



### Learning Objectives

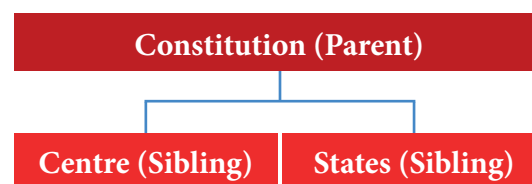
- ❖ To understand the meaning, evolution of the Concept of Federalism
- ❖ To evaluate the federal and unitary features of Indian Constitution and to fathom out how far our Constitution provides and promotes Federalism
- ❖ To examine the distribution of Center-State Powers in the Legislative, Executive and Financial domains in Indian Polity
- ❖ To know and evaluate the Cooperative Federalism provided in the Constitution
- ❖ To study the major issues and demands in the Centre-State relationship conspicuously found in our Political System
- ❖ To read and discuss the recommendations of various commissions in the domain of Centre-State relations in India
- ❖ To examine and evaluate the inter-State river water dispute settlement mechanism provided in our Political System

## 5.1 Meaning of Federalism

Federalism refers to a political system that possess Constitutionally provided and guaranteed distribution of powers between a national government and several regional governments. The fundamental attribute of a federal Constitution is the Constitutionally created and protected State or regional governments. If regions in a country are distinct in terms of ethnicity, language, religion etc., the ideal form of government will be the federal system. Democratic federalism is the best instrument to ensure 'Unity in diversity'. The constituent States retain and safeguard their distinct linguistic, religious or

cultural identity, without compromising the unity of the federated nation. The federal system is based on distribution of powers between the federal or central or Union Government and the constituent States. This distribution is determined by the Constitution, in clear written terms. Hence in any federal system, the Constitution becomes the supreme authority.

### Meaning of Federalism





## Evolution of Federalism

In the modern world, the United States of America became the first federal State. Thereafter British colonies in Australia and Canada were also granted self government and they too adopted federal forms of government. The trilingual Switzerland similarly adopted a federal form of government. The European Union today another example of federal formation on a voluntary basis.

## Rise of Federalism in India

The beginnings of federalism in modern India could be traced in the Regulating Act of 1773, which brought the three regions in India under East India Company's authority (Madras, Calcutta and Bombay). The Indian National Movement recognized the plural character of colonial India. The Government of India Act 1919, introduced partial autonomy (Dyarchy) in the Presidencies, while the Government of India Act 1935, granted provincial autonomy to the presidencies and proposed a Dyarchical form of government at the Centre. The Nehru Committee Report in 1928 and Pandit Jawaharlal Nehru's first proposals of a Constitution favoured a federal structure with more powers for the constituent States. The Seventh Schedule of the Constitution contains the three lists relating to the distribution of powers between the Centre and States.

## Federal features of Indian Constitution

**Indian Constitution possesses several federal features**

## 1. Written Constitution

Federalism requires a written Constitution. There are many governments in any federal system and for their smooth and friction free functioning their powers must be stated in crystal clear terms. There are Twenty Eight State Governments and One national government at present operating in Indian federalism and therefore their powers and functions must be clearly defined.

## 2. Supremacy of the Constitution

The Constitution must be the supreme legal document in the country. All governments must follow the terms and conditions, procedures contained in the Constitution. No government can claim powers above the Constitution.

## 3. Distribution of Powers

The distribution of powers between Centre and States is the cardinal principle of any federal system. Indian Constitution distributes powers between the two levels of governments in a comprehensive scheme. There are three lists of power distribution unlike in the classical federalism of American Constitution where there is only a single mode of distribution.

## 4. Bicameralism

The federal Constitutions provide for bicameralism. It refers to parliament having two houses. Indian Parliament is bicameral as it consists of two houses. The upper house is called Rajya Sabha or Council of States while the lower house is known as Lok Sabha or House of the People. The Council of States is the guardian of States' rights and it consists of

the representatives of the States. All over the world the upper house is deemed to be the protector of States' rights and interests.

### 5. Rigidity of Constitution

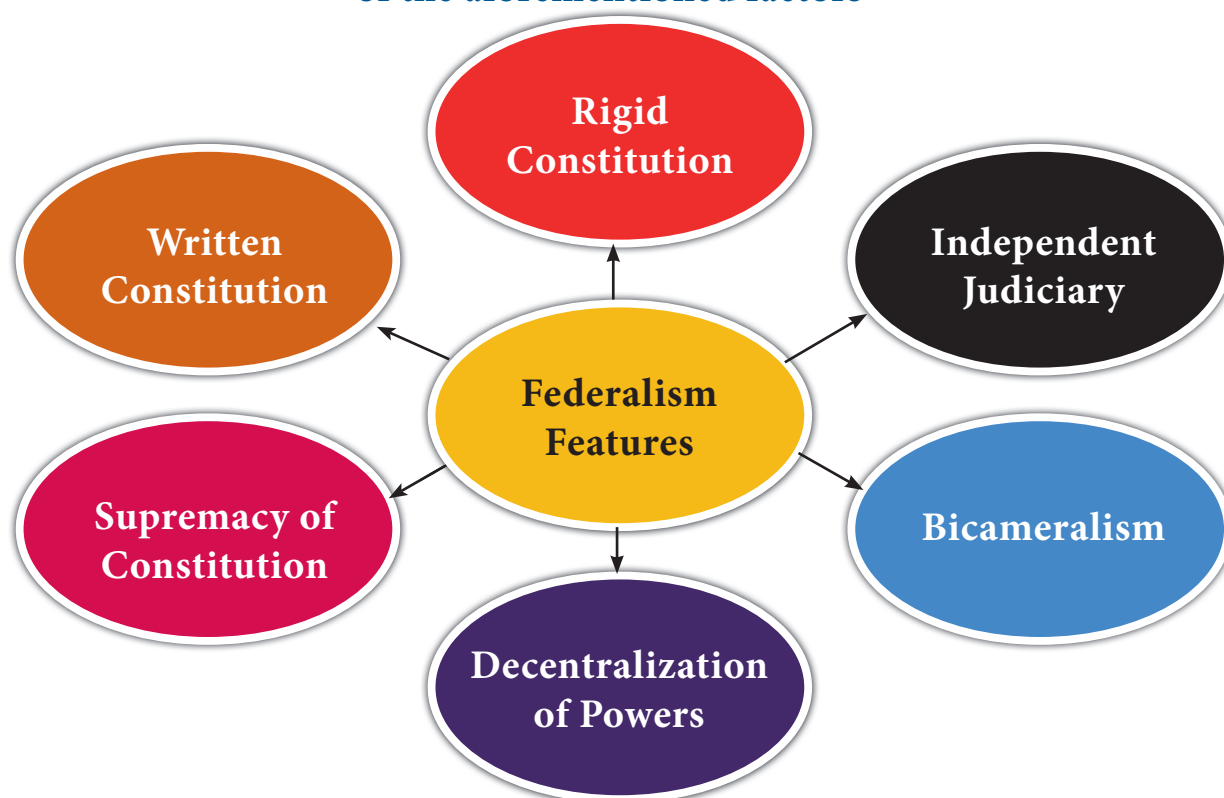
A Constitution will be called a rigid Constitution if its provisions can be amended only through a special process of Constitutional amendment or through a separate amendment body and not through ordinary legislative process. Federal Constitutions do not permit Constitutional changes through ordinary legislative process. They prescribe a tougher, rigid process of amendment like greater majority. The rationale behind this rigidity is the desire to protect States' rights. The article 368 in Part XX Indian Constitution provides a separate amendment procedure for amending Constitutional provisions and therefore

our Constitution is rigid one and to some extent protects the States.

### 6. Supreme Court

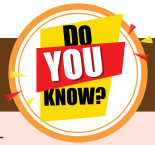
Indian Supreme Court acts as the umpire of the federal system and protector of the Constitution. It possesses the powers of interpretation and adjudication. If any disagreement or contradiction arises among the Central and State Governments the Supreme Court resolves them. The Constitution endows the Supreme Court with Original Jurisdiction. It means that the Supreme Court alone possesses the exclusive powers to resolve any federal dispute between Union Government and State governments or among State governments. If a problem arises between Tamil Nadu and Union Government or between Tamil Nadu and any other State only Supreme Court has powers to resolve it.

**Indian Constitution is described to be a federal one on the grounds of the aforementioned factors**





## Territory of India



There are important differences between Union of States and Territory of India. Union of State refers to the twenty eight states and Central Government. Territory of India means:

1. Twenty Eight States
2. Nine Union Territories
3. Acquired Territory (Any territory acquired by India like Pondicherry, Daman Diu after they became part of India and before they were made Union Territories)

## Unitary or Non-Federal Features of Indian Constitution

Indian Constitution differs greatly from the concept of federalism followed in the classical federal Constitutions like the United States

### 1. Single Constitution

India possesses only one Constitution that caters to the needs of administration both in the Centre and States. Like the United States the individual States possess their own Constitution in addition to the national Constitution.

### 2. Single Citizenship

There is only one citizenship, exists in India, i.e. national citizenship. In the United States the citizens are endowed with both national and State citizenships.

### 3. Flexibility of Constitution

Indian Constitution is partially flexible. Some of the provisions of the Constitution can be carried out by a simple majority in the Parliament.

## 4. No Right to Existence for States

Our Constitution doesn't recognize the right of the States to name and existence. The union parliament can change the nomenclature and territorial identity of the States through an ordinary law. The articles 3 and 4 of the Constitution provide the procedure for the creation of new States and abolition of the existing States. An ordinary bill is introduced in either House of the Parliament for creating a new State or changing the name on the recommendation of the President. The bill is discussed and passed in Parliament leading to the creation of new States. A simple majority in Parliament is the requirement for reshaping the identity of the States.

## Activity



Do you know that Sikkim was once called an Associate State of India?

## 5. Anti-Federal nature of Rajya Sabha

There are three reasons and areas where critics have criticized it as being against the States' rights and federal spirit of the Constitution.

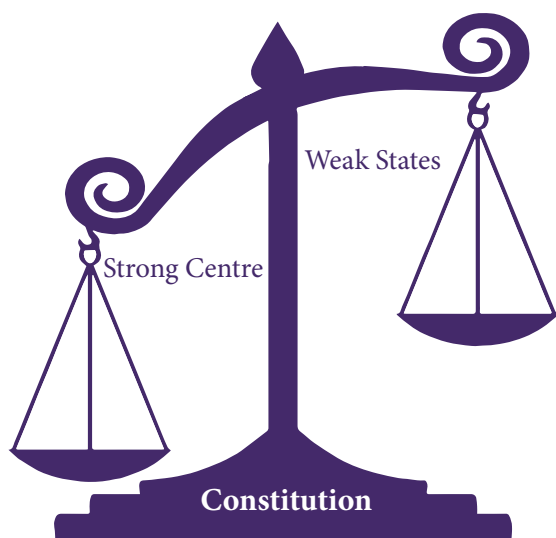
There is no equality principle followed in the distribution of seats in the Council of States. The seats are distributed on the basis of population of the individual States. The most populous State of Uttar Pradesh has 31 seats whereas the smaller States like Nagaland have only one seat. But in any ideal federalism there should be equality of seat distribution in the upper house as seen in the United States where all the fifty State have two seats each in the

upper House of Congress (Parliament) the Senate.

### **Tamil Nadu has 18 Seats in the Rajya Sabha**

Article 249 of the Constitution enables the Rajya Sabha to transfer a subject from the State List to the Union list for the purpose of legislation by parliament on grounds of national interest.

## **6. Imbalanced Distribution of Powers**



The Union Government is endowed with comparatively greater powers both in terms of quantity and quality. Most of the lucrative sources of revenue have been allotted to the Union Government and the States have been rendered financially weaker and forever dependent on Central Government. The Union List has more subjects than the State List and in the Concurrent List ultimately the union power over the States will prevail. The residuary powers are given to the Union Government and not granted to the States as in federal countries like the United States.

## **7. Emergency powers**

The articles 352 to 360 in Part XIII of our Constitution provide for three kinds

of emergencies in India. Article 352 of the Constitution can proclaim National Emergency. Under article 356 of the Constitution the President can impose emergency in any State on the grounds of the breakdown of Constitutional machinery in the State. Under article 360 of the Constitution, the President can declare Financial Emergency.

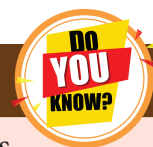
## **8. Integrated Judiciary**

India establishes a single, integrated and hierarchical judiciary. The Supreme Court is the apex judicial institution and the High Courts and the Subordinate Courts function under its supervision and power. In contrast, the classical federalism is following the United States.

## **9. Election Commission**

The National Election Commission conducts elections not only to Parliament but also to the State legislatures. There is a unified election machinery in charge of both Parliament and State legislature elections. The Chief Electoral Officer under the control of the Election Commission conducts the elections to the State legislatures. In the ideal federal systems, there is a separate election machinery for conducting elections to the State legislature.

### **State Election Commission**



State Election Commission is not part of the federal system in India. It conducts elections to Panchayat Bodies and Urban Local Bodies in accordance with 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendments.



## 10. Unified Auditing

India follows a unified auditing system for both the central and State governments. The Comptroller and Auditor-General as mentioned in article 148 of the Constitution controls the entire financial system of the country.

## 5.2. Centre-State Relations

The Centre-State Relations revolve around the fulcrum of distribution of powers between Centre and States. Distribution of powers is the foundational feature of federalism and in federal Constitutions there are three types of distributions, they are:

1. Legislative Power Distribution
2. Executive Power Distribution
3. Financial Power Distribution

### 5.2.1 Legislative Relations

There are two aspects to the distribution of legislative powers between the Centre and States in our Constitution. They are

- a) Territorial Distribution of Powers
- b) Subject Distribution

#### a) Territorial Distribution of Powers

The powers are distributed between the union and State governments territorially. The Union Government possess the powers over the entire territory of India while the States have jurisdiction over their own territories. The Central Government has extra territorial jurisdiction that means that its laws govern not only persons and property within India but also Indian citizens and their properties located in any corner of the world. In contrast, the State legislatures do

not possess jurisdiction outside their own territory.

#### b) Subject Distribution

The Constitution distributes the legislative subjects between the Union Government and States in an elaborate scheme. There are three Lists of distribution.

**List I (Union List)** contains the subjects and powers exclusively allotted to the union parliament. There are 100 subjects here including defense, foreign affairs, banking, currency

**List II (State List)** contains the subjects that are exclusively allotted to the State governments. There are 59 items including public order, and police, public health, local government, agriculture, forests, fisheries

**List III (Concurrent List)** contains 52 items including criminal law and procedure, civil procedure, marriage, education. This list is called as Concurrent List. Both the union and State governments have powers over these subjects. But when there occurs a clash between the union and State governments the law of the parliament will prevail

There is also another category called residuary powers. Any subject not mentioned in the above three lists will automatically come under the jurisdiction of the Union Government. Our Constitution broadly follows the legislative distribution of powers provided in the Government of India Act 1935 enacted during the British colonial era.

#### Exceptions

The above scheme of legislative power distribution will be normally followed.



But under exceptional circumstances the scheme will be suspended. The power of the Union Parliament will be expanded and concomitantly the powers of the State legislatures will be diminished.

### **a) National Emergency**

When the President of India declares National Emergency the union parliament acquires the powers to legislate over the subjects in the State List. The emergency is declared by the president to tackle problems like war, external aggression and armed rebellion that pose a danger to the existence of our nation. For the purpose of tackling the challenges successfully and effectively, the Union Government gains control over State legislature powers too.

### **b) Agreement between States**

When two or more States agree that their mutual interests will be served better if there is common law on a particular subject and request the Union Government to enact the needed law, the Parliament can enact a common law for the desiring States on that subject even if it falls in the List II (State List).

### **c) International Agreement**

The Parliament will have powers of enactment on a State subject for the purpose of implementing an international agreement.

### **d) Article 356, Emergency**

After the declaration of article 356 emergency in a State the President can declare that the parliament will enact on State list subjects for that State

## **5.2.2 Executive Relations**

Our Constitution distributes executive powers between the union

and State governments. The distribution is co-terminous with legislative power distribution to a great extent. The Union Government possesses executive powers over the subjects that are included in the List I, namely the Union List. The States have executive powers over the subjects that are included in the List II, namely the State List. The executive power of the Union Government extends over the territory of India while the executive power of the State governments extend over their own territories.

The executive powers over the subjects in the Concurrent List is ordinarily with the State governments. Nevertheless, the Union Government retains powers to issue directions to the State governments in the execution of executive functions both in normal times and during emergencies.

Another feature in the executive powers distribution scheme in the Constitution relates to mutual delegation of functions between the union and State governments. The Union Government can entrust its functions to the State government after getting the consent of the State Government concerned. Conversely, the State Government can entrust its executive functions to the Union Government after getting the consent of the Union Government. Moreover, the Union Government can entrust its executive function to the State Government without getting the consent of the State Government concerned but it must obtain the consent of the parliament.

## **5.2.3 Financial Relations**

Finances are very fundamental in the successful operation of federal system. Indian Constitution distributes financial

powers between the union and States in a comprehensive arrangement that is broadly modeled on the 1935 Government of India Act. There are two sources of revenue distributed by the Constitution namely Tax Revenue and Non-tax Revenue.

### A) Tax Revenue Distribution

There are five important ways in which the tax revenues are distributed between the union and State Governments.

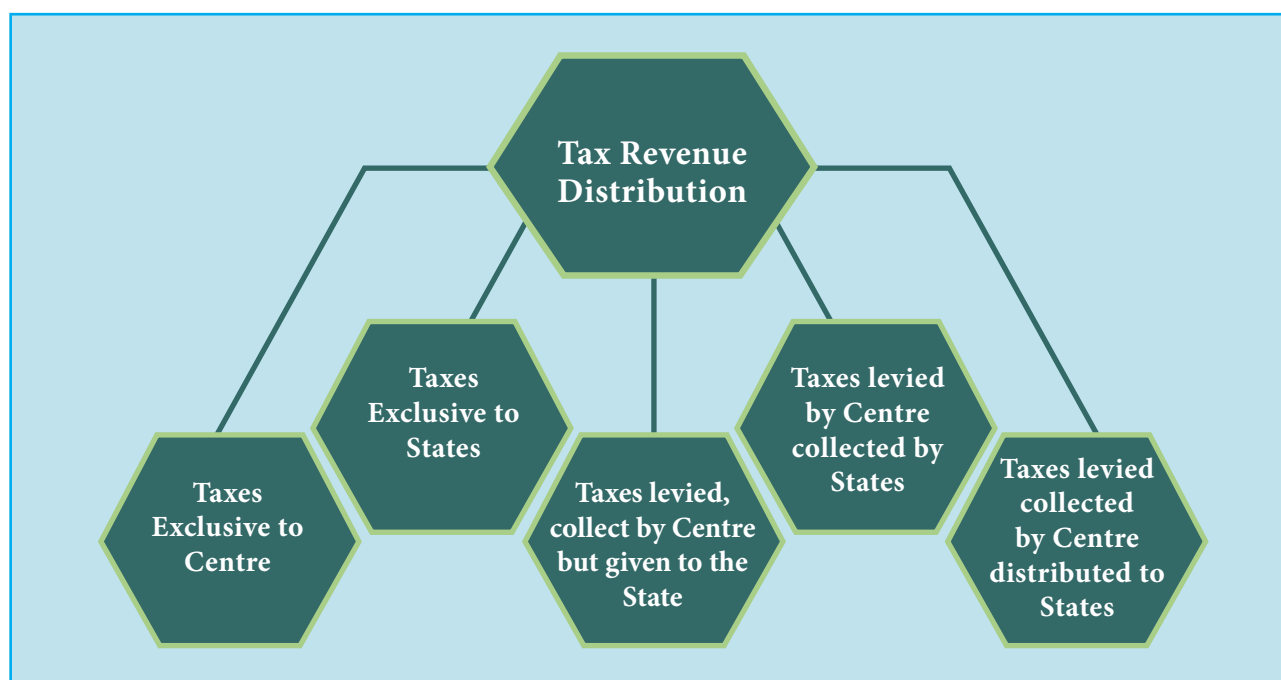
1. Certain taxes like Corporation tax and Custom tax are exclusively allotted to the Central Government

are assigned to the States in which they are levied like the taxes on the sale of advertisements in newspapers.

5. Certain taxes are levied and collected by the Central Government and are distributed between the union and State Governments in a certain proportion like the tax on income other than an agricultural income

### B) Non-tax Revenue Distribution

Both the union and State Governments are provided with non-tax revenue sources. The Union Government



2. Certain taxes like sales tax are exclusively allotted to the States
3. Certain taxes are levied by the Union but collected and appropriated by the concerned States and the examples are stamp duties on Bills of Exchange and Excise duties
4. Certain taxes are levied and collected by the Union Government but the proceeds

gets its revenue from the receipts from commercial and industrial undertakings relating to central subjects like Industrial Finance Corporation. It gets its revenue from Railways, Posts and Telegraphs, Broadcasting etc

The State Governments get revenue from the receipts of commercial enterprises and industrial undertakings





allotted to them. The sources among others include forests, irrigation, electricity, road transport.

The Constitution understands the greater financial needs of certain States and therefore the article 275 asks the Union Government to provide Grants-in-Aid to the States like Assam, keeping in mind the imperative of the development and welfare of the tribal population.

### **Finance Commission**

The president of India constitutes a Finance Commission once in every five years. The article 280 of the Constitution describes the composition of the Finance Commission. It will have one Chairman and four other members. The Chairman will be a person with experience in public affairs and the members will have experience in financial administration, special knowledge of economics, special knowledge of public accounts and government finances, and one member will have the qualification of a High Court judge.

### **Finance Commission will provide recommendations in the following manner:**

1. For the distribution of net proceeds of taxes between the Centre and States
2. Principles governing grants-in-aid
3. Measures needed to increase the Consolidated Fund of India or States to supplement the resources of the Panchayat Bodies
4. Measures needed to increase the Consolidated Fund of India or States to supplement the resources of the Urban Local Bodies

5. Any other matter referred by the president

So far fourteen Finance Commissions have been constituted once in every five years

## **5.3 Co-operative Federalism**

The Indian Constitutional expert Granville Austin described (Granville Austin, renowned scholar of the Indian Constitution, described) Indian federal system as Co-operative Federalism designed to promote co-operation between the Centre and States. The concepts of co-operative federalism applies to those federal governments like the USA where the States have more or adequate powers and the formation of the union is based on “the indestructible union composed of indestructible States”. In a quasi federal State like India, the Union Government can very easily pull down any constituent State for non-cooperation or non-compliance or defiance of Union Government’s will through Constitutional provisions, especially through the emergency powers assigned to the President. The Constitution does not permit States defiance to Centre.

There are many provisions, institutions and bodies created in Indian political system to promote the co-operative functioning of the central and State Governments in India. They can be classified into Constitutional, statutory and political bodies and provisions.

### **Constitutional Provisions and Institutions**

The Constitution itself has created a number of devices to promote cooperation and co-ordination.

## I) Inter-State Council

The article 263 of the Constitution says that the President of India can establish the Inter-State Council to serve public interests. There are three functions and duties assigned to the Inter-State Council

- a) To enquire into and advise upon disputes among the States
- b) To investigate and discuss the subjects that are common to the union and State Governments
- c) To make recommendations to the President for better co-ordination on any particular subjects among the State Governments.

A number of councils have been created to promote cooperation on specific subjects in the past like the Central Council of Health, Transport Development Council, and Central Council of Local Self- Government.

The holistic Inter-State Council was established in early nineties to deal with general cooperation among the units of Indian federal system on the recommendation of the Sarkaria Commission. The Prime Minister functions as the chairperson of the council. The Chief Ministers of all the States and Union Territories with Legislative Assemblies, six cabinet ministers of the Union Government, administrators of the Union Territories without Legislative Assemblies and Governors of States under President's Rule are its members. A Standing Committee consisting of the Union Home Minister, five other Cabinet

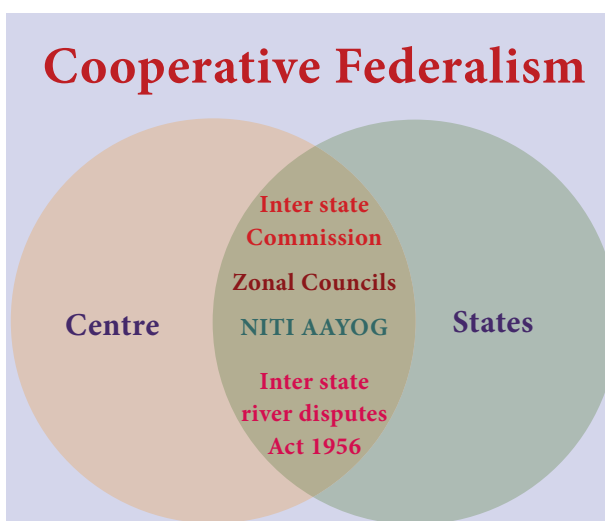
Ministers and nine Chief Ministers also works as part of the Inter State Council to promote co-operation among the members of the federal system.

## II) Statutory Bodies

There are certain bodies created through the statute of the parliament but not mentioned in the Constitution that function to promote cooperative federalism.

### 1. Zonal Councils

The Zonal Councils were established by the States Reorganization Act in 1956 to achieve cooperation and co-ordination among States. They were created in the backdrop of linguistic reorganization of India and the first Prime Minister of India Jawaharlal Nehru described their objective as to “develop the habit of co-operative working”. Originally five Zonal Councils were created and later on in



1971 one more Zonal Council was established for the North Eastern States. They are

1. Northern Zonal Council
2. Southern Zonal Council



3. Eastern Zonal Council
4. Western Zonal Council
5. Central Zonal Council
6. North Eastern Zonal Council

The Union Home Minister will be the common Chairperson of all the Zonal Councils. Additionally, each Zonal Council will consist of the Chief Minister and two other Ministers of the each State and the Administrator of the Union Territory in the zone.

The Zonal Councils will discuss and suggest measures to promote cooperation among the members in areas like economic and social planning, border disputes, inter-State transport etc.

## **2. River Board**

The River Boards Act, 1956 establishes River Boards to provide advice to the concerned governments concerned for the regulation of an inter-State river or river valley.

## **3. Water disputes Tribunal**

The Inter-State Water Disputes Act, 1956 was enacted in accordance with the article 262 of the Constitution that mandated that all inter-State river disputes should be resolved through negotiations. The act provides for the formation of ad hoc tribunals for resolving inter-State water disputes if repeated negotiations prove to be futile in resolving the issue.

## **Political or Resolution Bodies**

### **NITI AAYOG**

The Union Government created the National Commission for Transforming

India after dissolving, 65 year old, the Planning Commission on January 2015. The Prime Minister is the ex officio chairman and the permanent members of the governing council are all the Chief Ministers of all the States, Chief Ministers of the Union Territories of Delhi and Puducherry and the Lieutenant Governor of Andaman and Nicobar Islands. One of the primary objectives of the commission is to “foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis”. It recognizes that strong States will make strong nation. But, without Constitutionally empowering more the constituent States and adequate devolution of revenue resources, the States continue to remain over dependent on the Union Government, even in matters relating to tackling of natural calamities.

## **5.4. Inter – State River Water Dispute**

Inter-State River Water Disputes play a crucial role in the evolution of federalism in Indian politics. There are a large number of such disputes in our country. The Cauvery dispute involving Tamil Nadu, Karnataka, Kerala and Puducherry Union Territory, Vamsadara River dispute involving Andhra Pradesh and Odisha, Sutlej dispute involving Punjab, Haryana, Mahadayi river dispute involving Goa, Maharashtra and Karnataka are the major ones. We have the following dispute settlement mechanism in Indian federalism to solve them.

### **1. Constitution and Inter – State River Water Disputes**

The article 262 of the Constitution empowers the parliament to enact a law providing for the adjudication of any



dispute, complaint relating to the use, distribution and control of any inter-State river or river valley. It also provides that parliament can exclude the Supreme Court or any other court from exercising any jurisdiction over inter-State river water disputes. For this purpose, parliament is empowered to enact a law overriding any provision of the Constitution. The logic of this provision is that inter-State river water disputes contain emotional and economic implications affecting the lives and livelihood of millions of people. Judicial adjudication of the disputes may create social and economic problems. Therefore, the national legislature must have competence to evolve a mechanism for resolution of these disputes through negotiations and direct dialogue.

## 2. Inter-State River Water Disputes Act, 1956

Empowered by the article 262 of the Constitution the parliament enacted inter-State river water dispute act, 1956. This act enables the Union Government to establish a tribunal for the adjudication of an inter-State river water dispute. The Indian Constitutional and legal consensus is that all inter-State river water disputes must be resolved through peaceful negotiations. If no fruitful decisions can be reached through negotiations, the States concerned can approach the union for the Constitution of a tribunal on ad hoc basis for resolving that issue.

When the Union Government decides to constitute a tribunal, the Chief Justice of Supreme Court of India will nominate a person to head it. Earlier, the tribunal always used to consist of one person only but later on this provision was amended to

include more members. The Chief Justice will choose a person (nominee?) from the sitting or retired Judges of the Supreme Court and High Courts. The decision of the Tribunal shall be published in the Official Gazette and there after that decision shall be final and binding on the parties to the dispute. Neither the Supreme Court nor any other court shall have jurisdiction over any inter-State water dispute referred to a tribunal under the Act. No tribunal can be constituted for any dispute that has been placed for arbitration under the River Water Board Act, 1956.

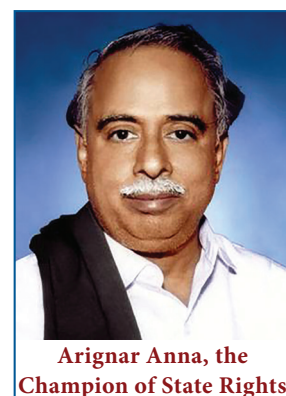
In shortly, we can say that our Constitutional, legal and political strategy advocates a dual strategy to resolve inter-State river water disputes. It advocates negotiated settlement as the first choice if negotiations fail to resolve the issues, an ad hoc tribunal based adjudication should be established.

## 5.5 Issues and Demands in Indian Federalism

There are many issues in Indian federalism that create disturbances in the Centre-State relations. We will focus on the major problems in this section.

### Appointment and Role of the Governor

The very office of the Governor as an agent of the Central Government to monitor the State Government imperils the powers of the constituent States. The Raja Mannar Committee Report was highly critical of the office and role of

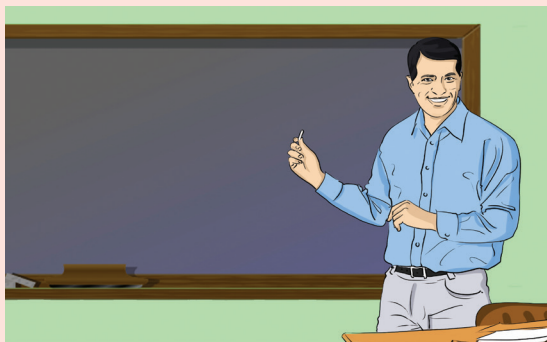


Arignar Anna, the  
Champion of State Rights





## Activity: Conversation on Cauvery Dispute



**Student:** Sir, can you please explain us the Cauvery dispute?

**Teacher:** Cauvery dispute is an inter-State water dispute. It involves the states of Tamil Nadu, Karnataka, Kerala and Union Territory of Puducherry.

**Student:** What is the history behind the issue?

**Teacher:** The history of the issue is a long one. The Madras Presidency and the Princely State of Mysore signed an agreement in 1924 for sharing the waters. After being in operation for fifty years the agreement lapsed in 1974.

**Student:** Did the disputants hold negotiations thereafter?

**Teacher:** Yes, many rounds of negotiations were conducted for nearly two decades but no solution was reached. As we learnt earlier in the class, the Inter State River Water Disputes Act 1956 allows for the formation of a tribunal for resolving the river water disputes. The Cauvery River Water Tribunal was established in 1991 to solve the issue.

**Student:** Did the Tribunal deliver its Award? What are the features of its Award?

**Teacher:** Yes. The Tribunal gave the final Award in 2007. It stipulated a monthly release of water from Karnataka to Tamil Nadu across the border in Biligundlu. It fixed the share of each state from Cauvery River. It provided a distress formula to share the waters in years when rainfall is low allowing for proportionate sharing of the available water.

**Student:** What is the Cauvery management Board?

**Teacher:** The Tribunal provided a Cauvery Water Management Board to manage the tricky problem of sharing the water

**Student:** Has it been formed?

**Teacher:** After many years of litigation, the Supreme Court delivered the final verdict and directed the Union Government to constitute the mechanism to implement the Award. The Cauvery Water Management Authority and the Cauvery Water Regulation Committee were established in 2018 to







implement the Award of the Tribunal as modified by the Supreme Court. At present Tamil Nadu is entitled to get 177.25 tmcft of water from Karnataka as measured in Biligundlu border. The total share for Cauvery water allotted to Tamilnadu is 404.25 tmcft. Karnataka is entitled to get 284.25 tmcft. Kerala's share is 30 tmcft and the fourth disputant Puducherry will get 7 tmcft.

governor. It is often pointed out that the Union Government to arm-twist the State executive. The Dravidian parties, since the days of C.N. Annadurai, have been demanding 'genuine autonomy for the States, by reducing the Governor's power of interfering with the State executive and State legislature.

The regional parties have deprecated the practice of appointing politically active and partisan persons as governors. They have frequently demanded that the governor should be appointed in consultation with the State Government. Many political commentators and commissions have argued for the appointment of eminent persons who have contributed to India's development in diverse fields as governors.

The attitude of the Governor towards the State Governments of those ruled by parties opposed to the ruling party at the Centre is another major tension area in Centre-State relations. Whenever there is a split in a ruling State party or hung assembly, the role of the Governor becomes very crucial and in many instances, the regional and opposition parties have agitated against the decisions of the incumbents in gubernatorial office.

### Activity



Prepare a project report on the role of the Governor in the evolution of state politics in India.

## Education

There is a popular demand that the subject of education must be restored to the List II or State List in which originally it was located. The Parliament in 1976 enacted the 42nd Constitutional Amendment Act that transferred the subject of education to the List III or Concurrent List. The State Governments exclusively had authority over education when it was in State List and the Union Government acquire education after this transfer. As we learnt earlier when a contradiction arises between the States and the Central Government in the Concurrent List the authority of the Central Government or Parliament will prevail. Many political parties in States like Tamil Nadu are demanding the transfer of education back to the State List.

### State Autonomy Issues

Transfer of Education

Appointment of Governors

Article 356

Reservation of Bills

All India Services

## Reservation of State Bills for Presidential Consideration

The Governor of a State has discretionary power to reserve a bill of the State legislature for the consideration of the President. Whenever a money bill of the State



legislature is reserved by the Governor the President may either declare or withhold his assent. In case of other bills, he can declare or withhold his assent. He can also direct the Governor to send the bill for reconsideration to the legislature concerned. Even if the bill is again passed by the State legislature it is not obligatory for President to declare his assent. This provision was incorporated in the Constitution to protect the unity and integrity of India.

But many State Governments have criticized the Governors for reserving the duly passed State bills for the consideration of the President as there were alleged to have been motivated by political considerations to suppress the State Governments and to further the interests of the ruling party or coalition at the Centre.

### Activity



Organize a debate in the class on the state autonomy demands in India.

### Improper use of Article 356

The article 356 in Part XVIII of the Constitution provides for the proclamation of Emergency by the President in any State where there is a breakdown of Constitutional machinery either based on the report of the Governor or even otherwise. The article emphasizes on the supremacy of the Constitution and national unity and integrity. The State Governments ruled by the opposition parties of the ruling party at the Centre have complained against the frequent and improper use of this article by the ruling party or coalition at the Centre. More than a hundred times, the article has been used to impose emergency in States and in many instances there was a huge complaint that

political and party considerations have led to the imposition of the President's Rule. Many regional parties have demanded the abolition of this article. However, since the Supreme Court's judgement in S.R. Bommai vs Union of India case, the chances for misuse of article 356 drastically reduced.

### All India Services

All India Services are created under article 312 of the Constitution. The officers to these services are recruited by the Union Government and posted in the States. The State Governments have powers of posting, transfer while the Central Government alone has powers to dismiss them. As the ultimate control over the All India Services are with the Central Government the State Governments have sought changes in the system and the Rajamannar Commission of Tamil Nadu government suggested a complete revamping in the structure and position of All India Services.

### Commissions on Centre-State Relations

A number of commission have been formed in past to study and provide recommendation on Centre-State relations.

#### 5.5.1 Administrative Reforms Commission

There were two Administrative Reforms Commissions established in the past to provide recommendations for reviewing and reforming the administrative system of the country. The First Administrative Reforms Commission was formed in 1966 initially under the leadership of Morarji Desai and later on by K. Hanumanthaiah. It submitted twenty reports including one in which extensive suggestions were provided in the domain of Centre-State relations. The Second



Administrative Reforms Commission was constituted in the new millennium in 2005 under the chairmanship of initially Veerappa Moily and later on by V. Ramachandran.

Commissions on Centre-State Relations	1. Administrative Reforms Commission
	2. Rajamannar Commission
	3. Sarkaria Commission
	4. Punchhi Commission
	5. Venkatachaliah Commission

### 5.5.2 Rajamannar Commission



**Rajamannar**

The Tamil Nadu government established the Rajamannar committee to analyze and provide recommendations for restructuring the Centre-State relations in our Constitution. The committee consisted of the retired Chief Justice of Madras High Court Justice. P.V.Rajamannar, former Vice-Chancellor of the University of Madras, Dr A Lakshmanaswamy and a former Chief Justice of Andhra, Dr P. Chandra Reddy. It submitted its report to the government in 1971 marking a great milestone in the history of autonomy debate in the country. The major suggestions of the committee include

1. The article 263 of the Constitution should be implemented and Inter-State Council should be formed to promote

cooperation among central and State Governments. The proposed council must consist of the Chief Ministers of the States or their nominees and the Prime Minister as the Chairperson. All the major bills of the Parliament and decisions of the Union Government that affect the interests of one or more States must be placed and discussed in the council. Its opinion should be considered in the decision making process. The committee's made consultation with the Inter State Council is mandatory in all matters barring those related to the two subjects, namely defence and foreign affairs.

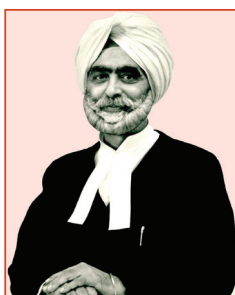
2. The committee recommended the elimination of articles 256, 257, 339(2) from our Constitution. The committee was against specifically these articles as they enable the Centre to issue instructions to the State Governments
3. It favored the shifting of the residuary powers of legislation and taxation from the Union Government to the State Governments to empower the States.
4. The article 356 in Part XVIII of the Constitution should be diligently used by the Union Government only as a measure of last resort in the event of a complete breakdown of the Constitutional machinery in the State and not in a mere law and order break down situation.
5. The committee wanted to introduce far reaching changes in All India Services. It suggested the abolition of All India Services including the elite Indian Administrative Service as they are against the spirit of federalism and State autonomy. It highlighted the concerns of the State Governments ruled by opposition parties

of the ruling party at the Centre about the All India Services acting as agents of the Union Government.

6. In the domain of financial resources the committee recommended greater devolution of powers and resources to the States. For the purpose of expanding the financial capacity of the States it suggested changes in certain taxes like corporation tax, customs and export taxes. The committee recognized the finances as the fulcrum of State rights and balanced federalism and therefore recommended the transfer of many items from Union List and Concurrent List to State List in the seventh schedule of the Constitution. It argued for making the Finance Commission a permanent, impartial body devoted to the priorities of national unity, development and State rights and identities.

### 5.5.3 Sarkaria Commission

The Union Government constituted a commission under the chairmanship of



Justice R.S. Sarkaria

a comprehensive report containing 247 recommendations.

Justice R.S. Sarkaria in 1983 to review the Centre-State relations. B. Sivaraman and Dr. R. S. Sen were the two other members of the commission. Five

years later, it submitted

### Inter State Council

It recommended that the Inter-State Council must have the functions laid down in article 263 (b) and (c) that is to investigate subjects where many States have common interest and to make recommendation

for better co-ordination of policy in that subject. The commission argued against article 263(a) stating that the Inter-State Commission should not have powers to enquire and advise on interState disputes. The commission also suggested the establishment of an independent, permanent secretariat for Inter-State Council to make the body more effective.

### Article 356

It suggested that the article 356 must be imposed only meagerly, as a measure of last resort when there is a complete breakdown of Constitutional machinery in a State. All available and possible alternatives should be explored before the imposition of the article 356 Emergency in the State concerned.

### Governor

The commission rejected the demand and suggestion of some political parties and States that the office of governor must be abolished or the concerned State Government must be consulted before the appointment of State governors. On the contrary, for smoother functioning of federalism it suggested that the politically active persons and leaders should not be appointed as governors. Only eminent persons must be appointed as governors. When differing parties are ruling at the Centre and States the leader belonging to the ruling party at the Centre must not be appointed as the governor of a State.

### Language

It recommended the strict adherence to the tri language formula to strengthen the unity and integrity of the country.



#### 5.5.4. Punchhi Commission



**Justice Madan  
Mohan Punchhi**

The Union Government constituted a commission in 2007, under the leadership of Justice Madan Mohan Punchhi, the former Chief Justice of the Supreme Court in 2007. The commission also had three more members and a Secretary and presented its report in 2010. It recommended that the governors of the States must have fixed tenure

and they should be removed only through impeachment process akin to the President of India. It wanted to introduce changes in articles 355 and 356 so that insurgency or problem afflicted areas or districts in a State rather than the entire State can be brought under emergency as a strategy to localize emergency and efficiently handle insurgency or troubles. The commission also suggested that the Union Government must have power and authority for the suo motu deployment of central forces without the consent of the concerned States in areas affected by communal violence.

#### Activity



Organize a group discussion in the class on the argument that the big states must be bifurcated into small states so as to promote development.

#### Activity: Case study



##### Supreme Court Judgment in S.R. Bommai Case

- ❖ Somappa Rayappa Bommai (6 June 1924 to 10 October 2007) was the 11th Chief Minister of Karnataka. He was also the Human Resource Development Minister in the United Front Government from 1996 to 1998 and served with both the Prime Ministers H. D. Deve Gowda and I. K. Gujral.
- ❖ The Supreme Court delivered a landmark judgment in the S.R. Bommai versus Union of India Case in 1994 that has protected the rights of the states greatly. S.R. Bommai was the Chief Minister of Karnataka and his government was dismissed in 1994 by the Central Government leading to the filing of the case in the Supreme Court. The judgment protected the states from the arbitrary dismissal at the hands of the hostile Central Government. The main features of the judgment are:
- ❖ Article 356 is an exceptional power to the Union Government and it should be used only occasionally to meet the exigencies of special occasions.



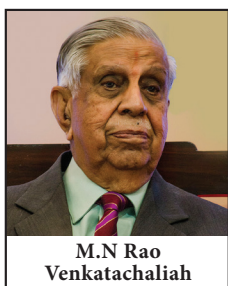




- ❖ Emergency under this article can be imposed only on certain grounds signifying Constitutional breakdown. For example, if no party or coalition is able to generate majority support after the Legislative Assembly elections resulting in a hung Assembly; if Constitutional directions from the Central Government are disregarded by the State Government or State Government actively assists in internal subversion.
- ❖ Emergency cannot be imposed on certain grounds as they do not constitute Constitutional breakdown. For example, a mere law and order problem cannot be construed as Constitutional breakdown. And, emergency cannot be imposed if the ruling party in the state lost heavily in the Parliamentary Elections.
- ❖ The Governor's report on the breakdown of the Constitutional machinery in the state must be placed in Parliament. The report should be a thorough one detailing the exceptional situation in the state.
- ❖ The Legislative Assembly of a state cannot be dissolved before the proclamation of the president is approved by both Houses of the Parliament.
- ❖ The court has power to determine the validity of the imposition of emergency under article 356 of the Constitution. If the court finds the grounds of imposition unconstitutional it can and will nullify the proclamation and restore the dismissed State Government to life. To put it succinctly the Supreme Court possesses the power of Judicial Review over the imposition of article 356.
- ❖ Ever since the judgment was delivered by the Supreme Court, the State Governments ruled by opposition parties have been protected from arbitrary dismissal by the Central Government with a different ruling party.

Dr. Ambedkar called this Article 356 as a dead letter to the Constitution as it negates the federal characters of the Indian Political System and the popular sovereignty of an elected government.

#### 5.5.5 Venkatachaliah Commission



Commission was set up by a resolution of the NDA Government of India led by

The National Commission to review the working of the Constitution (NCRWC) also known as Justice Manepalli Narayana Rao Venkatachaliah

Atal Bihari Vajpayee on 22 February 2000 for suggesting possible amendments to the Constitution of India.



**Dicey:** "A federal state is nothing but a political contrivance intended to reconcile national unity with maintenance of states' rights".



## Glossary



- ❖ **Federalism:** A political system in which powers are distributed between the central and State Governments through the Constitution.
- ❖ **Rigid Constitution:** A Constitution that can be changed only through a special or greater majority based amendment process in Parliament or by a Constituent Assembly. It cannot be changed easily.
- ❖ **Flexible Constitution:** A Constitution that can be changed through an ordinary legislative process. It can be changed easily.
- ❖ **Distribution of Powers:** The powers or subjects of governance will be Constitutionally divided between the central and State Governments in federal system.
- ❖ **Co-operative Federalism:** Granville Austin, the noted Constitutional scholar described the federalism of our Constitution as Co-operative Federalism. It promotes cooperation between the Centre and the States.
- ❖ **Union List:** The List I in the Seventh Schedule of the Constitution contains the subjects that are exclusively allotted to the Union Government.
- ❖ **State List:** The List II in the Seventh Schedule of the Constitution contains the subjects that are exclusively allotted to the States
- ❖ **Concurrent List:** The List III contains the subjects that are allotted to the joint jurisdiction of the central and State Governments. If there is a contradiction between the central and State Governments the law of the Union Government will prevail.
- ❖ **Residuary List:** Any subject that is not mentioned in the Union List ( List I) State List(List II) and Concurrent List(List III) will come under this category. The Union Government will have jurisdiction over these subjects.
- ❖ **All India Services:** The officers to these services are recruited by the Central Government and allotted to the State Governments. Any new All India Service can be created by a special majority, two third majority based resolution of the Council of the States as per the article 312 of the Constitution.
- ❖ **Raja Mannar Commission:** This commission on Centre-State relations was established by the Tamil Nadu government in 1968, whose report is an important landmark in the political history of States' rights.
- ❖ **Sarkaria Commission:** The Central Government constituted in 1983 the Sarkaria Commission to provide recommendations on Centre-State relations.
- ❖ **NCRWC:** The National Commission to Review the Working of the Constitution, otherwise known as the Venkatachaliah Commission was established by the Union Government in 2000 to study the Centre-State relations.
- ❖ **Unitary Constitution:** The Constitution that recognizes only one set of government (National government). There is no Constitutional recognition to the State or regional governments in this system.



❖ **Judicial Review:** The power of the Supreme Court to review the Constitutional validity of the laws of the Parliament and other legislature and acts of the Executive. It emerged in the Constitution of the United States and our Constitution provides limited Judicial Review powers to the Judiciary.

❖ **Tribunals:** The Constitution provides for the establishment of tribunals for the resolution of inter-State water disputes. Tribunal means a body established to settle certain kinds of disputes.

## ( Evaluation )

### I. Choose the correct answer:

- The first federal Constitution in the world belonged to
  - United States
  - United Kingdom
  - India
  - Australia
- Federalism was demanded in India for the first time by
  - Mountbatten Plan
  - Nehru Report
  - Cabinet Delegation
  - Rajaji Plan
- Bicameralism refers to the Parliament having
  - Three Houses
  - One House
  - Four Houses
  - Two Houses
- The most important feature of a federal Constitution is
  - Regional Governments
  - National Governments
  - Decentralization of Powers
  - Political Parties
- The disputes between Central Government and State Governments are adjudicated by
  - Parliament
  - Supreme Court
  - High Court
  - President
- Who described Indian Constitution as Cooperative Federalism?
  - Granville Austin
  - Dr. Ambedkar
  - Jawaharlal Nehru
  - Wheare
- Article 262 of the Constitution deals with
  - Inter State River Water Disputes
  - Inter State Disputes
  - Centre-State Disputes
  - International Disputes
- Find out the correctly matched pair
  - Union List ----- List II
  - State List ----- List I
  - Residuary List ----- List I
  - Concurrent List ----- List III

