Role of Governor – Constitutional Debates

Majority of the members in the Constituent assembly felt that the Governor has to play the important role of the agent of the Centre.

1. They wanted the Governor to help the Central government in implementing its policies and agenda throughout the country.
2. Many of the senior most leaders were unconcerned about the autonomy of the provinces. Their main agenda was to unite and integrate the country, and they felt that it can

be achieved by nominating the Governor by the Union, rather than having him elected directly by the people.

3. This nomination will enable the Central government to effectively control its policies and agendas.
4. They wanted the provincial government to be subordinate of the Central government.

The Chairman of the drafting committee of the Constitution, B.R. Ambedkar clarified this position in the Constituent assembly on 1st June 1949, he stated as follows:

Because the provincial governments are required to work in subordination to the central government, and therefore in order to see that they do act in subordination to the central government the governor will reserve certain things in order to give the President the opportunity to see that the rules under which the provincial government are supposed to act according to the constitution or in subordination to central government are observed.

Towards the end of the constituent assembly debates, B.R. Ambedkar further highlighted the constitutional role of the governor as follows:

The Governor under the Constitution has no function which he can discharge by himself; no function at all. While he has no function, he has certain duties to perform, and I think the House will do well to bear in mind this distinction... a distinction has been made between the functions of the Governor and the duties which the governor has to perform. My submissions is that although the Governor has no functions still, even the Constitutional Governor, that he is, has certain duties to perform. His duties according to me, may be classified in two parts. One is, that he has to retain the Ministry in office. Because the Ministry is to hold office during his pleasure, he has to see whether and when he should exercise his pleasure against the Ministry. The second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry, to suggest to the Ministry an alternative and to ask for reconsideration. I do not think that anybody in this House will question the fact that the Governor should have this duty case upon him; otherwise, he would be an absolutely unnecessary functionary; no good at all. He is the representative not of a party; he is the representative of the people as whole of the state. It is in the name of the people that he carries on the administration. He must see that the administration is carried on at level which may be regarded as good, efficient, honest administration. I submit that he cannot discharge the constitutional functions of a governor which I have just referred to unless he is in a position to obtain the information.... It is to enable the Governor to discharge his functions in respect of a good and pure administration that we propose to give the Governor the power to call for any information.

5.4.5 Role of Governor – After Independence

The Constitution of independent India has vested some very important powers, roles and responsibilities on the office of the Governor.

1. The Governor plays an important role in the legislative sphere of the state concerned.
2. He may or may not give consent to the bill passed in the Assembly. In this regard, *Article 200* states that when a bill is passed in the legislative assembly of the state or, in case of states having legislative council, by both the Houses of the legislatures, it shall

be presented to the Governor, then he either gives assent, or withholds it, or he sends the bill again to the legislature for its reconsideration, or he withholds his consent and reserves the bill for the consideration of the President.

3. Further *Article 200* provides that when the reconsidered bill is again submitted before the Governor with or without amendments, he has to give his assent and cannot further delay its passage.
4. Also under *Article 201*, the Governor is given power to reserve the bill for the consideration of the President.
5. *Article 161* of the Constitution bestows power to the Governor to grant pardons, reprieves, respite and remission of punishment or to suspend, remit or commute sentence of any person convicted of any offence to which the executive power of the state extends.

5.4.6 Controversial Role of Governor

The most controversial role of the Governor which has serious repercussions on the Centre-State relations is when he submits reports to the Central government recommending the President's Rule in the state.

1. Emergency under *Article 356* can be proclaimed even without the report of the Governor by the President if he is satisfied that such situation exists, however most of the President's Rule in states have been proclaimed on basis of the reports of Governors.
2. The Central government in order to avoid controversy for taking unilateral decision on imposing Emergency, relies on the report of the Governor to impose it.
3. Since the Governor being an appointee of the Centre, generally complies and cooperates with the Centre and provides with reports as required by the Centre, in this case-recommendation report for imposition of President's Rule.
4. There are also few instances where the Governor refused to comply with the directions to the Centre and the Union government had to unilaterally impose the President's Rule.

5.4.7 Examples – Excesses by Governors

The report of the Governor based on which the President's Rule was imposed was unchallenged until the landmark Supreme Court's judgement in S.R. Bommai's case. There was no one single way or guideline based on which the report has to be submitted for recommending President's Rule.

(a) Kerala

For example, the imposition of the President's Rule in the state of Kerala in 1959 was based on the recommendation of the report of the Governor, who had felt that the ruling party had "lost support of the majority of the people". This doctrine can become a dangerous weapon in hands of the Governor and the Central government who can dismiss constitutionally elected government in the state. Even personal conviction of the Governor became grounds for dismissal of the state government and for imposing the President's Rule in the state. In the above case, the Governor did not bother to realistically analyse whether the communist government enjoyed majority or not in the assembly.

(b) Andhra Pradesh

In another incident of imposition of President's Rule, the Governor of Andhra Pradesh, in 1984, dismissed the non-Congress Chief Minister allegedly based on some information that he had lost majority in the assembly. A minority government was then installed and was given an unusual long time of a month to prove majority on the floor of the house, which it failed to do. Rather the previous dismissed Chief Minister N.T. Rama Rao of the Telugu Desam Party successfully proved his majority. This shows that how Governors arbitrarily dismiss, without any genuine reasons, a constitutionally elected government based only on political considerations. In the case of Andhra Pradesh, the Governor and the Central government came under intense public pressure, and were compelled to set aside their earlier order and had to replace the Governor; also there were raising calls for abolition of office of Governor itself.

5.4.8 Governor – An Agent of Centre

The discretionary powers granted to the Governor were in reality used by the Central government using the Governor as the proxy.

1. The office of Governor was used frequently by the Centre to install government of its choice in the State.
2. The controversy starts right at the beginning, with the appointment of Governor. The office of Governor has to be neutral as envisaged by the Constitutional makers, but in reality defeated and active politicians were appointed to the office, thereby politicising the post of the Governor, who then took active part in the politics.
3. Non-political persons such as retired Bureaucrats too were appointed as Governors, even they were loyal to the government that had appointed them.
4. The frequent use of President's rule and the role played by the Governor in it, particularly in coalition situation, created a unique practice of 'parading' the supporters before the Governor of state to convince him of the majority for forming the government.
5. The political role of the Governors can be clearly seen from the fact that they never stick to a fixed time for proving the majority. Some selected leaders and parties were given extraordinarily long time to prove majority while some others were denied the same.

The Governor's office was so politicized that when the National front government led by V.P. Singh took over the Central government, the President, in January, 1990 called for resignation of eighteen Governors "to facilitate the reshuffle by the Union". The National Front Government could not trust the impartiality of the Governors appointed by the previous Rajiv Gandhi-led Congress regime.

5.4.9 Recommendations – Sarkaria Commission

Several representations regarding the role of the Governor was made before the Sarkaria Commission on Centre-State relations by the State governments, many calling for the reduction in powers and role of the Governor. Representations were even made for the abolition of the office of Governor itself. The Sarkaria commission suggested the following four criteria for being appointed as a Governor,

1. He should be eminent in some walk of life.
2. He should be a person from outside the state.
3. He should be a detached figure and not too intimately connected with the local politics of the state.
4. He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance hitherto.

The Sarkaria Commission recommended that the selection should be based on consultation with the following authorities, the Vice-President of India, Speaker of Lok Sabha and the Chief Minister of the State concerned. The Commission also recommended that it is “desirable that a politician from the ruling party at the Centre is not appointed a Governor of a State which is being run by some other party or a combination of parties”. The Commission observed that different Governors had adopted different methods for similar situations for the dissolution of the State assembly; and, accordingly, it was suggested by the Commission that Article 356 be amended so that “the State Legislative Assembly should not be dissolved either by the Governor or the President before the proclamation issued under Article 356(1) has been laid before Parliament and it has had an opportunity to consider it”.

5.4.10 Recommendations – National Commission to Review the Working of the Constitution

The NCRWC has also made certain recommendations with regard to what role the Governor should or should not play. It recommended that the question of whether a government has lost majority in the assembly has to be decided only on the floor of the assembly and nowhere else. NCRWC also recommended that the government in the state should not be dismissed as long as it enjoys confidence of the House and the majority in the Assembly. The Governor can only dismiss the government when the Chief Minister refuses to resign even after his party had failed to prove majority on the floor of the House and on losing a no-confidence motion in the Assembly. In a situation of political breakdown, the NCRWC recommended that

The Governor should explore all possibilities of having a Government enjoying majority support in the Assembly. If it is not possible for such a Government to be installed and if fresh elections can be held without avoidable delay, he should ask the outgoing Ministry, (if there is one), to continue as a caretaker government, provided the Ministry was defeated solely on an issue, unconnected with any allegations of mal-administration or corruption and is agreeable to continue. The Governor should then dissolve the Legislative Assembly, leaving the resolution of the constitutional crisis to the electorate.

Regarding the imposition of the President’s Rule based on the Report of the Governor, the NCRWC recommended that the report has to be a ‘speaking document’ containing a precise and clear statement of all material facts and grounds on the basis of which the President may satisfy himself as to the existence or otherwise of the situation contemplated in Article 356, and the governor’s report based on which the President Rule is imposed should be given wide publicity in media and in full.

5.4.11 Conclusion

Even in present condition the office of Governor continues to play a major factor in the Central-State federal dynamics. Despite numerous recommendations made by various commissions on Centre-State relations the office of Governor is continued to be misused by the Central governments. It has become a ritual to reshuffle or change the Governors of the states when there is a change in the government at Centre.

5.5 IMPACT OF EMERGENCY ON FEDERAL RELATIONS

5.5.1 Introduction

There are some very unique features present only in the Constitution of India and found nowhere else. One such provision is the Emergency powers vested with the Central government. Central government has the power to turn the federation into a unitary system during this period, and in case of President's rule it has the power to suspend the state government, and during Financial emergency it controls the finances of the state. Under the *Articles 352/356*, the Central government virtually takes control over the entire legislative, administrative and executive functions of the state instead of restoring back the constitutional machinery in the state which had failed.

5.5.2 Emergency Provisions in Constitution

Except on few occasions, most of the application of President's rule was for political considerations. As per the Sarkaria commission's report, nearly 75 instances of application of President's rule was to prevent a party from forming a government or dismiss a legitimately elected government. Political controversy followed most of the President's rule and widespread protests and agitation were carried out by the people in many instances and hence leading to the removal of the Governors who have proposed the President's Rule in the State. *The Articles 352, 356* were envisaged as a last resort and as a salvage operation for the sick state, but it has been brazenly and wantonly violated by every government who has assumed power at the Centre. The word 'otherwise' given in *Article 356* has been interpreted in various ways to dismiss the state governments by the Centre without the reports of the Governors. Hence, it is clear that the emergency provisions have significantly impacted the Centre-State federal dynamics. But it is also clear that all these interregnums were temporary none were permanent, the Constitution also made it clear that these emergency provisions operated for a limited time only.

5.5.3 Emergency: The Beginning

The first controversial use of the *Article 356* was made by the first Prime Minister Jawaharlal Nehru when he imposed the President's Rule in Punjab in 1951. He forced the Congress Parliamentary board to compel the then Chief Minister of Punjab Gopichand Bhargava to resign even though he enjoyed the majority support of the Nehru's cabinet. He informed the President that after the Chief Minister resigns no new ministry would be formed, rather the Governor will submit a report that it was not possible to run the government as per the Constitution and hence the President then should invoke the President's Rule in the state and take over its administration. Nehru was careful in imposing the President's Rule then onwards, but Indira Gandhi, Rajiv Gandhi, including the Janata Government of 1977's use of this provision severely

damaged the relation between the Centre and the State until the emergence of the Coalition government in 1989. For now the National Emergency has been imposed thrice, first during the Chinese aggression in 1962 and it continued and no new emergency was imposed in 1965 during the war with Pakistan, the next was in 1971 during the liberation of Bangladesh and finally the most controversial imposition of Emergency in 1975 by Indira Gandhi. The President's Rule has been imposed across States for more than 120 occasions and the financial emergency as provided in Article 360 has not been imposed so far.

5.5.4 Emergency: Indira's Time

In order to understand the increased use of President's rule during Indira's time it is important to look into the political ramifications which forced her to resort to such draconian measures of imposing President's Rule in the States and National Emergency of 1975.

1. After Nehru, Indira succeeded in his place, and Indira faced a very tough scenario. The economy was in dire state, especially the crisis was acute after the 1962 war with China and the economic scenario turned from bad to worse in subsequent years of 1960s leading to severe payment crisis and devaluation of Indian rupee.
2. There was short fall in agriculture production in mid 1960s due to two continuous drought spells. The public investments and the manufacturing saw a sharp decline. Apart from these, high inflation was prevailing and all these had a significant impact on the political scenario when Indira became the Prime Minister in 1966.
3. The political setup started to become antagonistic to the Congress system. In the south the anti-Hindi agitations often ended up being ugly and violent. Naxalite and leftist movements became more prominent in West Bengal and Kerala.
4. The dominance of Congress as a single party across the country suffered a severe setback in the general elections of 1967 as well as the mid-term election of 1969. Moreover, there were internal cracks within the Congress party itself.

(a) Changes in the Congress

Thus, Indira's tenure was engulfed with several political and structural complexities. In order to overcome them, Indira had no option but to be assertive and dictatorial. She had to resort to some tough decisions and had also to nullify criticisms against her both within and outside the party.

1. Kamaraj-led Congress syndicate which supported her succession after Shashtri gradually became hostile and started to challenge her authority. Indira too responded and retorted against the actions of the syndicate.
2. As a result Indira was expelled from the party in 1969 leading to the split in the Congress into Congress 'Organisation' wing (Congress O) which was dented by the Congress syndicate.
3. Indira then created numerous populist policies towards pleasing the people. The economic scenario too had become somewhat better by the time of emergency. If there were no violent protests against her and if her election as Member of Parliament was not embarrassing, Indira might not have resorted to imposition of emergency.

4. Indira centralized the decision making in the Congress party as all decision of the state and central organization came together under her.
5. Using emergency she was able to dictate the functioning of the state governments itself.
6. Apart from these the emergency was used as a tool to improve the economic condition and progressive economic policies were then implemented. A new twenty-point program to improve the economic condition was introduced within days of imposition of emergency, it addressed various issues like bonded labour, agriculture workers, harijans, etc.
7. Because of the imposition of emergency most of the measures to contain the inflation were implemented and also other measures to bring stabilisation were taken up such as crack down on the offenders – black marketers, hoarders and smugglers – unaccounted funds were restricted, traders were prevented from hoarding and were made to display the weights and prices properly.

(b) **As Congress, as Country**

Centralization were carried out not just around the country but it also happened within the Congress party itself. Using the powers under Maintenance of Internal Security Act 1971 and various other draconian provisions, prominent opposition leaders who were spearheading campaign against Indira were arrested and detained. The press was also censored and strictly restricted.

1. The centralization in the government and party were essential for the survival of Indira and the Congress party which had suffered a great setback and got its dominance shattered during the elections of 1960s.
2. Indira was firm in her resolve to centralize the powers in the party and the government even though she suffered from several violent and disruptive protests from the opposition leaders. She had imposed strict restrictions and discipline within the party.
3. No criticism against the government was tolerated and action was immediately taken against such persons. The Congress party local level committees were all restructured, the Centre took over the command and control. In the Congress-ruled states, the Chief Ministers were frequently changed and were replaced with loyal and active supporters of Indira Gandhi.

(c) **Control Over Cabinet**

Indira controlled the whole cabinet, even the senior-most ministers had to fall under her dictate. She implemented the concept called as the 'kitchen' cabinet, whereby small band of very loyal followers of Indira were surrounding her to aid and advise her, hence all the decisions were taken within the 'kitchen' cabinet itself. Indira frequently changed the portfolios of the ministers so that no one can have personal hold over any ministry, and also that it will tame the senior ministers. The Prime Minister's Office created in 1964 during the tenure of Lal Bahadur Shastri became all powerful. It bypassed the Home Ministry, the Cabinet Secretariat etc. to make appointments and promotions to high posts and positions. The Prime Minister's Office also controlled important departments like the Research and Analysis Wing, the Central Bureau of Investigation and Central Security Forces.

5.5.5 Excess During Emergency 1975–76

The emergency period was fraught with excess and several other illegal measures. The following are some of the drastic and draconian steps taken during the emergency period between 1975–76:

- (i) 1,10,806 persons were arrested, detained and tortured without trial under the laws made by the then government
- (ii) Press was severely repressed and journalists were harassed and detained if found to be against the government.
- (iii) Nearly 25,962 government employees were prematurely retired unjustly using provisions created during the emergency.
- (iv) Temporary shelters and slums of urban poor numbering 1,50,105 in Delhi was bulldozed without providing them any alternative homes.
- (v) The pet project of Sanjay Gandhi the son of Indira, the compulsory sterilisation was indiscriminately carried out. Nearly 81,32,209 sterilisations were carried out in 1976–77 as against 2,64,755 carried out under the family planning programme in 1975–76.

5.5.6 The 44th Amendment

The original emergency provisions made easier for Indira to impose such measures. But this was changed by the subsequent Janata Government by bringing the 44th amendment to the Constitution.

1. The provisions given under *the Articles 352 and 356* were amended. The most controversial expression of Internal Disturbance was deleted and replaced with Armed Rebellion.
2. The recommendation to be made by the President should now be in writing from the Cabinet. Also as under *Article 74*, the President can resend such recommendation to the Cabinet for reconsideration but had to act in accordance with the reconsidered advice of the Cabinet.
3. Previously there were no such provisions and thus Indira without consulting her Cabinet colleagues proposed and impose the Emergency by recommending it to the President.
4. Previously only a simple majority of both the houses was enough to approve the emergency, but the forty fourth amendment made Special majority mandatory for approval that is it has to be approved by a majority of total members of the house and by a majority of not less than 2/3rd of the house present and voting.
5. Before the 44th amendment there was no provision to approve the Emergency provision periodically, and Emergency under 352 once approved, continued for any length of time without further approval by the Parliament.
6. The Amendment proposes that once approved by both the houses the Emergency continued for six months and after that fresh approval is needed from the Parliament for its continuation and Emergency continued for another six months unless it is revoked beforehand.
7. By the 38th amendment, Proclamation of emergency was made non-justiciable, but the 44th amendment changed that, and hence now emergency can be challenged before the courts.

5.5.7 Emergency in Present Era

The misuse of emergency provisions under *Article 356* has now been greatly reduced. The last two decades have seen a significant change in the scenario. There are several factors including the rise of coalition governments at the Centre. The Sarkaria commission on Centre-State relation suggested that to quote “*Article 356* should be used only as a last resort, a warning should be issued to the errant state, the material facts and grounds on which the Article is invoked should be made an integral part of the proclamation and the state legislature should not be dissolved until Parliament has approved it”. The Supreme Court also asserted in the S.R. Bommai judgement that provisions under *Article 356(1)* were not immune and courts can look into them and strike down in case it is malafide and based on extraneous or irrelevant grounds. The NCRWC in its report recommended that the proclamation of emergency under *Article 356(1)* should be based on the report of the Governor. Moreover, it suggested that such report should be a speaking document, whereby it should state all relevant facts and grounds, based on which the President can take decision whether to or not to recommend the President’s Rule in the state. The NCRWC also recommended that the State assembly should not be prematurely dissolved by the President, first the emergency has to be placed before and get approved by the Parliament. The second commission on Centre-State relations, the Punchhi commission also recommended that the government should incorporate the guidelines given by the Apex court in the landmark S.R. Bommai judgement.

5.6 COALITION POLITICS AND ITS IMPACT ON FEDERAL RELATIONS

5.6.1 Introduction

The upper middle class elite played a dominant role in running the country after its Independence, and such scenario continued for a long time both in Centre and the States. This coordination and consensus was possible between Centre and State because of the one-party dominance of the system, which is ruled in both by the Congress party. The consensual elite accommodation was possible because of the dominance of the political class by the powerful upper caste political elites, and hence similar view and line of thought was possible.

5.6.2 Initial Phase: Times after Independence

The scenario started to change after the 1960s. There were some noteworthy changes in the political system such as rearrangement of the political forces, increasing role of rural elites in the system, rise of a partcolored and complex elite structure. The year 1967 marked the coming of change, the Congress party lost elections in several prominent states and first phase of coalition governments with support from regional parties started to arise in the system. This could not be sustained for a long time because of the lack of initial experience, differences and contradictions among the parties. Indira Gandhi too played a significant role in curtailing the rise of coalition politics by centralising political and economic powers. But some states did challenge such unilateral and centralising tendencies of the Union government, they also questioned the veracity of the planning by the Centre. Though the initial phase of coalition politics was temporary and short lived, it did indeed create some strong regional movement and state-specific parties in states like Tamil Nadu, Kerala, Orissa, West Bengal, Punjab, etc.

Before the beginning of the first phase of coalition politics era there was spurt of rural elites and regional interest groups in the form of farmers lobby and agriculture interest groups. The green revolution had not only economically enhanced the lives of the agriculturists but it also had a significant political impact. Their participation in regional and national politics started to rise and within a short span of time they had become a force to reckon with. This could be seen when Prime Minister Lal Bahadur Shastri tried to formulate an Integrated National food policy when the country was under a severe food crisis during the period of 1964–65, he was unsuccessful in doing so. The peasant castes have now been designated as the Other Backward Castes (OBC) and they play a substantial role in the coalition government at the centre.

5.6.3 The First Phase: The Late 1960

The Congress party underwent noteworthy changes during the 1960s. It had lost its dominant status after the 1967 elections. By the end of 1960s, the Congress had polarized into two camps and split – one led by Kamaraj called as the Syndicate-Congress (Organisation) and another under Indira called as the Congress (Ruling). Indira Gandhi faced stiff opposition within her own party, she increasingly started to reject principle of consensus and ignore long standing and established leaders of the party. She dismantled the party's decentralized structure and restricted its functioning without concern for regional and local sentiments. She practically took over the party operations completely. All senior members of the party had to fall in line with her dictates. This had not only changed working of the Congress party but it inadvertently also had significant impact on the Indian political federal system. This had led to growth of strong regional sentiment in the states. Strong case was made demanding decentralisation by sharing power of sovereignty by the states, especially Punjab and Assam during the second term of Indira Gandhi. Several prominent state-level parties came to power during Indira's second term in early 1980s- such as Assom Gana Parishad (AGP) in Assam, AIADMK in Tamil Nadu, Akali Dal in Punjab, Telugu Desam Party (TDP) in Andhra Pradesh, etc. The state governments of West Bengal and Kerala led by the United Front of the Left parties, Swatantra party in Orissa, DMK-led government in Tamil Nadu had emphasised the need to restrain the authority of Centre. In 1980s Jyothi Basu, N.T. Rama Rao and other opposition Chief Ministers came together to build a coalition of 'Non-Congress CMs' challenging the hegemony of the dominant Congress party and the so called 'centralized state'. Several conferences and conclaves were held to discuss these issues.

5.6.4 The Janata Interregnum

The Janata Party was an amalgamation of diverse interests, four opposition parties namely Bharathiya Lok Dal, the Socialist Party, Jan Sangh and the Congress (O) came together. It formed the first coalition government at the Centre. It also had support from the local dominant groups. It was expected that there would be greater decentralisation of powers, but it was not so. The Janata Government too acted like the previous Indira government and dislodged several Congress-led governments in the states using the Presidents Rule under *Article 356*.

5.6.5 The Second Phase: Late 1980's

The other major period of coalition era – the second phase started in 1989 – two years before the Economic Reform program. There was a transition from the dominant party system to a multi-party system and from a majoritarian government to a coalition government. Several unstable governments were formed in quick succession. The coalition politics got boost from the implementation of the Mandal commission reforms for reservation to OBCs by the V.P. Singh government and communalisation of the polity by the demolition of the Babri Masjid in Ayodhya. BJP emerged as a major force in the Centre, while in the states, caste-based, class-based politics of the SCs and OBCs took centre stage. Hence, now the so called national parties had to align themselves with these state-level forces in order to win the elections as national parties powers had waned.

5.6.6 Present Era of Coalition Politics

In successive years, the coalition government had become the norm in the Centre with support from the regional-state parties. Some of the dominant parties emerged in 1990s, such as Samajwadi Party (SP), Janata Dal (United) (JDU), Biju Janata Dal (BJD), Trinamool Congress, Samata Party, Nationalist Congress Party (NCP), etc.

1. It is impossible now to form a government at the centre without the support of these regional parties.
2. This had significant impact on the Federal system as states now played a dominant and decisive role in the coalition governments.
3. Though in 2014 elections BJP had won majority on its own, it still chose to form government with coalition of other parties.
4. Thus, states are now becoming increasingly assertive in Centre-State federal bargaining as their dominance has increased in the national-level politics.
5. The coalition government and its effect is not restricted to national politics alone, it has a significant impact on the neo-liberal economic policies of the centre.
6. Due to the opposition of the State governments, the centre could not carry forward many decisive economic reforms. The states now have a say in directing and modifying the economic policies.
7. The national parties too are now exploiting the coalition politics and thus the system has become more corrupt.
8. During the pre-liberalisation phase, there was a vertical competition between the national states, now it has become horizontal, that is competition is now between the regional state governments themselves.
9. Hence the policies of the Centre are now diffused across the states and it works on political considerations. Thus, the disintegration of the party system and unstable coalition has adversely affected the governance of the country.
10. There is now increased prominence of the state and regional parties because of the stability of the coalition government at the Centre.
11. The states hence now enjoy a greater degree of autonomy and they try to establish their own influence at the centre which is adversely impacting the polity.
12. The state-level parties are also in talks to create a United Federal Front to resist any centralization moves.

13. Such 'centralization' measures invite condemnation not just from the regional and state parties but also from the National Parties themselves in order to preserve the federal spirit and structure. Even the BJP-led government elected in 2014 has given greater emphasis on improving the dynamics of Centre-State relations at least on paper.

5.6.7 Conclusion

The emergence of coalition politics thus has significant impact on the Centre-State relations. The Central government's intervention in the affairs of the state has now been reduced significantly. The use of Presidents rule under Article 356 has also seen decline. The state governments are now not disbanded at the whims and fancies of the Centre, and also the legislative intervention by using the power of Governor to reserve the bill for the assent of the President too has now changed (under Article 200,201). Hence, according to scholars, the participation of the regional state parties in the coalition governments has led to 'refederalisation' of Indian democracy. Present era is moving towards increased decentralisation, refederalisation and regionalization of politics, and hence the institutions should also keep up with such changes in the political scenario for effective sharing of powers.

5.7 JUDICIARY AS A FACTOR IN FEDERAL RELATIONS

5.7.1 Introduction

The erstwhile 1935 government of India act set in motion the Constitutional federal structure of India. It established the legal basis for the present federal system. The Constitution of India, taking cue from the 1935 act created a unified and independent judiciary which plays a crucial role in maintaining the centre-state federal balance. Unlike other federations where there is a dual judicial system for centre and states, Indian Constitution provides for a 'single and integrated judiciary'. Article 124 of the Constitution of India says that there shall be a Supreme Court for India, while Article 131 says that that Supreme Court shall have original jurisdiction in any dispute: (a) between the government of India and one or more states, or (b) between the government of India and any state or states on one side and one or more other states on the other, or (c) between two or more states.

5.7.2 Basic Structure and Federalism

The system of federal structure has been upheld by the judiciary a number of times in various judgements. It has treated the constitution to have established a federation in the country. It has also reiterated that the federal form of government forms the 'basic structure' of the constitution. This 'basic structure' doctrine is undefined and the court has the power to define and block any changes to the basic structure of the constitution. In the following judgements of *Minerva Mills v. Union of India* (1980) and *S.R. Bommai v. Union of India* (1994) the courts have established parliamentary federal democracy and federalism to be the basic structure of the Constitution of India. Though the courts were the defenders of the concept of federalism and its structure, in the initial 30 years after independence most of the judgements were biased in favour of the Centre.

5.7.3 Judiciary During Emergency

After the impact of national emergency imposed by Indira Gandhi, the Courts started to defend the states to some extent. By enacting the 38th amendment, Indira Gandhi tried to curtail the important aspect of judicial power – the Judicial Review. The amendment stated that the “satisfaction” of President based on the report of the Governor is not subject to the judicial review that is President’s satisfaction cannot be questioned by the courts. Thus, the 38th amendment enacted in 1975 sought to block out the powers of the court. But this was short lived as the Janata government formed after the emergency enacted the 44th amendment in 1978 which restored the power of judicial review back to the courts. After this period, the judiciary started to act on its own to deliver verdicts questioning the authority of the Central government over the states. By 1980s, it started to question the rationale of using Article 356 – the President’s rule to dislodge state governments by the Centre.

5.7.4 Centre-State Relation and Judiciary

1. The first major judicial intervention came in the issue of Centre-State relation when the Communist- controlled State of Kerala tried to take over the management of the private schools in the state. The Communist party had formed the government in Kerala in the year 1957. The governor had reserved this Education bill for the assent of the President. In order to avoid controversy, this was referred to the Supreme Court under the Presidential reference of *Article 143* of the Constitution. It was held by majority of seven judges that the bill violated the fundamental rights guaranteed under *Article 30(1)* and thus was unconstitutional. State governments complained that they found it difficult to regulate the educational standards in the state after such a verdict.
2. In another landmark case of *Babulal Parate v. State of Maharashtra (1960)* which had significant and far reaching impact on the federal structure. The Court held that the power to change, diminish, alter boundary, form new state and change its name given as proviso to *Article 3* does not require the consent of the state concerned. It can be altered, changed unilaterally by the will of the centre. The proviso to *Article 3* states that no Bill for the purpose shall be introduced in either house of parliament except on the recommendation of the President and unless, where the proposal contained in the bill affects the area, boundaries or name of any of the states, the bill has been referred by the President to the legislature of that state for expressing its views therein within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.
The power under Article 3, the reference to the state government is not the discretionary power of the President, it is the power of the Council of Ministers and under their advice (*Article 74*). Thus, in the judgement it was held that even if the states opposed, its boundaries, area, name etc. can be changed lawfully by the Centre.
3. The Supreme Court in the *Purshothaman v. State of Kerala* held that there was no time limit for the President to give assent to a bill reserved to him by the governor. It was also held that the Bill pending before the Governor or the President does not lapse on dissolution of the assembly and on proroguing the bill pending in the legislature (either house) does not lapse.

4. In the case of *West Bengal v. Union of India* majority of the six judges upheld the Parliament's right to enact law to compulsorily acquire properties in the state by the Union. It was held that this measure would not amount to infringement of the state's sovereignty. Under the Coal Baring Areas (Acquisition and Development) Act 1957 the authority of the Union government was challenged by the state of West Bengal. It was held by the court that the Parliament's power to legislate in such matters of acquisition is unrestricted and unparalleled. B.P. Sinha J. Speaking for himself and four other Justices stated that

It would be difficult to hold that parliament which is competent to destroy a state, is on account of some assumption as to sovereignty of the State, incompetent effectively to acquire by legislation property owned by the State for governmental purposes.

In his dissenting judgement over the other five judges Subba Rao J. held as follows:

The impugned Act in so far as it conferred a power on the Union to acquire lands owned by the states, including coal mines and coal bearing lands in ultra vires. Under the constitution of India the political sovereignty is divided between the constitutional entities, that is, the Union and the States, who are juristic personalities possessing properties and functioning through the instrumentalities created by the Constitution. The Indian Constitution accepts the federal concept and distributes the sovereign powers between the coordinate constitutional entities, namely, the Union and the States. This concept implies that one cannot encroach upon the governmental functions or instrumentalities of the other unless constitution provides for such interference. The legislative fields allotted to the units cover subjects for legislation and they do not deal with the relationship between the coordinate units functioning in their allotted fields. This is regulated by other provisions of the Constitution and there is no provision which enable one unit to take away the property of another except by agreement. The power to acquire the property of a citizen for a public purpose is one of the implied powers of the sovereign. Under the Indian Constitution that sovereign power is divided between the Union and the States. It is implicit in the power of acquisition by a sovereign that it must relate only to property of the governed for a sovereign cannot acquire its own property.

5.7.5 Judiciary on Education and Federal Issues

Education as a matter of law has impact on any federal system. Education has its own intrinsic values and universality which cannot be confined within any boundary. Every unit in the federation play an important role in the field of education. But in the Indian context, the state government – the federal units are in requirement of funds and resources from the Centre. Thus, the concept of federal autonomy has become more complex. The constitutionally guaranteed place to education has undergone major changes because of the changing federal dynamics. The role and responsibilities of the centre have increased because of the resource crunch and regional imbalances between the states.

1. Legislative process involving education had brought numerous federal questions before the Supreme Court. For example, the Gujarat government made Gujarati to be the exclusive medium of instruction in all the universities in the state, when the subject

matter of education was under their control in the State list of the seventh schedule. But the Supreme Court had struck it down as it was beyond the legislative competence of the state.

2. There was another item in the seventh schedule, under the Union list entry 66 – coordination and determination of standards in institutions of higher learning, this item was exclusively under the purview of the Centre, and Courts decided that the State cannot override the powers of the Union, and therefore they had no competence to enact such a legislation.
3. After this Gujarat University constituted the Centre set up committee consisting of members of parliament, called as the *Sapru Committee*, to suggest steps to take greater responsibility in the field of education. The committee suggested an amendment to the Constitution, to include the University education in the concurrent list of the seventh schedule, so that Centre can take greater responsibilities in that sector. But this was heavily opposed by the states and hence the proposal could not get materialized into an amendment.
4. During the emergency the situation was different and the subject of education was taken from the State list and was added to the Concurrent list. The 42nd amendment enacted in 1976 made these changes to the Constitution. Hence, today we can see the sector of education being highly centralized and the Centre assuming greater legislative and policy making competence in this sector.
5. Therefore, today the role played by the states in the field of education has greatly reduced. And the courts too have retrained the states power to legislate in many matters concerning education. Especially the states power does not extend beyond its territory, hence they cannot go beyond their territorial jurisdiction. In the landmark case of *Prof. Yashpal and Anr v. State of Chattisgarh and others* the Supreme Court specifically considered the issue of extra territorial jurisdiction of the states and their power to grant affiliation to any institution outside its jurisdiction.
6. University Grants Commission (UGC) is the central regulatory authority on higher education. It controls, regulates makes rules and regulations of the Universities, including the state-run universities on various matters. Based on the *Yashpal case*, the UGC had asked all the state governments to bring amendment so as to conform to the Supreme Court observations, also directed the private universities not to operate beyond the territorial jurisdiction of the state. UGC clarified that any university incorporated under the State act can operate only within the territory of that particular state and in no case go beyond it.
7. The judiciary based on the concept of single all-India citizenship held that admission to colleges based on the domicile of the state is highly detrimental. There is only one domicile, domicile-in territory of India, as stated in Article 5 of the Constitution of India.

5.7.6 Judiciary on Emergency Provisions of Constitution

Supreme Court as mentioned above in the Judgement of *Minerva Mills v. Union of India* established parliamentary federal democracy as one of the ‘basic structure’ to the Constitution of India. And since then the courts have tilted towards the Centre in support of taking over the

state government under *Article 356*. The Constitutional Courts, that is the Supreme and the High Courts, made significant contribution in upholding the autonomy and status of the responsible state governments.

1. In 1977, the ruling Congress(R) dissolved the Lok Sabha, despite having another year to run as per the 42nd amendment. The elections were held and the Congress(R) faced its worst first ever defeat since Independence.
2. The coalition, Janata Party, formed the government with overwhelming majority, this is despite the fact that regionally there were a number of states ruled by the Congress party including states such as Himachal Pradesh, Haryana, Bihar, Uttar Pradesh, Orissa, Madhya Pradesh, Punjab, Rajasthan, and West Bengal.
3. The Union Home Minister addressed a letter to the Chief Ministers of these states on 18th April 1977 to 'earnestly commending' for their consideration that they may advise their Governor to dissolve their respective state assemblies under *Article 174(2)* and seek a new, fresh mandate from the people.
4. Shanti Bhusan, the Minister of Law, Justice and Company Affairs on 22nd April 1977, said that "a clear case has been made out for the dissolution of the Assemblies in the nine Congress-ruled states and holding of fresh elections since a serious doubt has been caste on their enjoying the people's confidence, their party having been rejected in the recent Lok Sabha elections".
5. The aggrieved state governments knocked the doors of the Supreme Court seeking directions against imposition of President's rule under *Article 356*. The Supreme Court refused to intervene and question the dissolution of the governments in the Congress-ruled states.
6. In fact, it seemed that the court were supportive of such moves by the Centre. The Central government of Janata party relied on the 'non-justiciable' provision under *Article 356*, which was made so in the 42nd amendment by the Indira government (it was later made justiciable by the Janata party in the 44th amendment).
7. The Judgement of Supreme Court in the case of *State of Rajasthan and Ors v. Union of India* made a serious dent in the federal consciousness of the nation. It went against the autonomous functioning of the state and legitimized the intervention of the Centre into the affairs of the state. This judgement thus had far reaching implications which changed the view of federal setup in the country. But subsequent to this judgement, the Courts started to take lenient view and supported the legitimate rights of the states.

5.7.7 Judiciary and Article 356

In *S.R.Bommai v. Union of India*, the Supreme Court made a significant shift and upheld the federal rights of the State, and questioned the indiscriminate application of *Article 356*. It stated that *Article 356* is not immune from the purview of the judicial review and the courts can strike it down when found to be malafide or based on extraneous grounds. In the *S.R. Bommai case*, the Apex Court laid down the following conditions:

- (i) *The power by Article 356 upon the President is a conditional power. It is not an absolute power. The existence of material which may comprise of or include the report(s) of the Governor is a*

pre-condition. The satisfaction must be formed on relevant material. The recommendations of the Sarkaria Commission with respect to the exercise of power under Article 356 do merit serious consideration at the hands of all concerned.

- (ii) *The Proclamation under Article 356(1) is not immune from judicial review. The Supreme Court or the High Court can strike down the Proclamation if it is found to be mala fide or based on wholly irrelevant or extraneous grounds.*
- (iii) *Burden lies on the Government of India to prove that relevant material exist (to justify the issue of Proclamation). When called upon, the Union of India has to produce material on the basis of which action was taken. It cannot refuse to do so, if it seeks to defend the action. The Court will not go into the correctness of the material or its adequacy. Its enquiry is limited to see whether the material was relevant to the action.*
- (iv) *If the Court strikes down the Proclamation, it has the power to restore the dismissed Government to office and revive and reactivate the Legislative assembly wherever it may have been dissolved or kept under suspension. In such a case, the court has the power to declare that act done, orders passed and laws made during the period of Proclamation was in force shall remain unaffected and be treated as valid.*
- (v) *The Constitution of India has created a federation but with a bias in favour of the Centre. Within the sphere allotted to the States, they are supreme.*
- (vi) *Any State government which pursues unsecular policies or unsecular course of actions acts contrary to the constitutional mandate and renders itself amenable to action under Article 356.*

5.7.8 Judiciary on Role of Governor

Even before the Judgement in the Minerva case, the Supreme Court in the Raghukul Tilak case in 1979 observed that,

...the appointment of the Governor and his tenure at the pleasure of the President "does not make the Government of India an employer of the Governor. The Governor is the head of the State and holds a high constitutional office which carries with it important constitutional functions and duties and he cannot, therefore, even by stretching the language to a breaking point, be regarded as an employer or servant of the Government of India"

The Supreme Court further added

It is impossible to hold that the Governor is under the control of the Government of India. He is not amenable to the directions of the Government of India, nor is he accountable to them from the manner in which he carries out his functions and duties. His is an independent constitutional office which is not subject to the control of the Government of India.

The Constitutional bench of the Supreme Court in the Bihar Assembly Dissolution case (2006) held that immunity granted to the Governor under Article 356 does not stop the court from scrutinizing the proclamation made for mala fide or being ultra vires. Thus, the Court's mandate put a full stop to end the unhealthy trend of unwarranted President's rule in the states. Further the *Punchhi Commission* on Centre-State relations recommended the government to adopt the directions issued in *S.R. Bommai case* with respect to the use of Article 356.

5.7.9 Judiciary on Minority Status

The intervention of the Supreme Court on the minority status has also affected the Centre-State relations. In the TMA Pai judgement and other similar pronouncements the courts have complicated the question of right of minorities and their relevance within the federal structure. Till then the court had asked to consider only the minorities based on religion state wise, but after the TMA Pai case, both religious and linguistic minorities were have to be considered state wise. This did have impact in identifying and notifying minorities at the state level.

5.7.10 Conclusion

It can be seen that initially the judiciary kept itself restrained and interpreted the provisions of the law literally. Moreover, due to the conditions prevailing at the time immediately after independence it is logical to derive that the courts were tilted in favour of the Union to carry forward the spirit of nation building. And decades after independence it was found that the Union was not functioning as efficiently and it is better to leave certain powers with the states themselves, moreover it was seen that Union was encroaching the powers given to the states under the Constitution and Courts carried forward a liberal interpretation of the constitutional provisions. In numerous judgements we can see this tilt towards the right of people over the national unity and integration as put forth by the Union. In the present era there is a phenomenon called as the 'Judicial activism' which makes the courts intervene into a wide range of issues. At present the Supreme Court and other courts have become the Champion of the rights of the people rather than government.

5.8 NATIONAL SECURITY AND ITS IMPACT ON FEDERAL STRUCTURE

As per the Constitution of India, law and order is the responsibility of the state. But in reality, the Central government intervenes in maintaining the law and order in the state, moreover such problems are not limited to the boundary of such state, it goes beyond it. There are a number of internal and external causes for such issues. Thus, in these conditions the question of national security is becoming a major concern for maintaining the balance of federal dynamics between the centre and the states. Presently the traditional and autonomous areas of functioning by the states are being eroded by emerging national security laws and various other security related aspects. It is clear that national security laws are being increasingly centralized, also it is naturally inclined to think that national security is predominantly, if not absolutely, the responsibility of the centre in a federation. Major national security resources and institutions are increasingly aligned towards the centre. National security intelligence activities are also penetrating into the jurisdiction of the local federal units, which however are resisting such unilateral moves by the centre.

5.8.1 Internal and External Dimensions to National Security

There is both an internal and external dimensions to national security scenario in our country. Internally, movements such as the sons of soil movement, naxalism, and other communal and sectarian violence are posing grave threat to the unity of the nation. As per the reports of the government 203 of 600 districts in 18 states in India is under the influence of left wing radical

forces. In the annual report of the Union Home Ministry 2011–12, says there were nearly 1755 incidents of left wing extremist violence extending to almost nine states. And there is also a resurgence of such extremism in the southern states.

Terrorism is also a major issue having both internal and external dimensions. The government has been employing several law enforcement measures together with various national security laws (such as National Security Act-NSA, Maintenance of Internal Security Act-MISA, Terrorist and Disruptive Activities (Prevention) Act-TADA, Armed Forces Special Powers Act-AFSPA etc.). Most of these laws have direct impact on the law and order problems in the state and thus has ramifications in the centre-state relations. The state government has very little say in execution and implementation of these acts, hence the state cannot challenge any violations or misuse made by the forces under them. For example, acts of omission or commission under the AFSPA cannot be challenged in a civilian court, unless and otherwise it has had prior approval by the centre. The AFSPA is thus a draconian act, which permits the armed forces to kill with impunity without having to answer to the courts of law. AFSPA has a long chequered history, it has been used even before independence and it is now continued to be used in some of the North-Eastern states and in Jammu and Kashmir. This act has been vehemently opposed in these states and there is a grassroot movement of people against it. It has been termed as discriminatory and is having a major effect on the relation between centre and the states.

Since independence a number of security forces has been created by the Centre, there is a huge Central Police and Armed forces, Intelligence Bureau, Central Bureau of Investigation, National Investigation Agency and a host of other forensic and training institutions to train, sustain, gather intelligence, to investigate special crimes and to maintain law and order in the states. The following Central Police and Armed forces play a significant role in maintaining law and order in the states, Central Reserve Police Force (CRPF), Rapid Action Force (RAF), Central Industrial Security Force (CISF), Indo-Tibetan Border Police (ITBP), Border Security Force (BSF), Assam Rifles, National Security Guard (NSG), Sashastra Seema Bal (SSB) etc.

Most of these forces operate at the state level, but their ultimate control lies with the centre. Though the federal concept of the Constitution envisages the law and order to be maintained by the state government, stationing of such huge armed police force who function under the direction of the Centre has unduly influenced the functioning of the states. This is the most unusual feature of the Indian Federation, where a separate, parallel police force is being maintained by the centre. The First Administrative Reform Commission, has made the following observation,

The Central Reserve Police and the Border Security Force are armed forces raised by the Union to meet the needs of the security of the country, both external and internal. In the circumstances, the use of the armed forces of the Union in aid of the civil power of a state is perfectly constitutional. It is also clear that such aid can be provide at the request of the state government or suo moto. The question whether such aid is needed must obviously be a matter of judgement by the centre.

It is understood by eminent scholars that such unilateral deployment of the central forces in the states based on its own judgement violates the federal autonomy guaranteed by the Constitution. A new entry 2A – empowering Union to deploy armed forces in the State ‘in aid of civil power’ was added to the Union list of the Constitution by the 42nd amendment, apart from Union list, it also amended the State list entry 2, where police power of the state is now subject to entry 2A of the Union list. The states presently have come to have accepted the fact that some

circumstances do warrant such deployment of the central forces, and they do need their help in maintaining the law and order situation in such cases. Moreover, the Centre and State have now devised a mechanism to effectively deploy the forces when the need arises. The states are in short of revenue, therefore maintaining a huge armed police forces has become a burden. Lack of equipment and training also adversely affect the maintenance of law and order situation in the states.

5.8.2 Anti-terror Laws in India

A number of anti-terror laws has been enacted by the Centre over the years in order to cope up with the increasing menace of terrorism. But these laws have been opposed by most of the state governments. The Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985 was enacted to manage the raising anti-national activities in the states, especially in Assam and Punjab. Initially it was introduced as a temporary measure to curtail the violence and disruptions caused by the secessionist Khalistani movement. But the Union government continued the use of the act in other states also. TADA was seen as continued interference of the Union into the affairs of the state. It also enormously increased the power of the state police forces which is controlled by the state government. As per the provisions of the TADA Act, the Central government is the final authority to decide how the act is to be implemented.

5.8.3 National Investigation Agency

The Central government had set up the National Investigation Agency created by passing the National Investigation Agency Act 2009, after the horrifying Mumbai terror attacks in order to take up cases having international and inter-state implications with serious impact on the national security. The government had also thought of setting up the National Counter Terrorism Centre as recommended under the Punchhi Commission on Centre and State relations, but this has been resisted by the state governments as this NCTC encroached on the law and order, which is essentially a state subject. States have raised their voices against setting up of such commission as such unilateral on the pretext of national security erodes the power of state over maintaining the law and order in the state, which essentially comes under the ambit of duty of the state governments, moreover such action by the centre lacks accountability. The centre has taken up to set this up under the Article 355 of the Constitution which entails the Centre to protect the states against external aggression and internal disturbance. It also ensures that the states function as per the constitutional provisions. But this justification of using Article 355 does not hold water as it can only be used during the Emergency and not for everyday law and order functioning of the state governments.

National security is indeed the concern of the Union government, but it cannot act unilaterally. Any measure taken by the Centre has impact and influence on the law and order of the state. Such measures also involve stationing of the central security forces within the territory of the state, these measures cause friction between the centre and the state and this tension cannot be simply overlooked.

5.9 RE-INVENTION OF SELF-GOVERNING INSTITUTIONS AND DECENTRALIZATION

5.9.1 Introduction

The concept of local self-government has a very long history in India. Any system of governance within the country would be incomplete without the mention of the independent small village republics. During the Vedic period, the Sabhas and Samitis played a key role in the administration of the village republic. Even under the Gupta rulers the villages were important administrative units and panchayats were important local self-governing institutions. Charles Metcalfe in his famous minute of 1830, has best described the autonomous village as follows:

The village communities are little republics, having nearly everything they can want within themselves... They seem to last where nothing else lasts. Dynasty after dynasty tumbles down, revolution succeeds revolution... but the village community remains the same.... This union of the village communities, each one forming a separate little state in itself, has... contributed more than any other cause to the preservation of the peoples of India... and the enjoyment of Freedom and independence.

5.9.2 British Era

The British started to develop the modern local self-governing institutions in India towards the end of seventeenth century, in the form urban municipal bodies. Likewise, municipal corporations were set up in the presidency town of Madras in 1688 and in Bombay and Calcutta in 1726.

1. Lord Mayo turned bodies into elected representative bodies in the 1870 resolution.
2. Lord Ripon carried forward this to the panchayat and rural localities, he created district board at district level and rural board at taluka/tehsil level under the resolution of 1882.
3. However, it was the passing of the Bengal Local Self Government Act 1885 that led to the spreading of modern self-governing institutions beyond the cities to the rural areas.
4. It led to establishment of district boards across the province of Bengal. To quote the Second Administrative Reforms Commission,

Within a span of five years, a large number of district boards came into existence in other parts of the country, notably Bihar, Assam and North West Province. The Minto-Morley Reforms, 1909 and the Montague Chelmsford Reforms, 1919, when Local Self Government became a transferred subject, widened the participation of the people in the governing process and, by 1924-25, district boards had a preponderance of elected representatives and a non-official Chairman.

5. The origin of the statutory panchayats is attributed to the 1907 Royal Commission on decentralization, which in its report had suggested setting up of village panchayats for cutting down the financial burden on the provincial government and to extend the concept of local self-government to the villages. And based on this recommendation, various provincial governments enacted the Village Panchayats Act to extend the governance to the villages.

5.9.3 Panchayats – Post Independence Debate

Though this system of village panchayat has long historic tradition, it is disappointing to find that the Constitution of India made no representation for the self-governing bodies. The Constitution makers sought to project India as a giant nation, forgetting the consequences of being a giant.

1. While several attempts were made before and after independence to create and develop local self-governing political institutions, the same could not take a formal constitutional shape until the early 1990s.
2. Even before the independence Gandhi was in favour of decentralization and handing over political powers to the villages and districts.
3. Gandhiji wanted lesser power to be wielded by the Centre, and villages be granted autonomous power to govern themselves through sarpanchs and panchas, village chief and councillors. Though this idea of Gandhiji's self-governing village republics came up for debate in the Constituent Assembly, but they did not find a mention in the final draft of the Constitution.
4. Though this concept of village level self-governing institutions found support among few of the members of the Constituent Assembly, the drafting committee of the constitution deliberately avoided making any provision for local self-governing institutions.

5.9.4 Ambedkar's View on Panchayats

Dr. Ambedkar, the Chairman of the drafting committee did not find any merit in such system of governance. While moving the draft constitution for approval in the Constituent Assembly on fourth November 1948, Dr. Ambedkar spoke at length against the concept of village self-governing institutions as follows:

The love of the intellectual Indians for the village community is of course infinite if not pathetic.... It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says: "Dynasty after dynasty tumbles down. Revolution succeeds turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes though the country. The village communities college their little cattle within their walls and let the army go unprovoked." Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survive through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has disregarded the village and adopted the individual as its limit.

1. Ambedkar was fundamentally opposed to the idea of independent village republics because he thought that it would be detrimental to the interests of the minorities and particularly to the interests of the untouchables, the Dalit community.

2. Ambedkar argued that villages were the cause of ruination of the country, empowering such villages will perpetuate the dominance of the upper castes, who would continue to dominate the downtrodden people. Autonomy to the village panchayats was also against his centralization project.
3. Ambedkar even wanted limited powers to be given to the provincial governments as he believed that such localized governments would not sincerely protect and safeguard the rights and interests of the minorities and the Dalit communities.

5.9.5 Countering Ambedkar's Views

This idea of Ambedkar drew comments from various quarters of the Constituent Assembly.

1. K. Hanumanthaiya argued that in such a vast country, it is impossible for any human or government to effectively control all the administration. Even as late as 1949, Hanumanthaiya was arguing for the effective decentralization, he also reminded the Constituent Assembly that this decentralization was the principle based on which Gandhi had wanted the Constitution to be constructed.
2. In order to defuse the situation created by Ambedkar's comment, and to air their resentment against the omission of the village panchayats, some of the members of the Constituent Assembly, including Alladi Krishnaswami Ayyar had to clarify that, although the Draft Constitution had not provided for establishment of such panchayats, the provinces had power to create such autonomous units in their states, providing them with administrative powers.
3. Subsequently, consensus emerged within the Constituent Assembly, thereby the decentralization of power and provision of village panchayat was made into the Constitution in the form of Directive Principles of State Policy.
4. Thus, panchayats only found a peripheral place in the original Constitution, among the Part IV, the Directive Principle of State Policy, and *Article 40* provides that the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as self-governing institutions.
5. The *Article 40* does not provide steps of constituting the village panchayat. Under it, the creation of panchayat as statutory institutions was left with the state legislatures. Under the seventh schedule Entry 5 list II, the State List, empowers the state legislatures to make laws with respect to local self-government or village administration.

5.9.6 Local Governance – Community Development Programmes

Only two tiers of government – Centre and State was recognised by the original Constitution post-Independence. However, the idea of local self-government was raised from time to time.

1. In compliance with the Directive Principle to establish villages as independent self-governing institutions, the Central government launched ambitious Community Development Programme in 1952 with the intention to bring socio-economic transformation of village life through people's own democratic and cooperative organisations, with the government providing technical services, supply and credit to the village bodies.
2. Participation of whole community was the key element of this experiment, and under this, 100 to 150 villages formed a community development block, to strengthen the foundation of the grass roots democracy.

3. Scientific and technical knowledge of agriculture, animal husbandry and rural craft sectors was transferred to the people by establishment of National Extension Service in 1953.
4. The second five year plan in 1956, recommended that the village panchayats should be linked with other organisations at the higher level, and in stages the democratic body should take over all the functions of general administration and development of the district excluding the functions such as law and order, administration of justice and a few functions of revenue administration. In view of this, the government of India set up a committee under the Chairmanship of Balwantrai Mehta in 1957.

5.9.7 Balwantrai Mehta Committee Recommendations

The Balwantrai Mehta committee suggested that for effective implementation of the development programmes, there should be administrative decentralization. And the local bodies should control the implementation of development programmes and also other administrative functions.

1. It recommended for further extension of the Community Development Programme and National Extension Service throughout the country, in all developmental blocks. It should be placed under an elected panchayat samiti for effective functioning.
2. The Balwantrai Mehta report recommended popular participation in the decision-making process at the local level, for that to happen, there has to be democratic decentralization of power to the sub-district level.
3. Based on this report, a three-tier panchayati-raj system was introduced in various states consisting of gram-village panchayats at the base, mandal or taluka panchayat in the middle and zila panchayat at the district level.
4. The panchayati raj was also promoted by the Union government as a matter of policy from 1957 to 1963, where the state governments were pressurized to adopt democratic decentralization and to directly involve the people at the village level in the planning process. Based on this, states of Andhra Pradesh, Rajasthan, Maharashtra, and Gujarat took legislative and administrative initiatives to set up the panchayati raj institutions.

5.9.8 Santhanam Committee Recommendations

Santhanam Committee was appointed in 1963 to solely look into the issue of the finances of the panchayati raj institutions (PRIs). It gave the following recommendations:

- (i) The panchayats should have special powers to levy special tax on land revenues, home tax, etc.
- (ii) A Panchayat Raj Finance Corporation should be set up which would look into the financial resources of PRIs at all three levels, provide loans and financial assistance to these grass root level government and also provide support for non-financial support of the villages.

5.9.9 Ashok Mehta Committee Recommendations

The momentum started to decrease and by mid-1960s, the support for panchayati raj system started declining as the most of the political leadership in the states were reluctant to devolve

powers to the district level, they feared that if powers were devolved, these local institutions would become alternative sources of political influence and patronage, which would threaten the leadership at the top, and degrade their ability to influence and control at the grassroot level. Hence by 1970s, only the skeleton existed, the panchayats were there but without any powers or functions. And simultaneously during this period, the centralization carried out by Indira Gandhi made the panchayats completely redundant. After the controversial tenure of Indira Gandhi, the subsequent Janata government in 1977 setup a new committee on panchayati raj, under the Chairmanship of Ashok Mehta.

1. It assessed the problems faced by the panchayat system and recommended establishment of a two tier system, one at mandal and other at district level.
2. The committee chose the district to be the first point of decentralization below the State level.
3. Under its recommendation, the zilaparishad – the district boards were to be given full control over all the development activities to be carried out.
4. The law and order would remain under the control of the existing administrative apparatus.
5. The most important aspect of this committee was that it introduced taxation powers by the local bodies.
6. While submitting its report in 1978, the committee was of opinion that the rhetoric over panchayat empowerment was not of much use unless it received a Constitutional standing.

5.9.10 Other Committees

1. In 1985, the GVK Rao committee recommended that PRIs at district level and below be assigned responsibility to implement, monitor and plan the rural development programmes and the block development office should be the spinal cord of the rural development.
2. In line with the Ashok Mehta committee recommendation, the L.M. Singhvi committee in 1986 recommended that the local self-government be constitutionally recognised, protected and preserved by including a new chapter in the Constitution.
3. As per the report of the second Administrative Reform Commission,

By end of 1982, except Meghalaya, Nagaland, Mizoram and Union territory of Lakshadweep, all other States and UTs had enacted legislation for the creation of PRIs. In 14 States/UTs there was a three-tier system, in 4 States/UTs it was a two-tier structure and in 9 States/UTs only one tier functioned.

4. Strong arguments were continued to be made for the re-organization of the Indian federation with smaller political units. The requirement for this re-organization was for greater political participation and effective democratic governance at all levels of governance.
5. Demands were also made to setup second State Reorganisation Commission. It was argued that there was much room for the states to devolve their power to the lower, district, panchayati level. It was said that failure of panchayati raj institutions can be attributed to the ineffective devolution of the powers.

6. The Sarkaria Commission set up in 1988 in its report recommended that the local self-governing bodies have to be significantly strengthened both functionally and financially. It also recommended that a Parliamentary law be enacted so that it is uniformly applicable throughout the country.

5.9.11 Constitutional Amendments

The landmark move in the process of decentralized governance came in 1989, when 64th and 65th constitutional amendment bills were introduced in the Parliament by Rajiv Gandhi, making it mandatory for all states to set up elected panchayats and urban local bodies, providing more powers and functions to the local bodies, even authorizing the panchayats to levy and collect taxes/ tolls and fees, etc. These bills were finally passed in 1993 under the stewardship of Prime Minister Narasimha Rao as 73rd and 74th Constitutional amendment, resulting in insertion of new parts Part IX and IXA, and new Articles 243 to 243ZG.

1. The 73rd and the 74th amendments created the panchayats and the urban local bodies.
2. They brought back the three-tier system of governance back, which was initially proposed by the Balwantrai Mehta committee.

5.9.12 The 73rd Amendment

The important aspect of the 73rd amendment is that it brought in Constitutional legitimacy to the panchayat raj institutions.

- a. It has provided panchayats at village, intermediate and district levels, with an exception that states having population less than 20 lakh need not constitute the panchayat at the intermediate level.
- b. A new Part IX has been inserted to the Constitution for legitimising the panchayats.
- c. In pursuit of this, the states have to devolve administrative and financial responsibilities to the panchayats in respect to the 29 matters listed in the new inserted eleventh schedule.

5.9.13 The 74th Amendment

The urban local bodies too received constitutional recognition, as the Parliament enacted the seventy-fourth amendment in 1992, known as the Nagarpalika Act, which received the assent of the President in April 1993 and came into force in June 1993.

1. This new amendment has added a new Part IXA to the Constitution. It mentions the subject matters pertaining to the municipalities.
2. The act has provided for three kinds of municipal bodies – Municipal Corporations for larger urban areas, Municipal Councils for smaller urban areas and Nagar Panchayats for rural-urban transitional areas.
3. These amendments have special provision with respect to participation of SCs/STs and especially women in the Panchayats and Urban local bodies. Another important aspect is that it has given power to the local bodies to impose tax.

4. Apart from the three-tier structure, some new provisions have been made for the establishment of district and metropolitan committees under Articles 243 ZD and 243 ZE.
5. The job of the district planning committee is to consolidate the plans prepared by the panchayats and the urban local bodies in the district and prepare a draft plan for the district as a whole, while the metropolitan planning committee is “to prepare a draft development plan for the metropolitan area as a whole”.
6. The composition of these committees is left to the state legislature.
7. Though the panchayats and the urban local bodies are directly elected by the people, they are subjected to the political control of the state through its legislative assembly.
8. Most of the panchayats continue to be treated as an agency of the state for implementation of its schemes, though it is accepted that the essential services for providing drinking water, rural sanitation, preventive health and primary education come under the panchayats legitimate core functions.

5.9.14 Devolution of Finance

In order to effectively devolve finance to the third tier, the Constitution has given additional task to Finance Commission, which is now burdened with to recommend measures to supplement resources of the third tier, including grants, which are supplementary to the devolutions by the State Finance Commission. Although the 11th and 12th Finance Commission has provided for united grants to these institutions, there is a doubt regarding their financial capacity. Hence, we can see that the PRIs exist as over-structured but under-empowered organizations, they boast to have constitutional status, but suffer from lack of effective devolution of powers, functions and finance from the state governments.

5.9.15 Other Recommendations

The National Commission for Review the Working of the Constitution, in order to address the gap between state governments and the local self-governing institutions, had recommended that a provision be made for creation of State panchayat council, with Chief Minister at its head, in line of inter-state council, created under the provision made under Article 263 of the Constitution. It further recommended that the leader of opposition be made the de facto Vice-Chairman of the council, to provide for a consensus-based approach for the development of panchayats as fully democratic, effective and responsible institutions.

5.9.16 Extension of Panchayats to Scheduled Areas

The 73rd amendment excluded the adivasi and the scheduled areas from its purview. But it was always open for the Parliament to extend to same to these areas, as per the provisions of the Article 243M(4). Bhuria committee was constituted in 1994 to formulate law for extending the provisions of the Part IX to the Scheduled areas and to suggest modifications in other acts relevant to the fifth schedule in order to further strengthen the local self-governing areas. The recommendation of this committee culminated in the enactment of the Panchayats (Extension to the Scheduled Areas) (PESA) Act 1996, which came into effect on 24th December 1996. The PESA Act has led to the extension of the panchayats act to the tribal areas of Andhra

Pradesh, Orissa, Gujarat, Chhattisgarh, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, and Rajasthan. This enables the tribal society to effectively take control of their traditional rights over natural resources.

5.9.17 Conclusion

It has been proposed for some time now that all the functions of the district be devolved to the district government, including the police, land administration and other economic and social functions associated with the district. The Ashok Mehta committee report in 1978 had considered district to be an important governing unit. In carrying forward its recommendation, the Second Administrative Reform (ARC) Commission in its report on the local governance has also recommended setting up of the District Government, with each district constituting a district council having elected representatives both from the panchayats and the urban local bodies. The ARC also recommended that the post of District Collector should be eventually abolished. In the interim period the Collector will play a dual role as head of the administration and the secretary to the DG. The observation of the ARC is as follows:

... there must be a single elected District Council with representatives from all rural and urban areas, that will function as a true local government for the entire district. In such a scheme, the District Council will be responsible for all the local functions, including those listed for them in the Eleventh and Twelfth Schedules. The DPC in its present form will be redundant, once a District Council comes into existence as envisaged by the Commission. Planning for the whole district- urban and rural- will become an integral part of the District Council's responsibility. The role of District Collector/DM also needs to be reviewed in the context of the District Council and the District Government.... The institution of District Collector must remain in the current form for some more time. Eventually, the District Council should have its own Chief Officer. Meanwhile, as an interim mechanism, there is a merit in utilizing the strength of the Collector's institution to empower local governments. The commission is of the considered view that a golden mean between these two positions is desirable and the District government must be empowered while fully utilizing the institutional strength of the District Collector. The Commission believes that these two objectives can be realized, by making the District Collector function as the Chief Officer of the District Council. In such a case, the Collector's appointment should be in consultation with the District Council. The District Collector-cum-the Chief Officer would have dual responsibility and would be fully accountable to the elected District Government on all local matters, and to the State government on all regulatory matters not delegated to the District government.

5.10 FEDERAL FISCAL RELATIONS

5.10.1 Introduction

Centre state fiscal relation forms important aspect in any federation. Imbalances and disparities exist between the constituent states and this can only be removed by redistribution and reallocation of the economic and fiscal resources. Imbalance exists not just between different states but also between different tiers of government in a federation and thus the fiscal federalism helps in distribution of goods and resources to the sub-national governments so that they can be allocated as per the public consumption entailing responsibility between different levels of government. Thus, redistribution and reallocation of financial resources become important aspect

of fiscal federalism. Various ways and means such as revenue sharing, specific purpose grants, general purpose grants, conditional grants, matching grants, central policies/ rules and centrally administered prices, local incidence of central expenditures, such as, central government investment, etc., help in redistribution of the resources in a federal state.

5.10.2 Role of the Centre

As far as India is concerned, the Central government play an important role, it retains the control over the economy and frames most of the fiscal rules and regulations. The Centre has more resources than it needs while the sub-national state governments have less than needed. There is always fiscal imbalance between Centre and the States and also more between the States themselves. In the Indian federal system, the states governments have very little choice in revenue raising and spending.

In the fiscal federalism the intergovernmental fiscal transfers constitute an important policy mechanism. It helps in removing the inequalities between various federating states and also to remove the fiscal mismatch between the revenue sources and expenditure needs of the constituent states. But this sharing of the fiscal resources has always been controversial in the federal system. The method of fiscal transfer to the states has always been politicized, especially the controversial use of Planning Commission in distribution of fiscal resources. The various centrally sponsored schemes and uneven distribution of centrally controlled public resources has made the matters more politicized and contentious.

5.10.3 The Finance Commission

The framers of the Constitution had anticipated the mismatch and the problems that could arise due to the presence of gap between the fiscal capacities and the needs of the states. And thus they had constituted an impartial transfer the revenue to the states from the Centre through the Finance Commission (*Article 280*).

1. The Finance Commission is an independent constitutional body. It is constituted every five years and submits its report to the President. Its basic terms of functioning are set under *Article 280* of the Constitution, which are as follows:
 - (i) Distribution between the Union and the States of the net proceeds of the taxes which are to be, or may be, divided between them under Chapter 1 Part XII of the Constitution and the allocation between the states of the respective shares of such proceeds.
 - (ii) The principles which should govern the grants in aid of the revenues of the states out of the consolidated fund of India and the sums to be paid to the states which are in need of assistance by way of grants in aid of their revenues under Article 275 of Constitution for purposes other than those specified in the provisions to clause(I) of that article.
 - (iii) The measures needed to augment the consolidated fund of the state to supplement the resources of the panchayats and municipalities in the state on the basis of the recommendations made by the Finance Commission of the state.
2. This transfer of fiscal resources from Centre to State through the Finance Commission is called as the statutory transfer.
3. It has been fixed based on a formula and cannot be deviated from it.

4. Apart from this, the Finance Commission has also to recommend the distribution of grant in aid to the states under the *Article 275*. The *Article 275* specifies special grant given to the states based on its backwardness or whether it is a hill state, and thus some states were categorized and given special status.
5. Through *Article 275* the Finance Commission gives specific grants to the individual states based on the problems faced by them, and thus the Commission meets the requirement of the special category state through these grants. The Special Category States receive relatively favourable treatment in case of federal fiscal transfer. Eleven states were categorized as special Category State by the Planning Commission. The share of such grants under *Article 275* in the total Finance Commission's transfers has been between 15%–18%.
6. The twelfth Finance Commission brought in new provisions based on maintenance of forest to provide grant-in-aid to the states.
7. In this regard, the state of Uttarkhand submitted a memorandum before the thirteenth Finance Commission to review and properly evaluate its Ecosystem services (ESS) and asked for special compensatory grant based on ESS to the state.
8. The Punchhi Commission of centre-state relation also gave recommendation that an expert body has to be constituted with representatives from Centre and States on a periodic basis to determine the amount of compensation to be granted to the forest-rich states.

5.10.4 The Planning Commission

The role of Finance Commission has been undermined and reduced by providing grants under *Article 282* by the non-statutory, permanent Planning Commission and by giving loans to the states by the Centre under *Article 293* of the Constitution. Right from its inception the Planning Commission, which was not envisaged initially by the Constitution makers, started to play a dominant role in economic policies and in distribution of central resources to the States.

1. The Planning Commission had distributed larger share of the Central resources compared to the statutory transfers made by the Finance Commission up until the annual plans of 1966–69.
2. This influence of non-statutory Planning Commission created a dilemma because before the fourth plan period there was no objective criteria used by them to transfer the central funds. Apart from these, other discretionary transfers such as the budgetary transfers and the transfers by the ministries were also quite high during this period.
3. The inherent nature and functions of the Planning Commission were not federal but unitary in nature. And in the name of development the successive Planning Commissions too tended to expand and extend the authority of the Union government with total disregard to the spirit of federalism emulated in the Constitution.

5.10.5 Planning Commission and Finance Commission – A Comparison

Till recently, the Planning Commission has been controlling major share of the transfers to the states. Though the transfers were made based on the Gadgil formula, revised from time to time,

the inherent objective of the Planning Commission and the Finance Commission were entirely different.

1. The statutory transfers made by the Finance Commission were largely fixed and pre-determined based on distribution of net proceeds from the central taxes.
2. In 1960s, a clear-cut distinction was made between the roles and jurisdiction of Finance Commission and the Planning Commission with regard to transfer of central funds to the states.
3. All planned expenditure came under the purview of the Planning Commission, while the non-plan expenditure was disbursed by the Finance Commission to the states.
4. Apart from these, a major chunk of the federal fiscal transfers is through the ministries under their welfare schemes and programmes, the transfers are made to the states directly from the Centre.
5. After 1984, the federal fiscal transfer made by the Finance Commission year-on-year basis to the states were between 35% and 40%. The remaining share of the transfers were carried out either under the plan or discretionary powers of the centre.

5.10.6 Centralization of Economy

(a) Under Nehru

The Centralization of the economic policy making was carried out by Nehru through regulation and development of large scale industries, including their distribution and location. The majority of the investments were from the Centre and the most basic industries were reserved for the public sector.

1. Several constitutional amendments were carried out by Nehru to centralize the economic planning. For example, the third amendment in 1954 amended the Entry 33 of the concurrent list by adding “production of and trade in certain food stuffs and cattle fodder and raw cotton and raw jute” to the industrial products which were under the legislative jurisdiction of the states so that they could be brought under the Union’s by a parliamentary enactment in ‘Public Interest’.
2. The Sixth amendment in 1956 amended Article 286 to give power to the Union in order to determine the principles governing inter-state trade and commerce and also to implement the intention of the constitution makers not to allow the States to tax goods passing through its territory meant for sale or purchase in some other state or outside the country.
3. Further economic and political centralization was made by further amending the Seventh Schedule by bringing in the Seventh amendment in 1956.

(b) Under Indira

Indira furthered the Economic Centralization tendency of the Union by drastically nationalizing the major commercial Banks in 1969. The states virtually became satellites of the centre because of the centralized economic planning, increasing role of Planning Commission in the federal fiscal transfers and through other discretionary transfers to the states by way of centrally sponsored social and welfare schemes and policies. The states thus were totally dependent on the Centre for the funds. Apart from these, there were also other indirect transfers such as the food and fuel subsidy, schemes involving tax expenditure, etc.

5.10.7 Role of Discretionary Grants

Plan and discretionary transfer is influenced by the political consideration and bargain made by the states. Hence, when there is political consideration, it is impossible to expect the central ministers to take unbiased decisions to effectively allocate their budgetary funds to develop all regions equally. The most astounding fact is that the discretionary grant has continued to play a substantial part in the federal fiscal fund transfer. Majority of the resources needed to implement important development plans of the state's concern, such as education, health, agriculture, rural development, etc., come from the means of various central government schemes and programmes. Majority of the activities under the education and social welfare have now become central subjects. The central ministries thus play an important role in allocation of its discretionary funds to the states. The Planning Commission also play a role in allocation of the discretionary funds as it approves the plans proposed by the States. Key role in development and design of some of the centrally sponsored schemes was carried out by the Planning Commission.

5.10.8 From Planning to NITI

1. The role of Planning Commission as a decision-making body went unchallenged during the first two decades after independence as there was a single party rule across the country, thus the Planning Commission's failure to include representatives from the states went unquestioned.
2. This scenario changed when other party governments were formed in the states and when era of coalition governments started to rise in the Centre. These challenged the powers and functions of the Planning Commission, and questioned the contradicting federal aspect of the Commission.
3. The Commission was seen as a stumbling block when the government initiated the liberalising measures after the 1990's crisis.
4. Then Prime Minister Manmohan Singh tried to alter the nature and infuse new dynamism to the Commission by appointing pro-market specialists to manage the Commission.
5. The states started creating their own federal space whereby they could dictate the path of national development. This increasing role of the states pushed forth the requirement of cooperative federalism among the centre and the states and also among the states themselves.
6. In order to foster this new need, the present NDA government under Narendra Modi established a new body – NITI Aayog (National Institution of Transforming India).
7. NITI Aayog came into existence through an executive order replacing the Planning Commission. The present organisation too is under the command of the Central government and it is feared that this body too will follow the path taken by the erstwhile Planning Commission. But the performance and outcome of the NITI Aayog is not over yet to be judged.

Nevertheless the abolition of Planning Commission and establishment of NITI Aayog are expected to infuse energy towards a beginning of a new kind of fiscal federalism. There is already a recommendation made by the 14th Finance Commission to increase the state's share in the centre's new divisible tax pool to 42% from current 32%. It has also recommended to

remove the distinction between plan and non-plan expenditures. Even this measure might have political implications as there is still inequality existing between various states. The centrally sponsored schemes are sought to be cut down and states duties and responsibilities are to be increased in these spheres. The NITI Aayog is set to prioritize the plan and development needs of the states individually.

5.10.9 Role of Centrally Sponsored Schemes

The States and Centre have always mulled with the idea and functioning of the centrally sponsored schemes. Time and again, the states have expressed their genuine concerns about the design and implementation of these schemes. Most of the time, these schemes are unilaterally, without getting inputs from the states, constructed and no room is given for local and regional specificities. Several committees were formed to examine various centrally sponsored schemes in view of the dissent raised by number of state leaders. Some of the leaders consider these schemes to be encroachment of their constitutionally guaranteed powers and functions. Opposing the central government's recent implementation of the Direct Benefit Transfer (DBT) scheme, which was implemented by bypassing the state governments, former Chief Minister of Tamil Nadu, Late. J. Jayalalithaa stated as follows:

"They insidiously seek to secure for the Government of India unnecessary influence and authority over the finances of the States".... "We are equally opposed to the direct transfer of cash to the Bank accounts of the beneficiaries by the Government of India by passing the State Governments altogether"..... "This was neither an administratively sound practice nor in keeping with the spirit of federalism..... Planning Commission had issues a series of instructions and guidelines on number of conceptual and operational issues relating to DBT with virtually no consultation with the State Governments. Once decisions were taken and the scheme was finalized unilaterally by the Centre, the States were required only to place their field machinery at the disposal of the Central Government to implement the mechanism....." Are the State Governments expected to look on as mere bystanders, far removed from the process of administering the scheme, after having placed their entire field machinery at the disposal of the Government India? This is clearly an infringement of the authority of the State Governments and totally violative of the federal polity of the country and the spirit of democratic decentralisation".

1. The centrally sponsored schemes (CSS) have been undermining the autonomy and the fiscal powers of the state.
2. Larger expenses by the centre on the CSSs has its impact on the resources to be transferred to the states, as their availability becomes less, and hence the states suffer.
3. The smaller states are faced with other problems due to these schemes, these states are forced to allocate resources in the form of monetary and human resource. As they are already backward, these states struggle even more to implement the schemes of the centre.
4. A sub-committee appointed by the National Development Council (NDC) in 1966 recommended abolition of several centrally sponsored schemes.
5. The First Administrative Reform Commission too recommended minimizing these schemes. In, 1968 the NDC took decision so as to keep the transfers to the states outside the fixed Gadgil formula to be one-sixth of the total central assistance to the states.

6. In 1985, committee headed by K. Ramamuti recommended that the number of CSSs has to be reduced and its primary aim should be to initiate the process of change. Another high level committee in the year 1985 recommended to transfer some of the CSSs to the states. But in reality, against all these said recommendations the number of CSSs has only risen with bigger budget allocation and outlays, and in name of CSS these schemes intervened into the subject matter of the State list.
7. Accordingly, decision was taken at the Chief Ministers Conference (headed by the Prime Minister) in 1996 to transfer the funds of those CSSs which fall under the State list.
8. The CSSs have other implications too, such as when the Centre coerces the state to take part and share cost in some of the major CSSs like Sarva Siksha Abhiyan (SSA) scheme.
9. The Union government being in the dominant position and as the major funder of these schemes, dictates terms to be followed by the state governments even on matters pertaining and falling within the constitutional jurisdiction of the states.

(a) Views of Puncchi Commission – Centrally Sponsored Schemes

- a. The Punchhi Commission on Centre-State relations was of the view that these CSSs tended to erode the state powers and created an unbalanced fiscal relation between the centre and the states.
- b. In line with various other recommendations made by other committees, Punchhi commission recommended a comprehensive review of all fiscal transfers made to the states with a view of reducing the discretionary transfers through the centrally sponsored schemes.
- c. It has also suggested that some of these schemes should be completely transferred to the states while some others in-built flexibility be incorporated so that states can individually design and implement the schemes based on their need.
- d. The Commission also suggested that the additional expenditure liabilities on the states for implementing the central legislation should be borne by the central government and it should not burden the already overburdened state governments.

5.10.10 Taxation Powers

The Constitution itself provides a favourable position to the Centre with regards to the revenue and financial resource generation. The taxation powers of the centre are vast compared to that of the state. The most productive part of the taxes, the Income and Corporate tax, duties of customs and excises are assigned to the Union. The Eighty-eighth Constitutional amendment in 2003 inserted a new entry No. 92C to the Union list, giving exclusive jurisdiction to the Union government to levy taxes on services, which has now become a major source of revenue in the Economy.

The proceeds of the states taken together are less compared to that of the Union. Though the Constitution allows the Centre to retain and control major resources, it does provide for transfer and assignment of these resources to the states, some of such provisions are:

1. *Article 268*: Levied by Centre but collected and appropriated by the States.
2. *Article 269*: Levied and collected by the Centre but assigned to the States.

3. *Article 270*: taxes levied and collected by the Union, but assigned to both Union and States. Mandatory sharing through the Finance Commission.
4. *Article 275*: Statutory Grants-in-aid, based on the recommendation of the Finance Commission.
5. *Article 282*: Grants for any public purpose
6. *Article 293*: loans granted for any purpose

5.10.11 Borrowing Powers

Under *Article 292* of the Constitution the Union government has unrestricted power to borrow subject to the limits imposed by the parliament. But borrowing powers of the states are restricted under *Article 293*. This article says that the executive power of the state extends to borrowing within the territory of India and not outside. It also says that the state cannot raise a loan without the consent of the Government of India or its guarantee. Even after the economic liberalisation the Constitutional structure and nature of Centre-State fiscal federalism has not changed. Foreign funding to the state government and its projects are routed through the central ministries or through central financial institutions. Major industrial and investment policies are still under the control of the Central government, or under boards or agencies appointed by it. As per *Article 301* of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free, but restrictions can be imposed for 'public Interest' both by Centre and the States. Movement of commodities which play a vital role in life of common people though cannot be restricted even for such 'public interest'. *Article 285* says that the property of the Union shall be exempt from all taxes imposed by the states or any other authority within the state and similarly *Article 289* provided that the property and income shall be exempt from the taxation by the Union.

5.10.12 Conclusion

There are multiplicity of sub-national structures and political institutions in a federation, which undesirably affect the implementation capacity of the National governments which tries to formulate macro-economic reforms. The Indian federation is no different in this regard. As seen in the beginning, India is a giant multi-national system and many states within the system are now demanding reform in the Centre-State fiscal dynamics. The third tier – the Panchayats, which are still under the control of the state governments, have been already covered under the federal fiscal transfers. The states are now claiming their share from the National resources which till now were under the exclusive jurisdiction of the Union government. The states still look to the Centre for most of the things, but this dynamics is now changing in the era of coalition politics, the states are not just expecting but are bargaining and demanding from the Centre. And such dependence of states on the Centre eliminates the fundamental federal principles. To quote the State Reorganization Commission,

It is no doubt true that all the States of the Indian Union are now dependent in varying degrees on central aid for development expenditure. However, we must not lose sight of the fact that excessive dependence on the Centre detracts from the federal principle, since a real division of the political power is not possible without an adequate separation of financial powers and resources. The balance of a federal union is bound to be disturbed, if there are among its constituent unit's poor relations or mendicants, particularly if they are inclined to be extravagant.

Thus in such scenario, shift towards Centralization is inevitable if a nation and its macro-economic status has to progress. Effective federal fiscal and macro-economic management can be carried out by a unitary federal system. It can also generate several prospects for de-centralization also.

5.11 CONCLUSION

5.11.1 What is a Federation?

It is important to highlight the fact that Constitution of India does not define what ‘federalism’ is. During the Constituent Assembly debates, the terms ‘federal’ and ‘federation’ were very much discussed but they did not find favour to be included in the final draft of the Constitution of India. Instead, the Constitution declares India to be a Union. During the final stage of the Constituent Assembly debates, the drafting committee deliberately tried to avoid the usage of the words ‘federal’ or ‘federation’ in the Constitution.

5.11.2 Need for a Strong Centre

A strong centralized government has gathered forces and has brought a sense of unity and created a feeling of nationality among the people. Support has been there for a strong Centre in the federation, which can be seen from the debates and discussions in support of strong centre in the constituent assembly. G.N. Joshi, in 1937 much before the constituent assembly started its debates, he argued as follows:

Having regard to the political problems of India, the composition of her population, her economic requirements, and the danger of provincial patriotism intensified by communal feeling running amok, effective solutions of her vital problems are only possible if they are attempted on an all India scale.

Such a feeling is even present now among some of the contemporary political scientists in India. Only at a political level, the political parties, and state political leaders are demanding for better federalized structure and are raising voice against the centralization moves by the Union government. These pressures have resulted in gradual move towards decentralization.

5.11.3 Federalism in the Constitution

The Constitution of India tried to project India as a unified whole. Even though it contains several unfederal features, India is still considered to be a federal country. Several federal features have been incorporated into the Constitution, such as devolution of powers. Unlike the standard federal setup, the Indian constituent federal setup did not willingly join the continental structure. Forceful arguments were made for federalism during the initial years as there was difference in culture, social conditions and even history among the constituent states. But today ‘federalism’ is being held as one of the basic features of the Constitution.

1. The Constitution of India has recognised and acknowledged asymmetries existing between various states in the federation.
2. The representation of the states in the central legislature, that is the Parliament is highly asymmetrical in nature.

3. The seats reserved for the MPs from each states varies according to its size and population of the states.
4. It is not understood why asymmetrical pattern of representation based on population which was followed in the Lower house – Lok Sabha of the Parliament got replicated in the Upper house – Rajya Sabha also.
5. Considering the Centre-State federal fiscal relation, there exists a wide gap between the constituent states.
6. There is also a preference for more centralized or unionized fiscal system as the tax structure is largely controlled by the Central government.
7. There is mismatch in the pattern, growth and development of different units of the federation.
8. The developments of the constituent units are now increasingly tied to the central government.
9. Apart from these, the Constitution itself has provided explicit asymmetric federal provisions for the state of Jammu and Kashmir, North Eastern States and some other tribal states and regions. These provisions have been laid down in the Articles 370 and 371 and fifth and Sixth schedules of the Constitution. Also Article 275 has laid the foundation for categorization of some of the states as ‘special category’ states.

5.11.4 Constitutional Powers to the Centre

The Constitution has empowered the Centre to create new constituent states, change areas and nomenclature of existing states. Thus, territorial integrity is not protected by the Constitution. This is a major deviation from the fundamental federal principles. The constituent states are trying and re-trying to define the powers and functions on their own, including demand for more autonomy. Since independence, the Indian federation has undergone number of reorganisation and changes in its boundaries. There are still more demands for reorganisation and creation of more states. Intellectually demands are also being made for smaller constituent states for better administration of Indian federation.

5.11.5 Theory of Federalism

Coming to the theoretical aspect of the Indian federalism, it is presumed that the main issue involved is distribution of powers and functions between different organs of the government and distribution of functions and powers between different constituent state governments. While talking about federalism, we generally tend to link federalism with functional and territorial aspects. We tend to ignore other non-territorial aspects and other socio-cultural norms, including community participation and representation which tend to govern these relationships. Territorial federalism and power distribution had resolved the initial conflict facing the Indian federation-issues based on ethnicity and language. Of late contemporary issues including issues of non-territorial communities, such that of religious, caste and other cultural issues, have become important to maintain the political stability.

5.11.6 Indian Model of Federalism

1. In many academic discussions, it is argued that India has its own model of federalism-with its own unique features.

2. Federalism in India is significantly different from other existing models practiced elsewhere.
3. They are marked by certain distinct features. Unlike any other federations, there exists a centralized power setup which determines the powers and functions of the territorial and non-territorial units within its ambit.
4. The centre-state relation and the political power distribution are centrally controlled.
5. This is against the basic tenet of concept of federalism. In recent times when the constituent states are demanding more power and autonomy, we can see the growth of power of the centralized power structure, which is becoming more dominant.
6. However, when the central government is trying to take some of the important roles and functions of the state governments, the emergence of the coalition governments has bulldozed some of the constitutionally guaranteed powers of the central government over the states.
7. The distressing fact of emergence of the coalition politics is that it has led to development of some blackmail-type bargaining in centre-state federal relations.
8. As far as India is concerned, federalism means a dynamic process of maintaining vertical relations between the constitutionally powerful federal government and the constituent state governments.
9. Federalism has a long historic tradition in India and it has also undergone numerous changes.
10. In the post-independent era the political leaders have played a decisive role in shaping and re-shaping of Indian federalism.
11. Apart from them, the State Governors and the Constitutional Courts have played important role in shaping and re-shaping of the federalism.
12. Effort was made in 1990s to constitutionally recognise the third tier of the Indian federalism, this reinvention of Indian federalism did not alter much of the basic centralized structure and these institutions are yet to become effective governing bodies on their own.

5.11.7 Features of Federalism

It should be understood that federalism is a dynamic process in its relations and power sharing among arrangements among the constituent states. It has been argued that the success and the stability of the federation is based on how it is allowed to work.

1. The political leaders play a key role in maintaining this dynamic federal relationship between the constituent units.
2. In a federation it is important to maintain the balance between relations of centre and the constituent state units.
3. Any move towards over-centralization will break down the federation.
4. A strong and united India is always welcome, but for that to happen the constituent states have to be strong and resilient, which then can create a strong and united India.
5. Power sharing among the federal constituent units is very essential for sustaining and maintaining the democracy in deeply divided societies such as India.

5.11.8 Reorganisation of States

As already stated before, since independence the reorganisation of the state boundaries and territories are regular features. Time-to-time, new states have been created through the process of reorganisation, and hence there are now demands for more states based on regional tribal identities. Intellectually arguments have been put forth that smaller states would be easier to manage in Indian context. In fact, in reality some of the states are too large to manage or govern effectively. It is perhaps now the right time to constitute a second state reorganisation commission to look into the rationale behind demands of such states and consider the importance of size, population and cultural settings of the people. There is now also the need to devolve the power to the districts in order to strengthen the grassroots level governance.

5.11.9 Role Played by the Regional Parties

The centre-state relation dynamics has undergone change because of the growing role of regional parties and their participation in the coalition governments. This growth has led to informal re-federalization of the Indian political system.

1. This kind of federalism is tending to undermine the national development perspective.
2. On the other hand, as the country is fast developing in terms of industry and capital the concept of federalism is losing its significance.
3. Nonetheless, the constituent federal units are trying to re-enforce the concept of dynamic federalism in order to protect their power, authority and functional autonomy.
4. The role and power of the Central government were enhanced by extra constitutional bodies such as the Planning Commission (now reconstituted as NITI Aayog), but presently extra-constitutional features such as the coalition regimes are undermining the power of the Centre and the states are trying to enforce their will.

5.11.10 Steps to be Taken by the Centre

It is perhaps time that centre relieves its responsibility for each and every aspect concerning the country.

1. It must restrict its responsibility to limited subjects concerning national importance.
2. It must stop relying on the states to implement its policies and programmes. It must implement them using its own resources, infrastructures and offices.
3. It can even liaison with the district governments directly for implementation of such programmes.
4. For subjects under the purview of the state governments, the centre should ask the people to seek out to the state government they have elected for their implementation.
5. If the state governments could not guarantee and fulfil its public duty obligation to its citizens, the centre may coerce it to act and in extreme circumstances may take over the administration of the states for a temporary period.
6. In brief it can be stated that federation is anti-thesis to the concept of nation-state; but nonetheless it plays a key role in nation development.

7. Though Union of India is the basis of our national identity, it must be accepted that the strength and stability of the Union depends on the strength and capacity of the constituent states to develop and grow on their own.
8. The central government must not distraught the powers and functions given to the constituent state units.

5.11.11 Contemporary Status of Federalism

It is a known fact that India has voluntarily federalized itself to accommodate both territorial and non-territorial interests within the framework of broader power sharing arrangements and through recognition of linguistic and cultural autonomies of the constituent state concerned.

1. The independent India is undergoing a federalizing process and through this the federal diversity is also increasing.
2. In order to govern the vast diversified people divided historically, culturally, ethnically, etc. led to establishment of the federal structure in order to help them govern themselves.
3. The republic of India is thus a federation; but it has many distinctive features which essentially modifies these federal features.
4. In India the federation was created paradoxically to contain the divisive forces. Since independence several states have been added by modifying and rearranging the boundaries of the existing states.
5. There is growing demand for further creation of smaller states and their reorganisation.
6. Number of communities based on caste, religious and other cultural identities are demanding legitimate space of their own within the federal system in form of cultural autonomy.
7. In such a scenario, the nature of federal dynamics is changing rapidly.
8. The raise of coalition politics has also given boost to new dynamics in the federal debate in India. Today, every policy and programme of the central government, including development and welfare measures in some of the most important sectors such as- education, agriculture, rural development, health, etc. are directly linked to the emerging federal relations.
9. Apart from these, emerging security concerns in areas such as terrorism and naxalism have also given a new push to the federal dynamics in the country.
10. Additionally, in order to address diverse demands made by the constituent states, the Indian State has resorted to numerous asymmetrical and special federal arrangements, including that of asymmetric fiscal federal measures.
11. In short, the Independent India started with a unitary federal state with strong unifying tendency.
12. The Constitution was also highly centralized. Though the Constitution was in favour of a strong central government, it did have several provisions for maintaining the federal character of the state.
13. As time passed, the independent India underwent federalizing process, it recognised the regional federal diversity, ethnic diversity, linguistic and other cultural diversities.

14. This federalization process contained both unionizing and regionalizing features, which were expected to provide stability to the federal union and thus consolidate India as a federal state.
15. The Constitution guarantees enough powers to the state governments to protect interests and identities of various territorial and non-territorial minority communities.
16. It may be still be argued that India is still a multi-national state; but it is strongly moving towards a nation-state system.
17. People and the states are looking towards the one government that is the National government.
18. And even Centre government is playing a dominant role in every aspect possible. But as the states are demanding the centre should recuse itself from all activities and provide enough autonomy and powers to the states to take decisions on their own.
19. The Centre should also stop relying on the states for implementation of its policies and programmes.
20. It should intervene directly and reach people at the ground level through its own officers or with help of the district administration.
21. This will help in doing away with the negative role played by some of the state leaders and parties.
22. Perhaps time has now come to realize that districts are the constituent units of governance.
23. Constitution may itself delegate powers and functions at district level and create a mechanism to elect a representative, democratic, responsible government at district level.

Finally, it is important to understand that any demand for strong federalizing features will not in turn create a stable political governance system. Political leadership has a crucial role to play in the changing federal dynamics. What needed is not just a federal political leadership to understand the dynamic underlying federal relations. Thus, the federalism in India is a dynamic process based on needs and aspirations of a diversified population.

Following findings and observations can be derived from the above study:

1. Since ancient times, federalism has reminded an important instrument for political organisation in the country. Centralized states have been formed by alliances and counter-alliances of the kings and emperors during the medieval and ancient period. There existed several autonomous and semi-autonomous provinces having a limited sovereignty. In fact, some of the masterful personalities of ancient India controlled vast empires consisting of several smaller feudatory kingdoms. The emperor who had captured the kingdoms always treated them to be as subordinate alliance by the local ruler and king; but he respected the local laws and customs and never tried to introduce his principles in those territories ruled by him. In course of this, we have to acknowledge that the kingdoms in ancient India never joined together or united under one single ruler or system to form a strong unitary state nor was there any effective federal structure.
2. The local self-governing institutions and the village republics played a crucial role in the political organisation of people in ancient India.
3. While kingdoms in ancient India never came together to form a strong military state or a pure federal system, it has been established that all successful empires in that

time was highly centralized. This centralization became distinct during the medieval period. It has to be noted that strong centralizing tendencies of the ancient empires was followed by simultaneous devolution of powers that is by providing regional and provincial autonomy. Though the personality of the emperor held together the empire together, he had to give some kind of recognition to the regional kingdoms and autonomous states from time to time. There did exist a number of such autonomous provinces within the centralized structure and the rulers of these states did enjoy varying degree of power and autonomy.

4. The British tried to rule the country as a unitary system; but even they introduced several measures for administrative decentralisation and paved way for formal decentralisation of the federal system by enacting the Government of India Act 1935. Thus credit has to be given to the British for the emergence and growth of federal idea in modern India. The role played by the British brought in several territorial and non-territorial units of the Indian federation. In order to suit their vested interests the British even recognised and accommodated the princes, the minorities, the depressed classes and various other functional communities. They made systemic efforts for representation of these communities in the legislative and the public bodies.
5. The federal structure underwent a change by the enacting of the Government of India Act 1919, popularly known as the Montagu Chelmsford reforms. It marked the beginning of emergence of federalism in the country as it had clear cut provisions of separation of revenue heads between the centre and the provinces. It introduced the concept of 'diarchy' for sharing the sovereignty at the provincial level; it transferred many subjects to the Indian ministers answerable to the provincial government and rest other subjects were under the consideration of the provincial Governor's discretionary power. These reforms also provided for a representative bicameral legislature at the centre, a council of state and central legislative assembly; and a consulting and advisory body of chamber of Princes. For the first time ever the Provincial legislatures were given legal and financial authority over important subject 'heads' like health, education, irrigation, public works, agriculture etc.
6. In the history of development of federalism in the country, the Government of India Act 1935 remains a landmark instrument. The Government of India Act 1935 not only served as the governing instrument till the Independence, it also served as a reference for the members of the constituent assembly. If this Act had not been enacted, it would have been difficult for the members of the constituent assembly to frame the Constitution of India within the time they had taken to do it. Almost every provision present in the Constitution of India finds a mention in the Government of India Act, 1935 either directly or indirectly. The Constituent Assembly simply modified or changed the most of the existing provisions present in the 1935 act and adopted what suited them. They were thus not required to introduce any major fresh subjects.
7. The existence and presence of large number of princely states was a unique problem faced by the Indian federation which had no parallel anywhere. Their merger and integration with the Union of India within a short span after the independence was a unique exceptional achievement.

8. Initially the Constituent Assembly started with a very positive spirit to draft a federal constitution for India and also envisioned that India is a federation of states. However, right after the independence and the scenario that existed during the partition made the Constituent Assembly to think in the other extreme and it in fact decided to create a strong centralized structure. In the end, the Constituent Assembly even avoided the use of words 'federal' or 'federation' in the Constitution and supported for a strong Union. The Constitution of Independent India was biased towards the centre. The consociational provisions as provided in the Government of India Act, 1935 for the minorities, depressed classes were taken away by the Constituent Assembly. But certain special concessions to the SCs and STs (to some extent the Anglo Indians) were allowed to continue.
9. The territorial integrity and unity of the constituent states have not been recognized by the Constitution of India. Since the time of independence several state reorganisations have taken place. As per the Article 3 of the Constitution, the Centre has not only created several new states, but have also altered boundaries, changed names etc. of the existing states. The reorganisation of the states is still a burning issue as still now there are demands for autonomy.
10. The constituent states in the federation vary in terms of size and population. Apart from this there is significant difference in terms of economic growth and levels of economic development between the constituent states. In the Indian political setup the larger states enjoy much more dominant power and status. All these asymmetries existing between the states will impact on inter-state concord and discord and it will further reinforce state wise son of the soil movement. Asymmetrical features present in the Constitution for representation of the states in the Parliament have led to major imbalances in the power structure of larger and smaller states. In order to mitigate this imbalance in power and socio-economic backwardness of the smaller states, some asymmetric provisions have also been incorporated into the Constitution. It has had a negative effect as some of these provisions have further reinforced the asymmetry and thus making it difficult to manage the political process.
11. In the future the reorganisation of the states is going to be still a major concern for the Indian federation. The delimitation of the electoral constituencies (which was frozen till 2016 by the eighty-fourth Constitutional Amendment) is likely to open new problems as this will have a significant impact on the representation of the states in the Parliament. Based on population proportionality the northern states having larger population will walk away with more seats in the parliament compared to other states which have effectively implemented population control measures. This is likely to create problem among the states which might lead to further reorganisation.
12. In order to deal with several asymmetrical aspects and to provide effective governance, it is perhaps time to realize the need to make further reorganisation of the states and create new smaller states. It is indeed time to fix the minimum and maximum size of the states in terms of its population and size. The bigger states may be divided so as to fit the maximum size provided. This may not be as easy, thus there is now a requirement for a new state reorganization commission for effectively dealing with the issue. This reorganisation has to happen with the involvement of several experts and other representative members to be present in the commission.

13. In the Parliament of India, the Lok Sabha has a differential representation of members based on population of each state, hence there is no logic behind using the same formula for the representation of the upper house that is Rajya Sabha also. Such kind of similar proportionate representation for the both houses for the constituent state was in fact questioned in the constituent assembly, and thus the composition of the states in the Parliament especially Rajya Sabha is a subject matter of debate for a long time. The smaller states did have concerns regarding such composition in the Rajya Sabha as it was favouring the larger states having larger population, thus these larger states can impose a legislation on large number of the smaller states even without their consent or support. The Rajya Sabha being the house of states and accordingly the Rajamannar Committee in 1971 recommended for equal representation of states in it. This issue of equal representation was raised before the Sarkaria Commission on centre-state relations. The Punchhi commission on centre-state relations went a step further and recommended that relevant provisions should be amended so as to provide equal representation of states irrespective of their population size. It also suggested that the Section 3 of the Representation of the People's Act be placed back to its original position before its amendment in 2003 and thus representatives of the state in Rajya Sabha should again be linked to the territory of the concerned states.
14. The centre-state as well as the interstate conflict resolution mechanism is not very well developed. The Rajamannar Commission, the Sarkaria Commission, the National Commission on Review of Working of the Constitution, the Punchhi Commission etc. all suggested for a stronger role for the inter-state council. In fact, inter-state council was established by the V.P. Singh government, but it was kept in deep freeze. No proper role and function has been allocated to the inter-state council. As far as inter-state river waters are concerned, the inter-state river water tribunals have failed to resolve such issues within reasonable time. Such disputes have continued for a long time and the procedure behind the Water Disputes Act has remained a lengthy one. Even the interference of the Courts in such matters have not made any significant changes to resolve these issues. Hence there is a pressing need to bring proper and effective legislation concerning the inter-state sharing of river water and restructuring of the role of the tribunals in such matters.
15. There is now an urgent need for a balanced and equal growth and development among different zones of the country such measures will strengthen the 'Union' on India against any fissiparous tendency.
16. The extra-constitutional role played by the political parties and their leaders has significantly changed the dynamics of federalism in the post-independent India. A perusal of federalism in the post-independent India shows that Indian federalism has experienced three different phases of centre-state federal setup. First, during the first two decades after independence, most particularly under Nehru and Shastri, the federal relation was marked by centralized but cooperative federalism between the centre and the states. The relations were centralized from the perspective of the economic planning and national development. As far as the political relations were concerned Nehru maintained a balanced and coordinated federal relationship. Nehru with strong support from the Congress party defended the strong centre in order to maintain the national unity and integrity. The single party dominance by the Congress party during

the first two decades played an important role in centralizing all the important economic and government activities.

17. The second phase starts after Nehru, significantly after the 4th general elections in 1967. Indira Gandhi changed the cooperative federalism of the Nehru-Shastri era to coercive federalism. The centre-state relation was highly reactionary to each other. The coercive federalism of Indira was seen by over centralization of both political and economic spheres. The centre virtually ruled over all the states. Even the Janata government formed after overthrowing the Indira government did nothing to reverse this trend. Rajiv Gandhi though initially tried to be cooperative with the states ultimately tried to revive his mother's centralized and authoritarian mode of taking decisions. The coercive and over centralized phase of the centre-state federal relations continued till 1989 when the emergence of coalition politics virtually changed the federal dynamics.
18. The second phase of the centre-state federal relation started after the strong role played by Kamaraj-led Congress syndicate's influence of the state leaders of the Congress party. This syndicate later turned out to be a spoiler for Indira and was in fact responsible for her over centralization measures and the subsequent proclamation of emergency. The states by mid-1960s started to challenge the centre, and after the 1967 elections the domination of the Congress party in strategically important states got eliminated and non-Congress took up the power in these states, thus strengthening the regional voice. The Congress party got trounced in several state and coalition of regional parties or national party with regional parties support formed the government. This signalled the weakening of the centre and the strengthening of the clout of the states. This is described as the adulthood of the Indian states within the Indian federal structure. Apart from challenging the dominance of the Congress party these non-Congress ruled states started demanding structural changes be made to the Indian federalism. Indira's centralization move virtually defeated the adulthood of the Indian federalism.
19. The third phase marked with cooperation and confrontation between the centre and the states due to the emergence of coalition politics. The centre-state relations became a kind of federal bargain between the centre and the states, if the bargain resulted in favour of cooperation both the centre and state cooperated, in case otherwise they confronted each other. A perennial kind of era in coalition politics has given power to some of the leaders of the states who have become powerful and have influenced the bargain in favour of their own state and party. Even the central government started to bargain in order to have its own political sustenance. Unfortunately, the federal structure has served as the breeding ground for uneven development as the regional political groups have started to exert pressure on the central government to work on their interests, thus marginalizing the reforms to be carried forward by the centre. These kinds of bargain has weakened the ability of the central government to carry forth strong economic and political reforms.
20. The emergence of coalition politics and the role played by the judiciary has reduced the misuse of the office of the Governor and the controversial use of President's Rule in the states. In the present political scenario it can be easily inferred that constitutionally Indian federalism still remains centralized in nature but practically it has

turned out to be decentralized one. Within Indian federalism there is shift in balance of centre-state relation in favour of the states.

21. As far as the fiscal federalism is considered the centre still plays a dominant role. The extra constitutional role played by the Planning Commission in discretionary allocation of the funds and other discretionary fiscal transfers in the form of centrally sponsored schemes and welfare policies and other budgetary support undermined the growth of true federal spirit.
22. There are plethora of centrally sponsored schemes (CSSs) and in particular the manner in which such schemes are designed and implemented has greatly undermined the authority of the states concerned. Almost all the CSSs are designed by the central government without the consultation with the state governments and it does not give due recognition to the regional and local specificities for such schemes. Importantly, in some on the major centrally sponsored scheme involving huge funds, the states have been coerced to share the financial burden. Many state political leaders consider the same to be an encroachment upon their federally allocated jurisdiction.
23. Time has indeed come for the need to review and reframe the various centrally sponsored schemes and policies of the central government. If the subject matter they deal with fall under the purview of the State list, then such schemes have to be transferred to the states for its administration and implementation. Even if the schemes of the centre has to be administered by the states, they have be consulted and involved in the design and development of such schemes and policies. Any such centrally sponsored schemes has to be fully funded by the centre without financially burdening the state government. States may also be provided with scope of additional revenue generation by implementing various welfare schemes of their own.
24. In order to avoid controversy with regard to implementation of various CSSs and other direct benefit transfer schemes, the central government may use its own resources and offices, administrative infrastructure, and thus directly deal with the concerned people and avoid using the resources and machineries of the states.
25. Districts have traditionally remained the units of administration and governance. It is perhaps time to realize its importance, effectiveness and recognize the elected district governments. The idea of elected district government can be enhanced and implemented as part of already existing constitutionally provision giving power to local self-governance.