

## UNIT-III

### CENTER – STATE RELATION

#### INTRODUCTION

- ✓ Division of power between the center and the state
- ✓ No division of judicial power – integrated judicial system
- ✓ Constitution contains elaborate provisions for the Centre- State relation

#### LEGISLATIVE RELATIONS

##### Article 245 to 255 in Part XI

- Legislative power based on both territory and the subjects of legislation
- Four aspects in the Center-State legislative relations
- Territorial extent of Central and State legislative
- Distribution of legislative subjects
- Parliamentary legislation in the State field

##### Centre's control over legislative.

- ✓ DISTRIBUTION OF LEGISLATIVE SUBJECTS
- ✓ Three fold distribution of legislative subjects between the Centre and the State
- ✓ UNION LIST; Example; Defence, Banking, Currency, Census – Only parliament can make law on this subjects, Originally 97 subjects , at present 100 subjects
- ✓ STATE LIST; Example Police, Public health, Agriculture, Prisons – State legislature can make law on state list. Originally 66 subjects, at present 61 subjects
- ✓ CONCURRENT LIST; Example; Marriage, Divorce, Population control, Electricity- Both parliament and state legislature can make laws. Originally 47 at present 52 subjects.
- ✓ PARLIAMENTARY LEGISLATION IN THE STATE FIELD

##### Distribution of legislative powers between the centre and the state maintained in normal times.

- Under 5 extraordinary circumstances, constitution empowers the parliament to make laws on state list
- When Rajya Sabha passes a Resolution
- During a National Emergency
- When states make a Request
- To implement International Agreements
- During President's rule

#### CENTRE'S CONTROL OVER STATE LEGISLATIVE

- ✓ Governor can reserve certain types of bills passed by the state legislature for President's consideration

- ✓ Bills on certain matters enumerated in the state list can be introduced in the state legislature only with the previous sanction of the president.
- ✓ President can direct the states to reserve money bills and other financial bills passed by the state legislature for his consideration during a financial emergency

## **FEDERAL SYSTEM**

### INTRODUCTION

- Political scientists classified govt, into Union and Federal
- Based on nature of relations between nation and regional govt,

### FEDERAL GOVT:

- ✓ Powers divided national & regional govt. by the constitution. Both operated independently

Example: US ,Swiss, Australia .

### FEDERATION

- 'Federation' derived from Latin word 'foedus' means 'treaty' or 'agreement' .
- Federation is a new state formed through a treaty or an agreement units
- Federation formed in 2 ways
- Way of integration – Example: US
- Way of disintegration – Example: Canada

### INDIAN FEDERAL SYSTEM

- ✓ Constitution framers adopted federal system for 2 reasons
- ✓ Larger size of the country
- ✓ Socio-cultural diversity
- ✓ Term 'federation' has nowhere used in the constitution
- ✓ Article 1 : India as a 'Union states'
- ✓ Indian federal system is based on 'Canadian model'
- ✓ Indian federation resembles the Canadian federalism

### FEDERAL FEATURES OF THE CONSTITUTION

#### DUAL POLICY

- Union at the Centre and the state at the periphery
- Sovereign powers assigned to them by the constitution

#### Union Govt.

- ✓ Deals with matters of national importance
- ✓ Like Defense, foreign, affairs, currency, communication.

- ✓ WRITTEN CONSTITUTION
- ✓ Not only written constitution but also lengthiest constitution of the world
- ✓ Originally contained a Preamble, 395 Articles and 8 Schedules
- ✓ At present (2019) Preamble, 448 Articles and 12 Schedules

Specifies structure organization, powers and functions of two Govt.

- It avoids misunderstandings and disagreements.

#### DIVISION OF POWERS

- Constitution divides the powers between the Centre and the state into 3 terms
- Union list – 100 Subjects
- State list – 61 Subjects
- Concurrent list – 52 Subject

Both Centre and state can make law on subjects of the concurrent list

Residuary subjects are given to the Centre

#### SUPREMACY OF THE CONSTITUTION

- ✓ Constitution is the supreme law of the land
- ✓ Laws enacted by the Centre and state must conform to its provisions
- ✓ Else declared invalid by the supreme court through Judicial Review
- ✓ Organs of constitution must operate within the jurisdiction prescribed by the Constitution

#### RIGID CONSTITUTION

- Supremacy of the constitution can be maintained only if amendment is rigid
- Federal structure can be amended only by joint action
- Require special majority of the parliament and approval of ½ of the state legislative

#### INDEPENDENT JUDICIARY

- Constitution establishes an Independent Judiciary headed by the supreme court for 2 purposes
- Protect the supremacy of the constitution by judicial review
- State disputes between centre and state
- Constitution contains measures like
- Security tenure to judges, Fixed services conditions and so on
- STRONG CENTRE
- Division of powers in favor of the centre
- Union list contains more subjects than state list
- More important subjects have been included in the Union List

- Centre has overriding authority over the concurrent list
- Residuary powers left with centre
- NO EEQUALITY OF STATE REPRESENTATION
- State are given representation in the Rajya Sabha on the basis of population
- Membership varies from 1 to 131
- Regarded as a safeguard for smaller states

#### EMERGENCY PROVISION

- ✓ During emergency the Central Govt. becomes all powerful
- ✓ Coverts federal structural into a unitary

#### SINGLE CITIZENSHIP

- `citizenship irrespective of the state in which they are born or reside enjoy same rights all over the country
- Other federal state like US, SWISS and Australia has dual citizenship

## **GOVERNOR**

#### INTRODUCTION

- Constitution of India envisages the same pattern of Govt. in the states as that for the centre, that is, a parliamentary system
- Part VI of the constitution, which deals with the Govt. in the states
- Article 153 to 167 in Part VI deals with the state executive
- State executive consists of the Governor, the chief minister, the council of ministers and the advocate general of the state
- Governor is the chief executive head of the state but a nominal executive head
- Governor acts as an agent of the central Govt. He has a dual role.

#### APPOINTMENT OF GOVERNOR

- ✓ Governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president
- ✓ He is appointed by the president by warrant under his hand and seal
- ✓ He is a nominee of the central Govt. But, as held by the supreme court in 1979, the office of governor of a state is not an employment under the central Govt.
- ✓ Draft Constitution provided for the direct election of the governor on the basis of universal adult suffrage

#### EXECUTIVE POWERS

- ✓ All Executive actions of the Govt. of a state are formally taken in his name

- ✓ He can make rules specifying the manner in which the orders and other instruments made and executed in his name shall be authenticated
- ✓ He can make rules for more convenient transaction of the business of the state Govt. and for the allocation among the ministers of the said business
- ✓ He appoints the chief minister and other ministers
- ✓ He appoints the advocate general of a state and determines his remuneration
- ✓ He appoints the state election commissioner & determines conditions of services

#### LEGISLATIVE POWERS

- ✓ Can summon/ prorogue state legislature & dissolve the state legislative assembly
- ✓ He can address the state legislature at the commencement of the first session after each general election and the first session of each year
- ✓ He can send messages to the house of the state legislature, with respect to a bill pending in the legislature or otherwise.
- ✓ He can appoint any member of the state legislative assembly to preside over its proceedings when the office of both the speaker & deputy speaker fall vacant
- ✓ He nominates 1/6<sup>th</sup> of the member of the legislative council

#### FINANCIAL POWERS

- ✓ Governor sees that Annual Financial statement is laid before the state legislature
- ✓ Money bills can be introduced in the state legislature only with his prior recommendation
- ✓ No demand for a grant can be made except on his recommendation
- ✓ He can make advances out of the contingency fund of the state to meet any unforeseen expenditure
- ✓ He constitutes a finance commission after every 5 years to review the financial position of the panchayats and the municipalities

### **CHIEF MINISTER**

#### INTRODUCTION

- ✓ In the scheme of parliamentary system of government provided by the constitution
- ✓ The Governor is the nominal executive authority
- ✓ The Chief Minister is the real executive authority
- ✓ In other words, the governor is the head of the state while the chief minister is the head of the government

- ✓ Position of the chief minister as the state level is analogous to the position of prime minister at the centre

#### APPOINTMENT OF CHIEF MINISTER

- ✓ Constitution does not contain any specific procedure for the selection and appointment of the chief minister
- ✓ Article 164 only says that the CM shall be appointed by the governor. This does not imply that the governor is free to appoint anyone as CM
- ✓ In accordance with the conventions of the parliamentary system of govt. the governor has to appoint the leader of the majority party in the state legislative assembly as the CM
- ✓ POWERS AND FUNCTION OF CHIEF MINISTER
- ✓ IN RELATION TO COUNCIL OF MINISTERS
- ✓ Governor appoints those persons as ministers who are recommended by the CM
- ✓ CM allocates and reshuffles the portfolios among ministers
- ✓ CM can ask a minister to resign or advise the governor to dismiss him in case of difference of opinion
- ✓ CM presides over the meeting of the council of ministers & influence its decision
- ✓ CM guides, directs, control and coordinates the activities of all the ministers
- ✓ CM can bring about the collapse of the council of ministers by resigning from office. His resignation or death automatically dissolves the council of ministers.

#### IN RELATION TO STATE LEGISLATURE

- ✓ CM advises the governor with regard to the summoning and proroguing of the sessions of the state legislature
- ✓ CM can recommend the dissolution of the legislative assembly to the governor at any time
- ✓ CM announces the government policies on the floor of the house

#### OTHER POWER AND FUNCTIONS

- ✓ CM is the chairman of the state planning board
- ✓ CM acts as a Vice-Chairman of the concerned zonal council by rotation, holding office for a period of 1 year at a time
- ✓ CM is a member of the Inter-state council and the National Development council, both headed by the prime minister
- ✓ CM is the chief spokesman of the state govt. and political head of the services
- ✓ CM is the crisis manager-in-chief at the political level during emergencies
- ✓ As a leader of the state, meets various sections of people & receives memoranda.

## **STATE LEGISLATURE**

#### INTRODUCTION

- ✓ Article 168 to 212 in Part VI
- ✓ Deals with the organization , composition, duration, officers, procedures, powers and so on of the state legislative
- ✓ Though these are simile to that of parliament, there are some differences as well.

#### ORGANISATION OF STATE LEGISLATIVE

- ✓ There is no uniformity in the organization of state legislatures
- ✓ Most of the sates have an unicameral system, while others have a bicameral system
- ✓ At present only 6 states have two houses
- ✓ Tamil Nadu legislative council Act, 2010 has not come into force
- ✓ COMPOSITION OF TWO HOUSES
- ✓ DURATION OF TWO HOUSES
- ✓ Duration of Assembly
- ✓ Like the Lok Sabha the legislative assembly is not a continuing chamber
- ✓ Normal term in 5 years Expiration of the period of 5 years operates as automatic dissolution
- ✓ Term can be extended during the period of national emergency for 1 year at a time
- ✓ Duration of Council
- ✓ Like the Rajya Sabha , the legislative council is a continuing chamber
- ✓ Not subject to dissolution. 1/3<sup>rd</sup> of its members retire on the expiration of every second year
- ✓ Member continue for 6 years vacant seats are filled up by fresh election & nominations

#### SPEAKER OF ASSEMBLY

- ✓ Speaker is elected by the assembly itself from amongst its members
- ✓ Speaker remains in office during the life of the assembly
- ✓ He vacates his office earlier in any of the following 3 case
- ✓ If he ceases to be a member of the assembly
- ✓ If he resigns by writing to the deputy speaker
- ✓ If he is removed by a resolution passed by a majority of all the member of the assembly. Such a resolution can be moved only after giving 14 days advance notice

#### SPEAKER'S POWER AND FUCTION

- ✓ He maintains order and decorum and he is the final interpreter of the provisions
- ✓ He adjourns the assembly or suspends the meeting in the absence of a quorum
- ✓ He doesn't vote in the 1<sup>st</sup> instance. Can exercise a casting vote in the case of a tie.
- ✓ He can allow a 'secret' sitting at the request of the leader of the House
- ✓ Decides whether a bill is a Money Bill or not & his decision on this question is final
- ✓ He decides the questions of disqualification of a member of the assembly
- ✓ He appointed the chairman of all the committees & supervises of the assembly
- ✓ SESSION OF STATE LEGISLATURE
- ✓ Summoning
- ✓ Adjournment

- ✓ Prorogation
- ✓ Dissolution
- ✓ Quorum
- ✓ Voting in House
- ✓ Language in state legislative
- ✓ Rights of Ministers and Advocate General